

CITY OF FRANKLIN
COMMON COUNCIL MEETING*
FRANKLIN CITY HALL COUNCIL CHAMBERS
9229 WEST LOOMIS ROAD, FRANKLIN WISCONSIN
AGENDA**
TUESDAY, OCTOBER 21, 2014
6:30 PM

- A. Call to Order and Roll Call
- B.
 - 1. Citizen Comment Period
 - 2. Mayor Announcements:
 - Report on October 13, 2014 Intergovernmental Cooperation Council Meeting
- C. Approval of minutes of regular meeting of October 7, 2014
- D. Hearings
- E. Organizational Business
 - Appointments:
 - 1. A Resolution Confirming the Appointment of Glen E. Morrow as City Engineer/Director of Public Works.
 - 2. Economic Development Commission – Theodorus Grintjes, 7562 S. Nottingham Way (Ald. Dist. 2), 2-year term expiring 6/30/2016.
- F. Letters and Petitions
 - Memorandum from Planning Department Regarding Summary of the Wisconsin Economic Development Association 2014 Fall Regional Conference
- G. Reports and Recommendations
 - 1. Donation from The Rock Sports Complex to the Police Department in the amount of \$500.
 - 2. Quarry Reclamation Plan update and as such Plan is required pursuant to Planned Development Districts No. 23 and 24, Chapter 176 of the City of Franklin Municipal Code Nonmetallic Mining Reclamation, and Wisconsin Administrative Code NR 135 Nonmetallic Mining Reclamation.
 - 3. Professional Services Agreement Between the City of Franklin and Stantec Consulting Services Inc. for Quarry Monitoring Services.
 - 4. Authorization to engage Quarles & Brady, LLP as Bond Counsel for \$5,345,000 City of Franklin General Obligation Promissory Notes, Series 2014A.
 - 5. A Resolution Providing for the Sale of Approximately \$5,345,000 General Obligation Promissory Notes, Series 2014A.
 - 6. Recommendation from Board of Water Commissioners and Director of Finance to Approve Contract with ISI Water Company for Water Loss Study.
 - 7. Authorization Directing Staff to Advertise and Receive Bids for the Lining of Approximately 350 lineal feet of Sanitary Sewer on the east side of W. Forest Home Avenue, northeast of West Speedway Drive.

8. A Resolution Authorizing Officials to Execute Agreements with Milwaukee County to allow for the Installation of Optical Traffic Signal Pre-Emption at the Intersections of S. 76th Street (CTH U) and W. Imperial Drive/W. Brunn Drive, W. Puetz Road and W. Drexel Avenue.
9. A Resolution Authorizing Certain Officials To Execute a WE Energies South 27th Street Electric Relocation – WisDOT Project ID2265-16-70 Letter Agreement with the City of Franklin to Terms, to Proceed and Payments to Be Made for the Costs to Bury Electrical Circuits (West College Avenue to West Drexel Avenue).
10. A Resolution Authorizing Officials to execute an Engineering Services Agreement with Graef for the Relay of Water Main on W. Scepter Circle and W. Scepter Court.
11. A Ordinance to Establish Placement of Stop Signs on South 37th Place at its Intersection with West Madison Boulevard.
12. City Attorney Request for Potential conflict of Interest Informed Consent Waiver and Regard to the Performance of Legal Services for the City Upon West St. Martins Road Potential Project Subject Matters.

H. Licenses and Permits
Miscellaneous Licenses

I. Bills
Vouchers and Payroll approval

J. Adjournment

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

**Supporting documentation and details of these agenda items are available at City Hall during normal business hours.

[Note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, contact the City Clerk's office at (414) 425-7500.]

REMINDERS:

October 21	Common Council	6:30 p.m.
October 23	Plan Commission	7:00 p.m.
October 26	Trick or Treat	4:00-7:00 p.m.
November 3	Committee of the Whole and Common Council Meeting	6:30 pm
November 4	Election Day – General Election	7:00 am-8:00 pm

- BOARD AND COMMISSION APPOINTMENTS E.3. At this time Mayor Olson withdrew the appointment of Bruce S. Kaniewski (Ald. Dist. 2) for a 2-year term to the Economic Development Commission expiring 6/30/2016 and the appointment of Michael A. Soto (Ald. Dist. 5) for a 2-year term to the Economic Development Commission expiring 6/30/2016.
E.4.
- INTERGOVERNMENTAL AGREEMENT TRUNKED RADIO SYSTEM G.1. Alderman D. Mayer moved to approve an Intergovernmental Agreement with Milwaukee County Permitting Access to Milwaukee County's 800 MHz Project 25 Trunked Radio System, in the form and content as annexed hereto, subject to minor changes approved by the Police Chief and the Fire Chief and resulting from any further contract or program changes by Milwaukee County, and any governance board terms provisions amendments as approved by the Director of Administration. Seconded by Alderman Dandrea. All voted Aye; motion carried.
- INSTALLATION OF OPTICAL TRAFFIC SIGNALS G.2. Alderman D. Mayer moved to table until October 21, 2014, a resolution authorizing officials to execute agreements with Milwaukee County to allow for the installation of optical traffic signal pre-emption at the intersections of S. 76th Street (CTH U) and W. Imperial Drive/W. Brunn Drive, W. Puetz Road and W. Drexel Avenue. Seconded by Alderman Dandrea. All voted Aye; motion carried.
- RES 2014-7021 NAMING NEWLY INSTALLED TRAIL "PLEASANT VIEW TRAIL" G.3. Alderman D. Mayer moved to adopt Resolution No. 2014-7021, A RESOLUTION NAMING THE NEWLY INSTALLED TRAIL BETWEEN PLEASANT VIEW SCHOOL AND THE VICTORY CREEK SUBDIVISION, THE "PLEASANT VIEW TRAIL" as recommended by the Park Commission. Seconded by Alderman Schmidt.
Alderman Wilhelm moved to call the question. Seconded by Alderman Schmidt. All voted Aye; motion carried.
On the vote for the adoption of Resolution No. 2014-7021, all voted Aye; motion carried.
- QUARLES & BRADY LLP INFORMED CONSENT WAIVER G.4. Alderman Wilhelm moved to authorize the City Attorney to execute the informed consent letter in the form and content as annexed hereto. Seconded by Alderman Schmidt. All voted Aye; motion carried.
- RES. 2014-7022 S. 27TH ST. CORRIDOR RECONSTRUCTION G.5. Alderman Schmidt moved to adopt Resolution No. 2014-7022, RESOLUTION APPROVING STATE-MUNICIPAL AGREEMENT FOR THE SOUTH 27TH STREET CORRIDOR

RECONSTRUCTION. Seconded by Alderwoman Evans. All voted Aye; motion carried.

2014 SENIOR DINING
ADA FIRE ALARM CDBG
PROJECT

G.6. Alderwoman Wilhelm moved to authorize, as detailed in the Council Action sheet provided, the Director of Administration to execute a professional services agreement with Czarnecki Engineering, a contract amendment for additional Community Development Block Grant (CDBG) funding, and a contract amendment for a project extension, all for the 2014 Senior Dining ADA Fire Alarm CDBG Project, and to authorize publication of a request for proposals for the project, with a recommendation Alderman Schmidt. All voted Aye; motion carried.

RES 2014-7023
AWARDING CONTRACT
TO MIRON
CONSTRUCTION

G.7. Alderman Dandrea moved to adopt Resolution No. 2014-7023, A RESOLUTION AWARDING A CONTRACT TO MIRON CONSTRUCTION CO., INC. IN THE AMOUNT OF \$2,746,620 FOR THE CONSTRUCTION OF A WATER AND WASTEWATER OPERATION AND MAINTENANCE FACILITY. Seconded by Alderwoman Evans. All voted Aye; motion carried.

RES. 2014-7024
RELOCATION COSTS
FOR WE ENERGIES
FACILITIES

G.8. Alderwoman S. Mayer moved to adopt Resolution No. 2014-7024, RESOLUTION FOR APPROVAL OF RELOCATION COSTS FOR WE ENERGIES FACILITIES TO RELOCATE ELECTRIC AND GAS SERVICE AT 5550 W. AIRWAYS AVENUE IN THE AMOUNT OF \$10,559.75, and to abandon existing easements and accept new easements, and further to authorize the Finance Department to release funds necessary to facilitate the development of this project. Seconded by Alderman D. Mayer. All voted Aye; motion carried.

DPW FUEL TANK
PAINTING

G.9. Alderwoman Wilhelm moved to authorize staff to enter into an agreement with Armor Shield for the repainting of two (2) 10,000 gallon fuel storage tanks in the Department of Public Works yard, not to exceed \$9,350. Seconded by Alderman Schmidt. All voted Aye; motion carried.

AUGUST 2014
MONTHLY FINANCIAL
REPORT

G.10. Alderwoman Wilhelm moved to receive and place on file the August 2014 Monthly Financial Report. Seconded by Alderwoman S. Mayer. All voted Aye; motion carried.

- RES. 2014-7025
UPDATE FUND
BALANCE POLICY
- G.11. Alderwoman Wilhelm moved to adopt Resolution No. 2014-7025, A RESOLUTION TO UPDATE FUND BALANCE POLICY FOR THE CITY OF FRANKLIN. Seconded by Alderwoman Evans. All voted Aye; motion carried.
- RECOMMENDATION
FROM THE COMMITTEE
OF THE WHOLE
- G.12. No additional action was required at this time regarding the review of Mayor's Recommended 2015 Budget as presented at the October 6, 2014 Committee of the Whole meeting.
- CLOSED SESSION
*Fratrick, et al, Plaintiffs,
City of Franklin,
Involuntary Plaintiff, v.
MMSD and Milwaukee
Sewerage Commission*
- G.13. (See action taken following Item I.1.)
- MISCELLANEOUS
LICENSES
- H.1. Alderwoman Evans moved to approve the following licenses:
Grant Operators' Licenses to Barbara Jakubczak, 5003 S 26th St, Milwaukee; Jennifer Kapsos, 2567 S 92nd St, West Allis; Alexandria Morris, 2920A, N Bartlett Ave., Milwaukee; Kristi Quiles-Lembcke, 5588 Serene Ct., Greendale; Katie Templeton, 7925 S 27th St.;
Hold Operator's License application of Chelsea Gagliano, 7010 W Evans Dr. until applicant contacts Clerk's office; and
Grant Temporary Class B Beer License to St Martin of Tours Parish School Spaghetti Dinner, Jeanne Johnson, October 11, 2014. Seconded by Alderwoman Wilhelm. All voted Aye; motion carried.
- VOUCHERS AND
PAYROLL
- I.1. Alderman Schmidt moved to approve net general checking account City vouchers in the range Nos. 153790 through 153975 in the amount of \$1,389,122.84 dated September 19, 2014 through October 2, 2014. Seconded by Alderman D. Mayer. On roll call, all voted Aye. Motion carried.
- Alderwoman S. Mayer moved to approve net payroll dated October 3, 2014 in the amount of \$328,509.89 and payments of the various payroll deductions in the amount of \$199,717.38 plus any City matching payments, where required. Seconded by Alderman D. Mayer. On roll call, all voted Aye. Motion carried.
- Alderman Dandrea moved to approve net payroll dated October

17, 2014 estimated at \$344,000.00 and payments of the various payroll deductions estimated at \$230,000.00, plus any City matching payments, where required. Seconded by Alderman Schmidt. On roll call, all voted Aye. Motion carried.

CLOSED SESSION
*Fratrick, et al, Plaintiffs,
City of Franklin,
Involuntary Plaintiff, v.
MMSD and Milwaukee
Sewerage Commission*

G.13.

Alderwoman Evans moved to enter closed session at 7:52 p.m., pursuant to Wis. Stat. §19.85 (1) (g), to confer with legal counsel for the Common Council who is rendering advice concerning strategy to be adopted by the body with respect to the subject litigation, including an offer of settlement received by City defense counsel from plaintiffs' counsel, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate. Seconded by Alderman Schmidt. Alderwoman S. Mayer vacated her seat at this time. On roll call to enter closed session, all voted Aye. Motion carried.

Upon reentering open session at 8:45 p.m., Alderman Schmidt moved to authorize legal counsel to continue on the course of litigation as discussed in closed session. Seconded by Alderman Dandrea. All voted Aye; motion carried.

ADJOURNMENT

J.

Alderman D. Mayer moved to adjourn the meeting at 8:46 p.m. Seconded by Alderman Schmidt. All voted Aye; motion carried.

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<p>APPROVAL</p> 	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>10/21/2014</p>
<p>ORGANIZATIONAL BUSINESS</p>	<p>A Resolution Confirming the Appointment of Glen E. Morrow as City Engineer/ Director of Public Works</p>	<p>ITEM NUMBER</p> <p><i>E. 1.</i></p>

The Mayor requests the Confirmation of Glen E. Morrow as the City Engineer/Director of Public Works for the City of Franklin effective Friday, October 31, 2014, and as provided for in the attached resolution.

Following Jack Bennett's retirement, the Common Council authorized hiring GovHR USA to guide the City in a national search for a replacement. That process has been successfully concluded. GovHR USA received over 35 candidates for the position, which is a strong turnout for such a position. They narrowed that group to 19 who received an initial background check and interview by GovHR USA. Documentation for twelve individuals was presented for consideration by the Mayor and a staff review group, which included Gary Grobner, Chairman of the Board of Water Commissioners of the Franklin Water Utility. Six individuals, representing 4 in-state and 2 out-of-state candidates, were provided an initial interview at the City. Three of those were invited to participate in a second round of interviews. Based on that extensive process, Glen E. Morrow was extended a conditional offer of employment subject to completion of a background check, passing the medical and drug screening, and confirmation by the Common Council. The Police Department performed an extensive background check, with positive results, and that contingency was removed. The Mayor, therefore, respectfully requests the confirmation of Glen E. Morrow as the City Engineer/Director of Public Works for the City of Franklin effective Friday, October 31, 2014 as provided for in the attached resolution.

Glen's resume is attached, a prominent highlight of which was serving as the City Engineer for the City of Greencastle, Indiana, from 2000 to 2007. Since 2007 Glen has been a Senior Project Manager for the Utility Infrastructure Sector at Burgess & Niple, an engineering consulting firm in Indianapolis. Glen's extensive experience in sewer and water utilities and general municipal engineering combined to make him an ideal candidate for Franklin's specific circumstances. The Mayor desired to find a candidate who sees "the big picture," will function as a strong leader, and can be an innovative problem solver with strong communication skills. The interview and background check strongly suggest that Glen is that individual and, thus, the Mayor presents him as his appointment.

Approval of the resolution would confirm the appointment and addresses a few transitional and benefit issues that are generally minor and reasonable adjustments expected with the hiring of an experienced, senior, department head level position. The proposed starting salary of \$106,000 is within the current approved salary range which goes up to \$111,179. There is the uncommon issue of providing a stipulation as to a patent(s) that Glen holds, but as it is all not related to City work, there should be no conflict. Glen holds Engineering licenses in Indiana, Missouri, and Illinois, and will obtain his Wisconsin license as a requirement to continuing in the position. Additionally, payment for reasonable moving expenses is requested.

Although this is the Mayor's appointment for your confirmation, as Human Resources Director it is my role to provide advice to you on such matters. Having participated at each stage in the GovHR USA process, I concur that Glen Morrow meets all of the expectations of position description as approved by the Common Council and that the hiring process undertaken has identified that he is a very strong applicant and an appropriate person for the appointment. As such, I recommend that the Common Council approve the resolution, thereby confirming Glen's appointment and some related conditions of the appointment.

COUNCIL ACTION REQUESTED

Motion to adopt Resolution No. 2014-____, A Resolution Confirming the Appointment of Glen E. Morrow as City Engineer/Director of Public Works.



A STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2014-_____

A RESOLUTION CONFIRMING THE APPOINTMENT OF GLEN E. MORROW
AS CITY ENGINEER/DIRECTOR OF PUBLIC WORKS

WHEREAS, a vacancy exists in the position of City Engineer/Director of Public Works, which vacancy the Common Council authorized use of a consulting firm to assist in soliciting for viable candidates; and

WHEREAS, in accordance with Section 55-1 of the Municipal Code of the City of Franklin, the method of selection for said position is appointment by the Mayor, subject to confirmation by a majority of all members of the Common Council; and

WHEREAS, following an extensive process, Mayor Olson has conditionally appointed Glen E. Morrow to the position of City Engineer/Director of Public Works, subject to the same condition as set forth below and subject to confirmation by a majority of all members of the Common Council and recommending the following wages and benefits as incorporated in this Resolution.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Franklin does hereby confirm the appointment of Glen E. Morrow as the City Engineer/Director of Public Works, effective October 31, 2014, and conditioned upon passing the required physical and drug screening.

BE IT FURTHER RESOLVED that, in accordance with Section 55-4 of the Municipal Code, the initial annualized salary rate for Mr. Morrow shall be \$106,000 and that this resolution does not serve as an employment contract and that Mr. Morrow's service to the City shall be in accordance with the employment policies, wage adjustments and policies, and fringe benefits as established by the Common Council from time-to-time, generally as set forth thereafter in the Employee Handbook, except as follows:

- Mr. Morrow will start with an initial vacation leave balance of two-weeks and accrue additional vacation at a rate of two-weeks per year for the first year and at three-weeks per year following completion of his first year of employment and effective in accordance with payroll practices; provided that if he resigns or is terminated prior to the completion of his second year, any vacation days remaining from the initial balance provided will not be paid-out upon separation and any vacation days used from the initial balance provided (calculated with earned accruals as used first) will be refunded to the City, in a manner as determined by the Director of Administration; and
- Mr. Morrow shall be provided a City cell phone for the convenience of the City, which phone may be used for personal use in accordance with IRS provisions; and
- Mr. Morrow shall be provided a document, in a form as prepared by the City Attorney, stipulating that the City has no claim to patents or royalties from patents Mr. Morrow currently holds or others that he may subsequently be granted, provided that it is clearly understood that work on such private matters or intellectual property may not be done on City time or using City equipment or facilities and that violating this prohibition would void any such stipulation; and
- The City will pay Mr. Morrow \$2,600 for moving expenses for household items.

BE IT FURTHER RESOLVED to successfully complete the Introductory Period (often called a Probationary Period in other organizations) for this position, Mr. Morrow shall obtain a Wisconsin license as a Professional Engineer and shall achieve any other performance expectations as determined by the Mayor, in accordance with the adopted position description.

Introduced at a regular meeting of the Common Council of the City of Franklin this 21st day of October, 2014, by Alderman _____.

Passed and adopted by the Common Council of the City of Franklin this 21st day of October, 2014.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, Director of Clerk Services

AYES ____ NOES ____ ABSENT ____

4675 N. Starnes Road
Bloomington, IN 47404
(812) 249-6535
gmorrowpe@gmail.com

Résumé For Glen E. Morrow, PE
Page 2 of 5

GLEN E. MORROW, PE

4675 N. Starnes Road
Bloomington, IN 47404
Telephone (812) 249-6535
gmorrowpe@gmail.com

EDUCATION:

- ❖ **Rose-Hulman Institute of Technology**- Class of 1991- B.S. Civil Engineering (Architectural/ Construction Concentration with a Consulting Engineering Program)

CERTIFICATIONS/ LICENSES:

- ❖ **Indiana Professional Engineering License** No. 9700176
- ❖ **Missouri Professional Engineering License** No. E-27606
- ❖ **Illinois Professional Engineering License** No. 062-060614
- ❖ **Colorado School of Mines**- 2012 Pilot Tube Microtunneling / Microtunneling Short Course
- ❖ **Purdue University Certificate in Watershed Management**- 2006 Indiana Watershed Leadership Academy
- ❖ **IDEM Municipal Separate Storm Sewer System (MS4) Operator** for the Greencastle/ DePauw MS4
- ❖ **IDEM Municipal Separate Storm Sewer System (MS4) Qualified Professional** for the Greencastle/ DePauw MS4
- ❖ **Indiana Department of Commerce Community Development Block Grant Certified Grant Administrator**- Expired

EXPERIENCE:

BURGESS & NIPLE, INDIANAPOLIS, INDIANA (April 2007-Present)

- ❖ **Senior Project Manager for Utility Infrastructure Sector to:**
 - Project Management / Engineering: Develop Fees, Assign Work Activity, Oversee Budgets, And Invoice Clients For Water And Sewer Projects.
 - Marketing / Client Development: Identify Projects, Respond To RFQs, And Develop Client Relationships
 - Supervision/ Mentoring: Oversee Young Engineers And Designers To Develop Plans, Cost Estimates, And Engineering Reports.
- ❖ **Significant Projects Include:**
 - Anderson IN-Miller Avenue Sewer
 - Barberton OH-Private I&I Policy Program
 - Citizens Energy Group- Fall Creek Dam Replacement
 - Citizens Energy Group-Harbour Water Groundwater Treatment Plant
 - Citizens Energy-Southern Madison Utilities Water Tank Relocation
 - Clay Township Regional Waste District-CTRWD I/I Policy
 - Columbia City IN-Long Term Control Plan Phase IIA
 - Crawfordsville IN-City Engineer On-Call
 - Eastern Richland Sewer Corporation- On-Call Wastewater
 - Greencastle IN On-Call Engineering Services
 - Greenfield IN-On-Call Engineering Water Systems
 - Greenwood IN-Western Regional Sanitary Sewer
 - Indianapolis IN-Lower Pogues Run Tunnel
 - Keystone Construction-Keystone On-Call Site Civil Engineering
 - MSKS-Bloomington Certified Technology Park
 - North Vernon IN-SR 3 Sanitary Sewer Replacement
 - Pace Dairy-Wastewater Pretreatment Assistance
 - Parsons Brinkerhoff -Lower Pogues Run Tunnel Advanced Facility Plan Update
 - Pittsboro IN-On-Call Services

- St Paul IN- On-Call Engineering Services
- St Paul IN- San Sewer Collection System Rehabilitation
- St Paul IN-Sanitary Sewer Preliminary Engineering Report
- United Mobile Homes Properties Goshen IN- Broadmore Mobile Home Park- WWTP Improvements and Revision to NPDES Permit
- Veolia Water- Fall Creek Backwash Recovery Water Systems
- Veolia Water- White River Backwash Water Systems
- Veolia Water-On-Call Water Resources
- Westfield IN-Utility Appraisal Utility Rate Study

CITY ENGINEER FOR CITY OF GREENCASTLE, INDIANA (August 2000 – April 2007)

- ❖ **Supervisor's role in Engineering Department to:**
 - One Assistant Engineer, One Engineering Technician, 3 Summer Engineer Interns, multiple High School Engineer Interns
- ❖ **Assist Fire Department**
 - Write grants to obtain firefighting equipment.
 - Write specs and bid out new exhaust system.
 - Select consultant for new fire station analysis.
- ❖ **Assist Planning Department**
 - Worked with consultant during rewrite of comprehensive plan and zoning ordinances.
 - Work with all new developers in private developments.
- ❖ **Assist Police Department**
 - Act as consultant liaison for new Police Station design and construction.
- ❖ **Assist Parks & Recreation Department**
 - Act as consultant liaison for major projects such as People Pathways Albin Pond Trail, People Pathways Campus Link Trail, People Pathways Big Walnut Sports Park Trail, and Concrete Skate Park.
 - Design small projects such as Maple Berry Neighborhood Park and Parking improvements at Robe-Ann Park.
 - Coordinate Environmental Site Assessments for Maple Berry Park and Clearwaters Park.
- ❖ **Assist Sanitary Sewer Department**
 - Oversight of construction of new vertical loop reactor (VLR) plant. Work with consultant, contractor, and Operator to ensure proper construction and sequencing of operations for new treatment, and also decommissioning old plant (conventional activated sludge w/ tertiary treatment). In the project, we bid the new process equipment separately and this involved a detailed analysis of many as-equal manufacturers and products. Contractor sued the City which was resolved through mediation.
 - Oversight of major lift stations construction/renovation and force mains to plant.
 - Development of private I/I policy. Solicit input from Operator and Board of Public works members to write and implement policy for private inspectors to inspect buildings and certify I/I compliance prior to new accounts or within a two year time frame. Also this function included training WWTP personnel on policy.
 - Develop protocols and systems for asset management systems and GIS.
 - Work with private developers on new projects. This function worked with operator to see that all concerns that affected the operation of the collection and treatment systems were adequately addressed.
 - Compiled reports and other documentation to help remove Greencastle from an IDEM Agreed Order.
 - Designed plans and specifications for various pipeline rehabilitation work (pipe-bursting, CIPP, and spot repairs)
 - Designed plans and specifications for minor lift station rehabilitation and/or replacements and new sewer main extensions.
 - Designed facilities at the treatment facility that include a vector dump station and a new storage building.

- ❖ **Assist Street Department.**
 - Act as consultant liaison for major projects such as Franklin Street Phase 2, Franklin Street Phase 3, West Side Project, Indianapolis Road, and salt/storage building.
 - Provide Bids, Specifications, and Bidding Services for minor projects such as annual sidewalk projects and annual street resurfacing projects.
 - Design and Bid small projects such as Indiana/Columbia parking lot, Walnut/Indiana Parking lot, and street garage roof repairs.
 - Design and Bid small storm sewer improvements
- ❖ **Assist Water Department**
 - Work with consultant on specifications and bidding of old water tower demolition
 - Wrote Vulnerability Assessment and Emergency Response Plan
 - Wrote specifications and bid out small projects such as new PLC installation.
- ❖ **Municipal Separate Storm Sewer System (MS4)**
 - Act as MS4 Operator and Qualified Professional for the Greencastle/DePauw MS4
 - Wrote Part A, Part B, Part C, and Annual Reports for the Greencastle/DePauw MS4 without aid of consultants.
- ❖ **Other Responsibilities**
 - Plan Commission Member
 - Attend and Report to monthly meetings for the City Council, Board of Public Works and Safety (BOW), Redevelopment, and Citizens Advisory Committee for Industrial Development (CACFID).
 - Develop and Administer Department Budget
 - Develop, Update, and implement City's Capital Improvement Plan for projects in TIF District, Utility Departments, and EDIT plan.
 - Work with consultants on rate studies for utility rate increases and annexations.

THE SCHNEIDER CORPORATION, INDIANAPOLIS, IN (June, 1996 to August 2000)

- ❖ Master Planning, Sanitary and Municipal Designs and Consultation for Town of McCordsville
- ❖ Subdivision and Site Plan Reviews for City of Franklin
- ❖ Sanitary Sewer Plan Reviews for City of Greenwood
- ❖ Sanitary Sewer Lift Station Designs for Several Large Developments in Indiana
- ❖ Water Modeling Systems for Several Public and Private Water Systems in Indiana
- ❖ Sanitary Sewer Collection System Evaluations for Several Cities and Towns in Indiana
- ❖ Residential and Commercial Septic System Designs
- ❖ Water Plant Improvements for City of Ligonier, Indiana.
- ❖ Lake Lemon Restoration
- ❖ Ravenswood Storm Sewer, Indianapolis, Indiana
- ❖ Eagle Creek Park Pavement Rehabilitation Improvements, City of Indianapolis
- ❖ Madison Avenue Sewer Rehabilitation, City of Greenwood
- ❖ Use of Auto CAD (Release 13 & 14) with Softdesk Packages, limited Eagle Point Packages

PATENTS:

- ❖ Patent US 8,453,658 B2 Pressure Progressing Spray Fitting Apparatus.

CURRENT AND PAST PROFESSIONAL ORGANIZATIONS AND SOCIETIES:

- ❖ **American Society of Civil Engineers**
 - Treasurer and Vice President offices of RHIT Student Chapter (1989- 1990)
- ❖ **American Consulting Engineers Council- Indiana Chapter**
 - Environmental Business Committee (2007-Present)
 - Environmental Business Committee (2008-Present)
 - Sustainable Design Committee (2007)
- ❖ **American Water Works Association**

- ❖ **Clay County Redevelopment Commission (2009-Present)**
- ❖ **Indiana Association of Cities and Towns (IACT) Involvement**
 - Legislative Committee (2003-2004)
 - Environmental Committee (2003-2007)
 - Environmental Circuit Rider Advisory Council (2004)
 - Transportation Committee (2005-2007)
- ❖ **Indiana Association of City Engineers- Member (2001-Present)**
 - Vice President (2002), President (2003), Past President (2004),
 - Website Committee, Scholarship Committee, Workshop Committee, Fundraiser Committee, and Road Trip Committee
- ❖ **Indiana Department of Environmental Management (IDEM) Involvement**
 - Municipal Separate Storm Sewer System (MS4) Task Group (2002-2003)
 - Nutrient Removal Task Group (2010-2012)
 - Green Checklist Committee for SRF Projects (2009)
- ❖ **Indiana Association for Floodplain and Stormwater Management (INAFSM)**
 - Stormwater Quality Group
- ❖ **Indiana Rural Water Association**
- ❖ **Indiana Water Environment Association**
- ❖ **Purdue University Local Technical Assistance Program (LTAP)**
 - Advisory Board (2003)
 - Road School Advisory Board (2003)
- ❖ **Rose-Hulman Institute of Technology Board of Advisors for Civil Engineering Department (2006-Present)**
- ❖ **Southern Indiana Operators Association (2004-2006)**

SIGNIFICANT PAPERS AND PRESENTATIONS:

- ❖ **Indiana Water Environment Association (2003)** *“City Of Greencastle, Indiana Board Of Public Works And Safety Policy Document To Reduce Inflow And Infiltration (L/I) From The Sanitary Sewage Collection And Treatment Systems”- Awarded Outstanding Paper of 2003. Related Presentations to Indiana Rural Water Association and also the Central Indiana Operators Association.*
- ❖ **5 Cities Plus Conference (2012)** *“Bridging the Gap- Using NPW to Address Water Supply throughout Central Indiana”*

<p>APPROVAL</p> <p><i>Slw</i></p>	<p>REQUEST FOR COMMON COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>10/21/2014</p>
<p>ORGANIZATIONAL BUSINESS</p>	<p>Board and Commission Appointment</p>	<p>ITEM NUMBER</p> <p>E.2.</p>

The following Mayoral appointment has been submitted for Council confirmation:

Economic Development Commission

Theodorus Grintjes, 7562 S. Nottingham Way (Ald. Dist. 2), 2-year term expiring 6/30/2016

Sandi Wesolowski

From: volunteerfactsheet@franklinwi.gov
Sent: Monday, August 25, 2014 12:57 PM
To: Lisa Huening; Shirley Roberts; Sandi Wesolowski
Subject: Volunteer Fact Sheet

Name: Ted Grintjes
PhoneNumber: 414-858-9885
EmailAddress: tgrintjes@outlook.com
YearsasResident: 41
Alderman: Dan Mayer
ArchitecturalBoard: 0
CivicCelebrations: 0
CommunityDevelopmentAuthority: 1
FinanceCommittee: 0
EnvironmentalCommission: 0
ForwardFranklinEconomicDevelopComm: 1
FairCommission: 0
BoardofHealth: 0
FirePoliceCommission: 0
ParksCommission: 0
LibraryBoard: 0
PlanCommission: 0
PersonnelCommittee: 0
BoardofReview: 0
BoardofPublicWorks: 0
BoardofWaterCommissioners: 0
TechnologyCommission: 0
WasteFacilitySitingCommittee: 0
BoardofZoning: 0
WasteFacilitiesMonitoringCommittee: 0
CompleteStreetsandConnectivityCommittee: 0
CompanyNameJob1: Currently retired
TelephoneJob1:
StartDateandPositionJob1:
EndDateandPositionJob1:
CompanyNameJob2: Triloc Software Engineering
TelephoneJob2:
StartDateandPositionJob2: October 1997, President US Operations
EndDateandPositionJob2: June 2002, President US Operations
CompanyNameJob3: Compuware

TelephoneJob3:
StartDateandPositionJob3: September 1991, Director Sales
EndDateandPositionJob3: October 1997, International Marketing Director
Signature: Ted Grintjes
Date: August 25, 2014
Signature2: Ted Grintjes
Date2: August 25, 2014
Address: 7562 South Nottingham Way Franklin, WI 53132
PriorityListing: CDA Franklin Forward
WhyInterested: Make Franklin the first choice for companies wanting to relocate in SE Wisconsin and create the environment that fosters retention and growth in Franklin!

CompanyAddressJob1:
DescriptionofDutiesJob1:
AddressJob2: Almere, The Netherlands
DescriptionofDutiesJob2: Software development
AddressJob3: Milwaukee, WI Farmington, MI
DescriptionofDutiesJob3: Managed large staffing/consulting sales and marketing organization.
Have more than 20 years of experience on Franklin's Economic Development Commission and Community Development Authority. Also served as Chairman of the 27th Street Steering Committee from inception to August 2008. Served a term on Franklin's Finance Committee.

AdditionalExperience:

ClientIP: 72.128.120.60
SessionID: 20feyu45beqypgjevl2suqfo
See Current Results

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MEMORANDUM: FROM PLANNING DEPARTMENT

DATE: October 14, 2014
TO: Mayor Olson and Common Council
FROM: Nicholas Fuchs
Senior Planner
SUBJECT: Summary of the Wisconsin Economic Development Association 2014 Fall Regional Conference

The purpose of this memo is to provide a summary of some of the information that Planning Staff obtained at the Wisconsin Economic Development Association (WEDA) Fall Regional Conference.

Background

The WEDA 2014 Fall Regional Conference was held from Wednesday, October 1st through Friday, October 3rd at the Oshkosh Convention Center in downtown Oshkosh, WI. Staff did not attend on Wednesday, which consisted of a bus tour of Oshkosh. I attended on Thursday and Joel Dietl, Planning Manager attended the Friday sessions.

The conference consisted of workshops and sessions related to a number of economic development topics including: Marketing to site selectors; business retention and expansion programs; cooperatives; legislative updates related to economic development; and a TIF study update.

Conference Sessions of Particular Note

Workshops or sessions of particular note (and who attended) are briefly summarized below. Access to the PowerPoint presentations is available on the WEDA website (www.weda.org/?2014Fall_Speakers).

Marketing Wisconsin: Economic Development & Site Selection (Fuchs). This session discussed the general attractiveness of Wisconsin for Business development and criteria that site selectors consider in choosing sites for their business clients. In general, Wisconsin's marketability is on the rise. Five years ago, Wisconsin ranked in the 40s in CNBC's Top States for Business rankings. In 2014, Wisconsin was ranked as the 17th top State for Business. It was noted, however, that Wisconsin still ranks poorly regarding taxes.

The speakers, Robert Hess of Newmark Grubb Knight Frank's Global Corporate Services and Darin Buelow of Deloitte Consulting LLP, discussed "drivers" or major themes impacting business location strategies. Some examples of location "drivers" include: 1) Talent availability, education and innovation; 2) Energy abundance, scarcity, (in)stability, and generation mix; 3) Product development and innovation; 4) Intellectual property access and protection; and 5) Market access, new markets for growth. The complete list is available on Mr. Hess's PowerPoint presentation.

Mr. Buelow discussed items for communities to consider when trying to attract and be prepared for site selectors and businesses interested in locating in the area. Some examples include: 1) Hone the value proposition; 2) Benchmark your budget for economic development; 3) Correct organizational issues; 4) Set an incentives policy; and 5) Know your employers. The full list can be provided by staff, if desired.

The speakers also discussed familiarization or FAM tours. These tours attempt to attract site selectors to a community to highlight particular sites/destinations.

Hess stated, "Let borders come down, economic geography rise." This is noteworthy as it is a common theme for economic development professionals, acknowledging that economic development and businesses do not follow local borders. Typically, the smallest segment for economic development will revolve around a particularly region, while much is discussed or highlighted on a State wide basis.

Marketing to Site Selectors (Fuchs). This session focused on how to effectively reach a site selector. The speaker, Janet Ady of Ady Voltedge, stated that it is important to build relationships with site selectors and share data. Sharing data can be done by FAM tours, advertisements, personal visits, direct marketing, websites and newsletters. An emphasis was made on marketing the unique characteristics of the community. For example, Ady said not to say that the community is a great place to live, work and play as that is overused. Ady also noted that it is the job of the State to get on a site selector's radar and that projects commonly start at the regional level as regions better reflect the workforce. Ady recommends marketing a community as part of a region to provide "more and better assets."

BRE – Kenosha (Fuchs). Heather Wessling of the Kenosha Area Business Alliance (KABA) conducts approximately 100 business site visits annually. Wessling indicated that the purpose and goal of the Business Retention and Expansion (BRE) visits are to understand the industries in the area, identify strengths of the community, identify clusters that exist in the area, and to build relationships with businesses. KABA utilizes the Synchronist Business Information System software package to assist in their business retention and expansion program and to track and analyze data. KABA tries to learn key performance indicators for area businesses, such as: sales growth; whether the business is entering into new markets and/or making capital investments; changes to the business's tax and regulatory structure; employment growth; and if investments are being made in technology. This is done to track how businesses in the area are performing. The site visits also allow KABA to promote their organization and grow their membership.

TIF Study Update (Dietl). The "2014 Legislative Council Study Committee on the Review of Tax Incremental Financing" is studying and discussing many possible changes to the TIF legislation, including changes that would expand the use of TIF's as well as changes that would place limits on the use of TIF's. Peter Thrillman of Lakeshore Technical College made many references to the valuable contributions that Ehlers and Associates in general, and Mike Harrigan in particular have provided this Committee. Thrillman believes that eventually some of these changes will be supported by the Legislature, mostly expanding the use of TIF's, but it is too soon to say what specifically. Some of the possible changes might include: changing the Equalized Value limit of 12% (how much of a community can be in TIFs) to maybe 15%; changes to what the Joint Review Board can do and/or what information it can request; providing some safety/cushion to communities whose TIF value decreases such as from property value decreases due to the removal of vacant or dilapidated buildings; allowing more sharing of revenue between TIFs; etc.

<p>APPROVAL</p> <p><i>Slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>10/21/2014</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>Donation from The Rock Sports Complex to the Police Department in the amount of \$500</p>	<p>ITEM NUMBER</p> <p><i>G.1.</i></p>

The Rock Sports Complex has donated \$500 to the Police Department.

COUNCIL ACTION REQUESTED

Motion to accept \$500 donation from The Rock Sports Complex to the Police Department.

Sandi Wesolowski

From: Mike Zimmerman [mikez@zimmventures.com]
Sent: Friday, October 17, 2014 11:28 AM
To: Sandi Wesolowski
Cc: Dawn Flasch; Joe Zimmerman
Subject: Police Department Donation

Sandi,

Please accept this \$500 donation for the Franklin PD. We appreciate the assistance with our Halloween event and wanted to show our gratitude through this donation.

Best,

Mike Zimmerman

<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">10/21/2014</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p style="text-align: center;">QUARRY RECLAMATION PLAN UPDATE AND AS SUCH PLAN IS REQUIRED PURSUANT TO PLANNED DEVELOPMENT DISTRICTS NO. 23 AND 24, CHAPTER 176 OF THE CITY OF FRANKLIN MUNICIPAL CODE NONMETALLIC MINING RECLAMATION, AND WISCONSIN ADMINISTRATIVE CODE NR 135 NONMETALLIC MINING RECLAMATION</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G.2.</i></p>

INTRODUCTION

The Common Council, at its September 9, 2014 meeting, moved to “direct staff to provide an update on the Reclamation Plan to the Common Council at their meeting on October 21, 2014”.

The following information provides a brief explanation of the purpose and need for a quarry reclamation plan, a short history of the current Reclamation Plan for the Payne & Dolan quarry, and the current status of this matter. Also provided is some information about the City’s Non-Metallic Mining Reclamation Ordinance.

PURPOSE OF AND NEED FOR A RECLAMATION PLAN

According to the Wisconsin Department of Natural Resources (DNR), the purpose of nonmetallic mining reclamation is to rehabilitate sites where nonmetallic mining has taken place in order to promote the reuse of such lands. Proper reclamation protects the environment through reduced erosion and improved wildlife habitat, allows productive end land uses, and has the potential to increase land values and tax revenues.

The DNR also states that a Reclamation Plan is the blueprint describing the steps that are necessary to reclaim a site to achieve a post-mining land use. It is the basis for the granting of the state mandated reclamation permit. The Reclamation Plan identifies the lands subject to reclamation, the post-mining land use, and the methods necessary to achieve the post-mining land use.

Three City of Franklin ordinances (Ordinance No. 97-1456 establishing Planned Development District No. 23, Ordinance No. 97-1457 establishing Planned Development District No. 24, and Ordinance No. 2001-1649 pertaining to non-metallic mining reclamation), and Wisconsin Administrative Code (NR 135 establishing statewide nonmetallic mining reclamation requirements and its associated mandated model ordinance), all address nonmetallic mine reclamation plans.

In particular, and as summarized in the attached Table 1, all of these regulations require that a reclamation plan for the Payne & Dolan quarry (including the former Vulcan quarry) be prepared and that the plan:

- be prepared by the quarry operator;
- be reviewed and approved by the City;
- identify the estimated reclamation cost; and
- identify the end land use of the quarry once it is reclaimed.

All of these regulations also provide that: the Reclamation Plan may be updated; Financial Assurance for reclamation of the quarry must be provided by the quarry operator; and the amount of the Financial Assurance shall be periodically reviewed.

HISTORY OF THE RECLAMATION PLAN FOR THE PAYNE & DOLAN QUARRY

Pursuant to the requirements of both PDD No. 23 and PDD No. 24, Payne & Dolan and Vulcan jointly prepared a Reclamation Plan and submitted it to the City on May 10, 2002. Subsequently,

- On August 7, 2003, a public hearing was held on this matter.
- At its September 4, 2003 meeting, the Plan Commission moved to “recommend that the Common Council deny the reclamation plan as submitted because the applicant will not pay for a third party hydrology study to

determine if the quarry pit will indeed fill with water to a level needed to create a useable lake.”

- At its September 9, 2003 meeting, the Common Council moved to “refer this item back to the Plan Commission and to direct the Planning Manager to work with the Vulcan Materials/Payne & Dolan.”
- On December 19, 2003, additional information was provided to the City by Payne & Dolan and Vulcan.

A review of City records by Planning Department staff could not find any further action on this matter.

CURRENT RECLAMATION PLAN STATUS

Pursuant to Wisconsin Administrative Code NR 135, the Wisconsin Department of Natural Resources conducted an audit of the City of Franklin’s nonmetallic mining reclamation program on December 10, 2013. By emails dated April 30, 2014 and August 20, 2014, DNR staff recommends that “...Franklin will work on approving the single-site reclamation plan in accordance with NR 135.18, issue a new reclamation permit for the mine, and reach out to Payne and Dolan about re-assessing their FA amount.”

The Quarry Monitoring Committee, at its October 13, 2014 meeting, also reviewed this matter and moved to recommend that the Common Council notify Payne & Dolan of the need for updating the Reclamation Plan as recommended by the Wisconsin Department of Natural Resources and that the Common Council set a date on when the Reclamation Plan will be completed.

NON-METALLIC MINING RECLAMATION ORDINANCE

In a related matter, the DNR has also requested that the City update its Non-Metallic Mining Reclamation Ordinance to reflect changes the state made to these regulations in 2006. In a letter dated January 29, 2014, the DNR notes that pursuant to Wisconsin Administrative Code NR 135, the City of Franklin must “Update the City’s reclamation ordinance (Chapter 176 of the municipal code) to reflect the 2006 changes. This is the most important issue and as such should be addressed posthaste. Please complete or provide to me a timetable for the ordinance amendment by March 31, 2014.”

The Planning Manager, the City Attorney, and Alderwoman Wilhelm met with Wisconsin Department of Natural Resources representatives on April 30, 2014 to discuss the issues raised by the DNR. It was agreed by all those present at the meeting that the City should continue the process to revise the City’s Non-Metallic Mining Reclamation Ordinance (to include the revisions requested by the DNR). Staff indicated that they hoped to prepare a draft of a revised ordinance by July of 2014. Staff has subsequently informed the DNR that additional time will be needed for this project.

The Quarry Monitoring Committee, at its October 13, 2014 meeting, also reviewed the status of the DNR requested update of the City’s Non-Metallic Mining Reclamation Ordinance, expressed its willingness to work on this subject, and moved to recommend that the Common Council provide direction on using the Ordinance as is, making corrections to it, or using the DNR Model Ordinance and inserting appropriate City language.

COUNCIL ACTION REQUESTED

A motion that the Common Council notify Payne & Dolan of the need for updating the Reclamation Plan as recommended by the Wisconsin Department of Natural Resources and that the Common Council set a date on when the Reclamation Plan will be completed.

-and-

A motion that the Common Council provide direction to staff and the Quarry Monitoring Committee in regard to the City’s Non-Metallic Mining Reclamation Ordinance on using the Ordinance as is, making corrections to it, or using the DNR Model Ordinance and inserting appropriate City language.

-or-

As the Common Council deems appropriate.

Table 1

General Reclamation Plan Requirements:

Comparison of PDD Nos. 23 and 24, the City's Nonmetallic Mining Reclamation Ordinance, and the DNR's Model Nonmetallic Mining Reclamation Ordinance

General Reclamation Plan Requirements	PDD Nos. 23 and 24	City's Nonmetallic Mining Ordinance	DNR's Model Ordinance
Reclamation Plan must be prepared by the quarry operator.	Yes, see Section S.1.	Yes, see Section 13.10.	Yes, see Section 13.10.
Reclamation Plan must be reviewed and approved by the City.	Yes, reviewed by the Plan Commission and approved by the Common Council, see Section S.5.	Yes, see Section 13.50.	Yes, see Section 13.80.
Quarry operator shall provide a Reclamation Plan review fee.	No.	Yes, for all City costs of review, see Section 25.10.	Yes, for City's costs of examining and approving, see Section 26.10.
Reclamation Plan may be updated.	Yes, to reflect new reclamation standards, see Section S.6.	Yes, to reflect changing conditions, to remain in compliance with NR 135, etc., see Section 22.10.	Yes, see Section 23.10.
Reclamation Plan must identify the estimated cost of reclamation.	Yes, see Section S.2.(c).	Yes, see Section 13.10(4)(e).	Yes, see Section 13.40(5).
Financial Assurance must be provided by the quarry operator.	Yes, \$200,000 from each operator, see Section E.1.	Yes, see Section 14.10.	Yes, see Section 14.10.
Amount of Financial Assurance shall be periodically reviewed.	Yes, at time of approval of reclamation plan, in event of a substantial change of circumstances, etc., see Section E.2.	Yes, to assure it equals outstanding reclamation costs, see Section 14.10(3).	Yes, see Section 14.10(3).
Reclamation Plan shall identify the end land use.	Yes, to provide a quarry lake with appropriate public access and adjacent areas for private development, see Section S.1.	Yes, consistent with local land use plans and zoning at the time of Reclamation Plan submittal, see Section 13.10(3).	Yes, see Section 13.30.
Reclamation Plan shall identify when the end land use development plans will be submitted.	Yes, at time of end land use development proposals pursuant to the then-applicable ordinance requirements, see Section S.4.	No.	No.
Implementation of the Reclamation Plan.	Yes, within 3 years after cessation of extraction, see Section S.3. Quarry operator shall provide Financial Assurance, see Section S.7.	Yes, quarry operator shall certify the Reclamation Plan, see Section 13.10(6). Quarry operator shall provide Financial Assurance, see Section 14.10(2).	Yes, see Sections 13.60 and 14.10(2).

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APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE October 21, 2014
REPORTS AND RECOMMENDATIONS	REVIEW OF THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF FRANKLIN AND STANTEC CONSULTING SERVICES INC. FOR QUARRY MONITORING SERVICES	ITEM NUMBER <i>G.3.</i>

BACKGROUND

On August 14, 2014 the Quarry Monitoring Committee (QMC) reviewed and discussed possible changes to the Quarry Monitoring services within the 2013/2014 Professional Services Agreement between the City of Franklin and Stantec Consulting Services Inc. for continued services in 2015.

The QMC noted they believe the educational and monitoring efforts have helped reduce complaints and have improved accountability to the PDD requirements; that citizen appreciation and trust in their municipality is important and that quarry monitoring provides valuable information related to safety for the community; and that the complaint process has helped identify areas of concern where the QMC should direct its attention. The QMC suggested the following changes based on monitoring data and noted quarry complaints:

- To reallocate a portion of the Air Quality Monitoring within the previous contract over to Blast Monitoring (an amount to be equal to four weeks of blast monitoring)
- Shift the remainder of the Air Quality Monitoring funds to Quarry Operations Monitoring (for additional site visits and expanded air quality observations).
- Reports to include a compilation of applicable quarry complaints as well as weather related information and a year-end summary.

Alderman Schmidt moved, and Member Shore seconded, a motion to contact Stantec to provide the City an estimated budget for a renewed Quarry Monitoring contract for 2015 incorporating the changes identified by the Committee. On voice vote, all voted 'aye'. Motion carried.

On September 9, 2014, review of the Professional Service Agreement between the City of Franklin and Stantec Consulting Services Inc. for Quarry Monitoring Services was before the Council resulting in the following motions:

Alderman Schmidt moved that Stantec Consulting Services, Inc. provide an estimate for renewed Quarry monitoring services for 2015 including the changes by the Quarry Monitoring Committee. Seconded by Alderwoman Evans. All voted Aye; motion carried.

Alderwoman S. Mayer moved to refer the subject matter to the Quarry Monitoring Committee for the consult with staff and the Committee and bring the proposal back to the Common Council. Seconded by Alderman Dandrea. All voted Aye; motion carried.

On October 13, 2014 the Quarry Monitoring Committee (QMC) reviewed the itemized description of services and costs estimates from Stantec Consulting Services Inc. and discussed video versus photos for dust observations, Payne & Dolan's ability to share blasting data to assist the consultant with understanding event logistics which are resulting in the highest complaints, and clarity of the observation form used by the consultant. The QMC was satisfied with the suggested cost and services changes and made the following motion:

Quarry Monitoring Committee recommends that the Stantec Consulting Services Inc. contract come before the Common Council meeting on October 21, 2014 for consideration including the three suggested changes by the Quarry Monitoring Committee to the contract provided by Stantec and that the Committee recommends continuation of the quarry monitoring by Stantec as soon as possible with the agreement that the contract remain within the budgeted amount of \$42,000.

Staff suggests the 2014 Professional Service Agreement between the City of Franklin and Stantec Consulting Services Inc. could be updated by replacing the "Attachments" within the 2014 contract with the 2015 service costs.

FISCAL IMPACT

Stantec's suggested services and costs fall within both the terms of PDD's 23 & 24 and the City budget. The costs are reimbursable under the terms of PDD's 23 & 24 and have no fiscal impact to the City. Costs are within \$10.00 of the amount approved by Council in 2013.

COUNCIL ACTION REQUESTED

Motion authorizing staff to modify the 2014 Professional Services Agreement with Stantec Consulting Services Inc. to reflect the 2015 service changes, not to exceed \$41,310. as detailed in the spreadsheet provided by Stantec Consulting Inc. and to authorize a 2015 contract subject to City Attorney approval.

Or as the Common Council may deem appropriate.

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (hereinafter "AGREEMENT"), made and entered into this _____ day of _____, 201_, between the City of Franklin, 9229 West Loomis Road, Franklin, Wisconsin 53132 (hereinafter "the CITY") and Stantec Consulting Services Inc. (hereinafter "the CONTRACTOR"), whose principal place of business is 12075 Corporate Parkway, Suite 200, Mequon, Wisconsin 53092.

WITNESSETH

WHEREAS, the CONTRACTOR is duly qualified and experienced as a quarry monitoring service contractor and has offered services for the purposes specified in this AGREEMENT; and

WHEREAS, in the judgment of the CITY, it is necessary and advisable to employ the CONTRACTOR in connection with providing quarry monitoring services, as described in Attachment A, for the City of Franklin.

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

I. BASIC SERVICES AND AGREEMENT ADMINISTRATION

- A. The CONTRACTOR shall provide services to the CITY for the quarry monitoring activities specified in Attachment A, which is attached and incorporated herein by reference.
- B. The CONTRACTOR shall serve as the CITY's professional representative in matters to which this AGREEMENT applies. The CONTRACTOR may employ the services of outside consultants and subcontractors when deemed necessary by the CONTRACTOR to complete work under this AGREEMENT following approval by the City for each such type of use.
- C. The CONTRACTOR is an independent contractor and all persons furnishing services hereunder are employees of, or independent subcontractors to, the CONTRACTOR and not of the CITY. All obligations under the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax Act (FUTA), and income tax withholding are the responsibility of the CONTRACTOR as employer. The CITY understands that express agreements may exist between the CONTRACTOR and its employees regarding extra work, competition, and nondisclosure.

Quarry Monitoring Services Contract
City of Franklin

Stantec

II. FEES AND PAYMENTS

The CITY agrees to pay the CONTRACTOR, as set forth in Attachment A, for an in consideration of the performance of Services as set forth in Attachment A, except as such services and fees may otherwise be amended in accordance with and as provided for by the terms of this agreement.

- A. The CONTRACTOR shall invoice the CITY at least quarterly but not more than once monthly for and following performance of services and delivery of required reports to the City. The invoice shall include base costs and any adjustment for additional services as provided for herein. The CITY shall pay any undisputed invoices within 30 days of receipt. Alternatively, the CITY shall notify the CONTRACTOR of any dispute to an invoice, and the nature of the dispute, within 30 days of receipt of the invoice.
- B. In consideration of the faithful performance of this AGREEMENT, the CONTRACTOR will not exceed the fee for Services without written authorization from the CITY to perform work over and above that described in this original AGREEMENT, including Attachment A.
- C. Should the CITY find deficiencies in work performed or reported, it will notify the CONTRACTOR in writing within thirty (30) days of receipt of invoice and related report and the CONTRACTOR will remedy the deficiencies within thirty (30) days of receiving the CITY's notice, which period may be extended by mutual agreement of the CONTRACTOR and the CITY's Planning Manager. This Subsection shall not be construed to be a limitation of any rights or remedies otherwise available to the CITY.

III. MODIFICATION AND ADDITIONAL SERVICES

- A. This AGREEMENT may only be amended by written instrument signed by both the CITY and the CONTRACTOR.
- B. The CITY may, in writing, request changes in the scope of work required to be performed by the CONTRACTOR under this AGREEMENT. Upon acceptance of the request of such changes, the CONTRACTOR shall submit a "Change Order Request Form" to the CITY for authorization, notice to proceed, and signature. Following execution the City shall return a copy to the CONTRACTOR. Should any such changes be made, an equitable adjustment (based upon fees, costs, and rates set forth in Attachment A and/or CONTRACTOR's original written response to the RFP, where applicable) will be made to compensate the CONTRACTOR or reduce the fixed price, for any incremental or decremental labor or direct costs, respectively. Any claim by the CONTRACTOR for adjustments hereunder must be made to the CITY in writing no later than forty-

five (45) days after receipt by the CONTRACTOR of notice of such changes from the CITY.

IV. ASSISTANCE AND CONTROL

- A. Michael Roznowski, Associate, Industrial Team Leader, will serve as Project Manager and will coordinate the work of the CONTRACTOR, and will be solely responsible for communication within the CITY's organization as related to all issues originating under this AGREEMENT.
- B. Joel Dietl, Planning Manager, will serve as the representative of the City for all issues relating to administration of this AGREEMENT

V. TERMINATION

- A. This AGREEMENT may be terminated by either party to this AGREEMENT upon thirty (30) days written notice. Upon such termination by the CITY, the CONTRACTOR shall be entitled to payment of such amount as shall fairly compensate the CONTRACTOR for all work approved and completed up to the date of termination, except that no amount shall be payable for any losses of revenue or profit from any source outside the scope of this AGREEMENT, including but not limited to, other actual or potential AGREEMENTS for services with other parties.
- B. In the event that this AGREEMENT is terminated for any reason, the CONTRACTOR shall deliver to the CITY all data, reports, summaries, correspondence, and other written, printed, or tabulated material pertaining in any way to services that the CONTRACTOR may have accumulated. Such material is to be delivered to the CITY whether in completed form or in process.
- C. The rights and remedies of the CITY and the CONTRACTOR under this section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other article of this AGREEMENT.
- D. Failure to maintain the designated staff (as identified herein and in CONTRACTOR'S original response to the RFP) or such similarly qualified staff as determined by the City may lead to termination of the agreement, as determined by the City.

VI. INSURANCE

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

- | | |
|--|-------------|
| A. Limit of General/Commercial Liability | \$2,000,000 |
| B. Automobile Liability: Bodily Injury/Property Damage | \$1,000,000 |

Quarry Monitoring Services Contract
City of Franklin

Stantec

- C. Excess Liability for General Commercial or Automobile Liability \$3,000,000
- D. Worker's Compensation and Employers' Liability \$500,000 or per statute
whichever is greater
- E. Professional Liability \$1,000,000

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

VII. INDEMNIFICATION AND ALLOCATION OF RISK

- A. To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the CITY and the CITY's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of the CONTRACTOR or the CONTRACTOR's officers, directors, partners, employees, and consultants in the performance of the CONTRACTOR's services under this AGREEMENT.
- B. To the fullest extent permitted by law, the CITY shall indemnify and hold harmless the CONTRACTOR and the CONTRACTOR's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of the CITY or the CITY's officers, directors, partners, employees, and consultants with respect to this AGREEMENT.
- C. To the fullest extent permitted by law, the CONTRACTOR's total liability to the CITY and anyone claiming by, through, or under the CITY for any injuries, losses, damages and expenses caused in part by the negligence of the CONTRACTOR and in part by the negligence of the CITY or any other negligent entity or individual, shall not exceed the percentage share that the CONTRACTOR's negligence bears to the total negligence of the CITY, the CONTRACTOR, and all other negligent entities and individuals.
- D. Nothing contained within this agreement is intended to be a waiver or estoppels of the contracting municipality or its insurer to be entitled to and/or to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wisconsin Statutes 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

VIII. TERM AND TIME FOR COMPLETION

- A. The initial term of this agreement shall be thirteen months from receipt of a Notice to Proceed. The term anticipates monitoring and at-quarry work occurs for 12 months, thereby leaving one month to compile, report, and present results for the final period and to provide the required any such summary information and recommendations.
- B. In order to enable the City to evaluate its complete quarry monitoring program and to consider altering the scope of work required for future years, the initial term may be extended for a period and for terms as mutually agreed to in writing by the CITY and the CONTRACTOR. Each such subsequent term may also be extended for a period and for terms as mutually agreed to in writing by the CITY and the CONTRACTOR.
- C. The CONTRACTOR shall commence immediately upon receipt of a Notice to Proceed, not to exceed 30 days from the date approved by the Common Council.

IX. DISPUTES

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

X. RECORDS RETENTION

The CONTRACTOR shall maintain all records pertaining to this AGREEMENT during the term of this AGREEMENT and for a period of not less than three (3) years following its completion. Such records shall be made available by the CONTRACTOR to the CITY for inspection and copying upon request.

XI. CONFLICT OF INTEREST

The nature of this project requires an impartial, unbiased approach on the part of the CONTRACTOR. The CONTRACTOR shall not, during the performance of these services, engage in any other professional relationship or representation that would create any type of conflict or conflict of interest with regard to the consulting services provided hereby to and for the CITY.

Further, the CONTRACTOR 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. The CONTRACTOR warrants that it will immediately notify the CITY if any actual or potential conflict of interest arises or becomes known to the

CONTRACTOR. Upon receipt of such notification, a review and written approval by the CITY is required for the CONTRACTOR to continue to perform work under this AGREEMENT.

XII. PROFESSIONALISM

The CONTRACTOR stipulates that the same degree of care, skill and diligence shall be exercised in the performance of the services as is possessed and exercised by a member of the same profession, currently practicing, under similar circumstances, and all persons providing such services under this AGREEMENT shall have such active certifications, licenses and permissions as may be required by law.

XIII. PURSUANT TO LAW

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

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

CITY OF FRANKLIN, WISCONSIN

CONTRACTOR

BY: _____

BY: _____

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

BY: _____

BY: _____

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____



Attachment A

Quarry Monitoring Services

AMENDMENT TO STANTEC PROJECT #193702572

City of Franklin
Office of the City Clerk
9229 West Loomis Road
Franklin, Wisconsin 53132

October 17, 2014



QUARRY MONITORING SERVICES

SCOPE OF WORK AND ASSOCIATED COST

The following scope of work items, each with their own associated professional fee, is offered to the City by the combined team of Stantec and Giles for calendar year 2015.

DESCRIPTION	EVENT PERIOD	COST PER EVENT	# OF EVENTS	SUBTOTAL	NOTES
Quarry Operations Monitoring	daily	\$765	34	\$26,010	Total of 34 inspections. Will include additional weather data as part of observation summary, along with photos and short duration videos during periods of high winds.
Blast Monitoring	2 weeks	\$1,900	7	\$13,300	Total of 14 weeks (defined as 12-14 day period) of blast monitoring. This is double what was completed during 2013-4 for less than double the previous fee. Will also include a compilation and review of all applicable quarry related complaints provided to Stantec by the City. Stantec will continue to request blast data from quarry for additional comparison.
End-of-year Summary Report	report	\$2,000	1	\$2,000	Requested by City.

\$41,310 TOTAL

More detailed descriptions to these individual tasks are outlined below.

QUARRY OPERATIONS MONITORING

Per Visit - Quarry Operations Monitoring and Reporting by Direct Observation	\$765
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Conduct a qualitative site visit at the quarry to observe and document whether the site is in compliance with the operation parameters defined in the PDD agreements, and to evaluate whether the quarry's general operations are consistent with best management practices employed by other quarries throughout the state and country. Site visits will be a combination of announced and unannounced, but will be conducted during normal business hours. The days and times of the visits will vary. Qualitative data collected will include the following:

- Visual observation of all aspects of the mining operation, including but not limited to:
 - Trucking operations, emphasizing directly adjacent off-site, in particular as it may pertain to dust issues along Rawson Avenue
 - Operational issues that may affect local citizens in some form of adverse off-site impact
- Direct air quality observations, including:

- General site and surrounding visual air quality, including opacity, in particular along Rawson Avenue
- Dust control measures and issues on-site that may affect off-site receptors
- Dust control issues directly adjacent off-site
- Any other dust issues that may affect local citizens
- Quarry operations review, including:
 - Review of quarry records pertaining to dust control measures and recordkeeping, ensuring that both quarries are following standard protocol to minimize off-site impacts, and evaluating how well and how quickly they respond to potential of actual off-site impact situations
 - Comparison of records to stated performance objectives and respective PDD compliance, only as they pertain to dust in general, and along Rawson Avenue in particular

The findings of each visit will be documented on a standard form, which will be developed prior to the first visit and approved by the City. To minimize labor costs, the form will be filled in by hand during each site visit, and then scanned/posted to a project FTP site for review by City officials. Stantec may also obtain photos to document site or directly adjacent off-site conditions, and when appropriate short-duration video clips (e.g., showing dust impacts). In addition to the observations and record review, Stantec will also obtain and document on the inspection form local meteorological conditions that may be relevant to the observations (e.g., temperature, wind speed, wind direction, humidity, and precipitation).

BLAST MONITORING

12-14 day period - Fixed-location blast monitoring and written summary report	\$1,900
--	----------------

- Place a fixed seismograph (City owned) at the City-established blast monitoring sites or vaults for a two-week period (approximately 12 to 14 days);
- Maintain the seismograph and battery source (if one) to ensure it is powered for the full period;
- Perform data collection (download) at the end of the period;
- Evaluate blast data; and
- Prepare brief report which will provide a summary of the fixed-location blast monitoring and evaluation of the results relative to the requirements of the PDD.
- Scan/post report to a project FTP site for review by City officials.
- Review of any citizen complaints forwarded from the city to determine any correlation to the data obtained.
- Provide recommendations regarding adverse impacts or non-compliant results.

End-of-Year-Summary-Report	\$2,000
-----------------------------------	----------------

Stantec will prepare a brief letter report summarizing the results of the quarry operations monitoring and blast monitoring. The report will be scanned/posted to a project FTP site for review by City officials. The report will also include recommendations to consider regarding future monitoring.

As needed - Out-of-Scope Services	as needed; standard time-and-material rates
--	--

Stantec can provide additional services to the City as requested on a time-and-materials basis according to our standard fee schedule in effect at the time. This could include but is not limited to the following: additional follow-up on issues or problems identified during the previously described scope of work; additional PDD compliance evaluations or assistance to the City;

additional written reports; presented or attending at Quarry Committee or other public meetings.

As needed - Additional Services	no charge
--	------------------

- o Notify the City Planning Manager of any condition (pertaining to blasting, air monitoring, noise or other PDD condition) that we become aware of that exceeds the allowances outlined in the PDD. This will be completed prior to noon the business day following the day we become aware of such event.
- o As needed telephone or email interaction with City staff during regular business hours.

SCHEDULE

The following tentative schedule for 2015 is provided regarding the previously described scope of work.

DESCRIPTION	TOTAL NUMBER	JAN	FEB	MAR	APR	MAY	JUN	JULY	AUG	SEP	OCT	NOV	DEC
Quarry Operations Monitoring (Inspections)	34 inspections	1	1	2	4	4	4	4	4	4	4	1	1
Blast Monitoring (2 week monitoring period)	14 weeks				2	2	2	2	2	2	2		
End-of-year Summary Report	1 report												1

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APPROVAL <i>Slw Paul</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE October 21, 2014
REPORTS & RECOMMENDATIONS	Authorization to engage Quarles & Brady, LLP as Bond Counsel for \$5,345,000 City of Franklin General Obligation Promissory Notes, Series 2014A	ITEM NUMBER <i>G.A.</i>

Background

Quarles & Brady, LLP has represented the City of Franklin in debt offering over the years. On Sept 23, 2014 the Common Council authorized the engagement of Quarles & Brady, LLP to provide Bond Council on the sale of \$2 million of General Obligation 2014A Notes. That sale is now being revised to \$5.345 million 2014A Notes to provide funding for TID 3 projects along S 27th Street.

Fees will be paid out of bond proceeds.

Fiscal Impact

See attached draft agreement

COUNCIL ACTION REQUESTED

Motion to Authorize to engagement of Quarles & Brady, LLP as Bond Counsel for \$5,345,000 City of Franklin General Obligation Promissory Notes, Series 2014A



411 East Wisconsin Avenue
Suite 2350
Milwaukee, Wisconsin 53202-4426
414.277.5000
Fax 414.271.3552
www.quarles.com

Attorneys at Law in
Chicago
Indianapolis
Madison
Milwaukee
Naples
Phoenix
Tampa
Tucson
Washington, D.C.

October 15, 2014

VIA EMAIL AND REGULAR MAIL

Mr. Paul Rotzenberg
Director of Finance & Treasurer
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

REVISED

Scope of Engagement Re: Proposed Issuance of \$5,345,000 City of Franklin (the "City")
General Obligation Promissory Notes, Series 2014A

Dear Mr. Rotzenberg:

We are pleased to be working with you again as the City's bond counsel.

The purpose of this letter is to set forth the role we propose to serve and responsibilities we propose to assume as bond counsel in connection with the issuance of the above-referenced Notes (the "Securities") by the City.

Role of Bond Counsel

Bond counsel is engaged as a recognized independent expert whose primary responsibility is to render an objective legal opinion with respect to the authorization and issuance of municipal obligations. If you desire additional information about the role of bond counsel, we would be happy to provide you with a copy of a brochure prepared by the National Association of Bond Lawyers.

As bond counsel we will: examine applicable law; prepare authorizing and closing documents; consult with the parties to the transaction, including the City's financial advisor or underwriter or placement agent, prior to the issuance of the Securities; review certified proceedings; and undertake such additional duties as we deem necessary to render the opinion. As bond counsel, we do not advocate the interests of the City or any other party to the transaction. We assume that the parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction.

Subject to the completion of proceedings to our satisfaction, we will render our opinion that:

- 1) the Securities are valid and binding general obligations of the City;

Mr. Paul Rotzenberg

October 15, 2014

Page 2

- 2) all taxable property in the territory of the City is subject to ad valorem taxation without limitation as to rate or amount to pay the Securities; and
- 3) the interest paid on the Securities will be excludable from gross income for federal income tax purposes (subject to certain limitations which may be expressed in the opinion).

The opinion will be executed and delivered by us in written form on the date the Securities are exchanged for their purchase price (the "Closing") and will be based on facts and law existing as of its date. Upon delivery of the opinion, our responsibilities as bond counsel will be concluded with respect to this financing; specifically, but without implied limitation, we do not undertake (unless separately engaged) to provide any post-closing compliance services including any assistance with the City's continuing disclosure commitment, ongoing advice to the City or any other party concerning any actions necessary to assure that interest paid on the Securities will continue to be excluded from gross income for federal income tax purposes, or participating in an Internal Revenue Service, Securities Exchange Commission or other regulatory body survey or investigation regarding or audit of the Securities.

In rendering the opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation.

Diversity of Practice; Consent to Unrelated Engagements

Because of the diversity of practice of our firm, members of our firm other than those who serve you may be asked to represent other clients who have dealings with the City regarding such matters as zoning, licensing, land division, real estate, property tax or other matters which are unrelated to our bond counsel work. Ethical requirements sometimes dictate that we obtain the City's consent to such situations even though our service to you is limited to the specialized area of bond counsel. We do not represent you in legal matters regularly, although we may be called upon for special representation occasionally, and our bond counsel work does not usually provide us information that will be disadvantageous to you in other representations. We do not believe that such representations of others would adversely affect our relationship with you, and we have found that local governments generally are agreeable to the type of unrelated representation described above. We would like to have an understanding with you that the City consents to our firm undertaking representations of this type. Your approval of this letter will serve to confirm that the City has no objection to our representation of other clients who have dealings with the City, unrelated to the borrowing and finance area or any other area in which we have agreed to serve it. If you have any questions or would like to discuss this consent further, please call us.

We also want to advise you that from time to time we represent underwriters of municipal obligations. In past transactions that are not related to the issuance of the Securities and our role as bond counsel, we may have served as underwriter's counsel to the financial

Mr. Paul Rotzenberg
October 15, 2014
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institution that has or will underwrite the Securities. We may also be asked to represent underwriters, including the underwriter of the Securities, in future transactions that are not related to the issuance of the Securities or our role as bond counsel. By engaging our services under the terms of this letter, the City consents to our firm undertaking representations of this type.

A form of our opinion and a form of a Continuing Disclosure Certificate (which we may prepare) may be included in the Official Statement or other disclosure document for the Securities. However, as bond counsel, we will not assume or undertake responsibility for the preparation of an Official Statement or other disclosure document with respect to the Securities, nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document. If an Official Statement or other disclosure document is prepared and adopted or approved by the City, we will either prepare or review any description therein of: (i) Wisconsin and federal law pertinent to the validity of the Securities and the tax treatment of interest paid thereon and (ii) our opinion.

Fees

Based upon: (i) our current understanding of the terms, structure, size and schedule of the financing, (ii) the duties we will undertake pursuant to this letter, (iii) the time we anticipate devoting to the financing, and (iv) the responsibilities we assume, we estimate that our fee as bond counsel will be \$10,000 including all out-of-pocket expenses, including travel costs, photocopying, faxes, deliveries, filing fees, and other necessary office disbursements. Such fee and expenses may vary: (i) if the principal amount of Securities actually issued differs significantly from the amount stated above, (ii) if material changes in the structure of the financing occur, or (iii) if unusual or unforeseen circumstances arise which require a significant increase in our time, expenses or responsibility. Our fees and expenses may increase if the Securities are insured by a municipal bond insurance company, as municipal bond insurance companies require additional opinions and documents. If at any time we believe that circumstances require an adjustment of our original fee estimate, we will consult with you. It is our understanding that the City is responsible for our fee.

If, for any reason, the financing is not consummated or is completed without the rendition of our opinion as bond counsel, we will expect to be compensated at our normal hourly rates for time actually spent, plus out-of-pocket expenses. Our fee is usually paid either at the Closing out of proceeds of the Securities or pursuant to a statement rendered shortly thereafter. We customarily do not submit any statement until the Closing unless there is a substantial delay in completing the financing.

Limited Liability Partnership

Our firm is a limited liability partnership ("LLP"). Because we are an LLP, no partner of the firm has personal liability for any debts or liabilities of the firm except as otherwise required by law, and except that each partner can be personally liable for his or her own malpractice and

Mr. Paul Rotzenberg
October 15, 2014
Page 4

for the malpractice of persons acting under his or her actual supervision and control. As an LLP we are required by our code of professional conduct to carry at least \$10,000,000 of malpractice insurance; currently, we carry coverage with limits substantially in excess of that amount. Please call me if you have any questions about our status as a limited liability partnership.

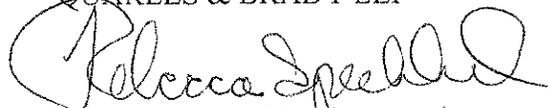
Conclusion and Request for Signed Copy

If the foregoing terms of this engagement are acceptable to you, please so indicate by returning the enclosed copy of this letter dated and signed by an appropriate officer, retaining the original for your files. If we do not hear from you within thirty (30) days, we will assume that these terms are acceptable to you, but we would prefer to receive a signed copy of this letter from you.

We are looking forward to working with you and the City in this regard.

Very truly yours,

QUARLES & BRADY LLP



Rebecca A. Speckhard

RAS:SMW:jmm
Enclosures
#360022.00031

cc: Mr. Mark W. Luberd (via email)
Ms. Sandra L. Wesolowski (via email)
Jesse A. Wesolowski, Esq. (via email)
Ms. Dawn R. Gunderson Schiel (via email)
Ms. Mary Zywiec (via email)
Ms. Sue Porter (via email)

Accepted and Approved:

CITY OF FRANKLIN

By: _____

Its: _____
Title

Date: _____

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APPROVAL <i>Slw Paul</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE October 21, 2014
REPORTS & RECOMMENDATIONS	RESOLUTION PROVIDING FOR THE SALE OF APPROXIMATELY \$5,345,000 GENERAL OBLIGATION PROMISSORY NOTES, SERIES 2014A	ITEM NUMBER <i>G.5.</i>

Background

On Sept 23, 2014 the Common Council authorized the Sale of \$2 million General Obligation Notes to finance the 2014 Capital Improvement projects.

Since that date, TID 3 project costs have required in excess of \$1 million in Dec 2014 and first quarter, 2015. To provide the financing for those projects, the planned summer 2015 sale of \$3.3 million of TID 3 Notes should be advance to co-inside with the City note sale in December 2013. This will save costs associated with the sale of the notes.

On October 7, 2014 the Common Council approved a resolution approving State-Municipal Agreement for the South 27th Street Corridor Reconstruction from W College Avenue to W Drexel Avenue.

The TID will have costs associated with this road project. An estimated \$3.3 million in financing will be needed for those projects.

Representatives of the City's Financial Advisor, Ehlers & Associates will be on hand to explain the impact of the Note sale.

COUNCIL ACTION REQUESTED

Motion to approve **resolution providing for the sale of approximately \$5,345,000 general obligation promissory notes, series 2014A**

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. _____

RESOLUTION PROVIDING FOR THE SALE OF APPROXIMATELY
\$5,345,000 GENERAL OBLIGATION PROMISSORY NOTES, SERIES 2014A

WHEREAS, the City of Franklin, Milwaukee County, Wisconsin (the "City") previously adopted a resolution providing for the sale of approximately \$2,000,000 General Obligation Promissory Notes, Series 2014, for public purposes, including projects listed in the City's Capital Improvement Program;

WHEREAS, the City is also in need of an amount of approximately \$3.3 million for tax incremental project costs; and

WHEREAS, it is desirable to borrow said funds through the issuance of general obligation promissory notes pursuant to Section 67.12(12), Wisconsin Statutes.

NOW, THEREFORE, BE IT RESOLVED that:

Section 1. The Notes. The City shall issue general obligation promissory notes designated "General Obligation Promissory Notes, Series 2014A" in an amount of approximately \$5,345,000 (the "Notes") for public purposes, including projects listed in the City's Capital Improvement Program and tax incremental project costs.

Section 2. Sale of the Notes. The Common Council hereby authorizes and directs that the Notes be offered for public sale. At a subsequent meeting, the Common Council shall consider such bids for the Notes as may have been received and take action thereon.

Section 3. Notice of Sale. The City Clerk (in consultation with the City's financial advisor, Ehlers & Associates, Inc. ("Ehlers")) be and hereby is directed to cause notice of the sale of the Notes to be publicized at such times and in such manner as the City Clerk may determine and to cause copies of a complete, official Notice of Sale and other pertinent data to be forwarded to interested bidders as the City Clerk may determine.

Section 4. Official Statement. The City Clerk (in consultation with Ehlers) shall cause an Official Statement concerning this issue to be prepared and distributed. The appropriate City officials shall determine when the Official Statement is final for purposes of Securities and Exchange Commission Rule 15c-12 and shall certify said Statement, such certification to constitute full authorization of such Statement under this resolution.

Section 5. Award of the Notes. Following receipt of bids for the Notes, the Common Council shall consider taking further action to provide the details of the Notes; to award the Notes to the lowest responsible bidder therefor; and to levy a direct annual irrevocable tax sufficient to pay the principal of and interest on the Notes as the same becomes due as required by law.

Section 6. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the Common Council or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

Introduced at a regular meeting of the Common Council of the City of Franklin this 21st day of October, 2014.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 21st day of October, 2014.

Stephen R. Oson, Mayor

ATTEST:

Sandra L. Wesolowski
Director of Clerk Services/City Clerk

(SEAL)

AYES ___ NOES ___ ABSENT ___

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APPROVAL <i>Steve Paul</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Oct 21, 2014
REPORTS & RECOMMENDATIONS	RECOMMENDATION FROM BOARD OF WATER COMMISSIONERS AND DIRECTOR OF FINANCE TO APPROVE CONTRACT WITH ISI WATER COMPANY FOR WATER LOSS STUDY	ITEM NUMBER <i>G.6.</i>

Background

The Franklin Water Utility has experienced water loss the last several years – see table:

Year	Gallons Purchased	Gallons Sold	Unbilled	Cost of Unbilled Water	% unbilled to Purchased
2013	1,018,374,000	851,362,000	167,012,000	\$495,620	16.4%
2012	1,108,835,000	954,745,010	154,089,990	\$388,655	13.9%
2011	1,023,293,000	866,694,409	156,598,591	\$333,879	15.3%
2010	1,011,233,000	838,811,353	172,421,647	\$362,085	17.1%
2009	1,070,916,000	898,365,765	172,550,235	\$362,356	16.1%
2008	1,048,889,000	905,485,531	143,403,469	\$274,875	13.7%
2007	1,066,478,073	932,450,369	134,027,704	\$225,167	12.6%
2006	1,002,872,000	858,417,808	144,454,192	\$242,683	14.4%

This level of water loss has drawn the attention of the Public Service Commission who recently requested information on efforts to reduce the water loss. The importance of this issue is illustrated when comparing 2013's Operating loss of \$38,088 to the \$495,620 cost of lost water. The lost income has increased over the years with the increasing rates from the supplier.

The Board of Water Commissioners has been working on a several pronged approach to finding and then controlling water loss. One of those efforts includes a detailed review of the billing process. The Board of Water Commissions would like to engage ISI Water Company to perform that review

Analysis

ISI Water Company would review the current billing process and then identify any issues. Upon agreement of the Water Utility staff, the prospective billing for identified customer(s) would be adjusted. ISI would receive compensation of 60% of the increased revenue for the 36 months following the change.

This contract approach would present no risk to the Utility, as only unbilled water located by this process would be subject to the compensation paid to ISI Water Company. Upon the expiration of the 36 months, the utility would then capture all of that revenue.

The City Attorney has reviewed the contract. The City Attorney does not believe that Common Council must take action on this contract. See attached comments by the City Attorney.

Sewer bills to Commercial accounts have a water volume component and Commercial water customer accounts will be included in the review, therefore some Sewer revenues maybe impacted by this contract.

Recommendation

The Board of Water Commissioners recommends approval of the contract.

The contract has no risk to the involved Utilities should no billing issues be located. Should billing errors be located, then the Utilities would gain 40% of the revenue for the first 36 months and 100% of that revenue thereafter.

The Director of Finance & Treasurer recommends approval of the contract.

Fiscal Impact

Staff anticipates that some amount of unbilled water will be identified in this process. Even 10% of the loss coming out of the billing process will generate an additional \$45,000 of annual Water Utility and an unknown amount of Sanitary Sewer revenues subject to provisions of the contract.

COUNCIL ACTION REQUESTED

Motion to approve the contract with ISI Water Company for Water Loss Study

**CONTRACT
FOR
SERVICES**

THE STATE OF: Wisconsin

COUNTY OF: Milwaukee

KNOW ALL MEN BY THESE PRESENTS:

THIS CONTRACT FOR SERVICES ("Contract") is made on the date of countersignature, hereinafter specified, by and between the City of Franklin ("City"), and ISI Water Company, a Texas corporation, with its principal office in Houston, Harris County, Texas (referred to herein as Water Company of America "WCA"). The initial addresses of the parties are as follows:

WCA
ISI Water Company
5215 Fidelity St
Houston, Texas 77029

City (or County)
City of Franklin, Water Utility
9229 W Loomis Road
Franklin, WI 53132

WITNESSETH:

WHEREAS, the City desires to secure the performance of services of the highest quality by trained, skilled personnel; and

WHEREAS, WCA desires to provide such services in exchange for the fees hereinafter specified; and

WHEREAS, WCA has submitted _____ dated _____ describing the proposed service;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

ARTICLE I

Definitions

As used in this Contract, the following terms shall have meanings as set out below:

"Account" is defined as a particular Water, Wastewater, Stormwater and/or Solid Waste Service of the City. This definition includes all unauthorized taps discovered by WCA that previously had not been given an Account number by the City.

"Base Revenue" is defined as the average of the monthly Account billings during the period of time when the Account experienced the problem and which immediately precedes the completion of the Work, for up to a twelve month period. By way of example, and not limitation, if WCA discovers a meter which has been broken for a six-month period, resulting in consumption of zero usage during such six-month period, the Base Revenue is zero, and shall not include in the Base Revenue average the preceding six-month period during which time the meter operated properly.

"WCA Share" is defined as the fee to be paid by the City to WCA for performance of duties under this Contract, computed in accordance with Section 5.02 hereof.

"City" is defined in the preamble of this Contract and includes its successors and assigns.

"WCA" is defined in the preamble of this Contract and includes its successors and assigns.

"Customer Information System" (or "CIS") is defined as the system used by the City to bill and to account for customer activities.

"Contract Administrator" is defined as that person designated by the Director by notice to WCA, to administer this Contract on behalf of the City. This individual shall have a working knowledge of City protocol and operating procedures of the City, and shall have the authority and responsibility of administering all day-to-day aspects of this contract on behalf of the City.

"Director" is defined as the City's designated Utility manager who has ultimate authority and responsibility over this Contract.

"Documenting the Find" is defined as the notation by WCA on the Research report to the City or the approval of a submitted Formal Work Order.

"Find" is defined as the discovery by WCA of an Account condition, as the result of the Work, which causes a specific Water, Wastewater, Stormwater or Solid Waste Service to be improperly or inaccurately billed.

"Force Majeure" as used herein, shall include but not be limited to, acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornadoes, hurricanes, arrests, and restraints of government and people, explosions, breakage or damage to machinery or equipment and any

other abilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability.

"Increased Revenue" is defined as the amount of monthly income received by the City on an Account, over and above the Base Revenue, including any rate increases, subsequent to corrective action being taken on that Account, including both income derived from ongoing usage, as well as retroactive billing.

"Notice to Proceed" is defined as the written notification by the City to WCA to initiate Work. This notification shall be issued upon the successful conversion of Account data from the CIS by WCA. The date of the Notice to Proceed shall mark the initiation of the Contract Term.

"Research Report" is defined as the reports delivered to the City by WCA pursuant to Section 2.01 (C) (1) hereof.

"Water, Wastewater, Stormwater and/or Solid Waste Service" is defined as the physical location of a City consumer, both known and unknown to the City, which utilizes services provided by the City.

"Work" is defined as all of WCA's efforts towards determining needed changes and recommending the corrective actions necessary in order for the specific Water, Wastewater, Stormwater or Solid Waste Service to be properly and accurately billed.

"Work Order" shall be defined to mean that certain standard document that defines relevant information about a City Account that WCA has evaluated and determined to be defective.

ARTICLE II

Scope of Service

2.01 - Basic Service

WCA shall provide the investigation, Work Orders, and field services necessary to maximize the billable revenue for the City's utility Service.

- A) Investigation and Field Work
- B) Upon receiving the Account information described in Section 3.01 (A) hereof WCA shall:
 - 1) Investigate each Account and determine if there is a loss of revenue to the City associated with that Account.
 - 2) Submit Work Orders with recommendation for changes in billing procedures and/or changes in physical service. This information will be provided for each Account.
- C) Reports
 - 1) WCA shall provide to the City on a periodic basis a complete list of all Accounts researched on which WCA has identified potential increased revenues to the City. This Research Report shall be submitted for the purpose of "Documenting the Find" and WCA shall be entitled to its portion of the Increased Revenues on said Accounts (the WCA Share), if the Work Order(s) included therein are subsequently approved by the Contract Administrator.
 - 2) On each Account for which WCA has Documented the Find and the City has collected Increased Revenue, WCA shall provide a detailed report that quantifies Increased

Revenue prepared from the information received from the City in the monthly account data download. This report typically contains at least the following information:

- a) Work Order number
 - b) Account Number
 - c) Cycle counter (indicates progression through the revenue sharing period)
 - d) Amount of customer billing (from the download)
 - e) Base Revenue
 - f) Calculation of Increased Revenue
 - g) Calculation of WCA Share
- 3) WCA may provide the Contract Administrator a status report on a frequency agreed to by the parties. This report is to be inclusive of all Accounts that are deemed by WCA to justify action and on which a Work Order has been generated in the prior month.
- D) WCA warrants that all work shall be performed in a good and workmanlike manner meeting the standards of quality prevailing in the City ordinances for services of like kind. WCA further warrants that trained and skilled persons who have been previously approved by the City shall perform all Work.

2.02 - Services in General

WCA shall coordinate all of its activities herein described with the City, the Director, WCA Administrator, or their designated representative(s).

2.03 – Finds Exempted

In certain rare cases, WCA may discover a Find on an account of which the City has prior knowledge and is attempting to remedy. Such a Find being remedied by the City is exempted from WCA Work. These cases fall into two categories and require that WCA shall: 1) for a period of 60 calendar days from the date of the inception of a new Account problem that originates during the term of this agreement, refrain from submitting a Work Order related to that Find, and 2) for a period of 60 calendar days beginning at the Notice to Proceed date, refrain from submitting a Work Order for any specific account problem known to the City and made known to WCA, that the City is in the process of remedying.

It is agreed by the parties hereto that the purpose of this Section 2.03 is to define and agree to the period of time for the City to remedy new problems that it discovers, and/or to remedy known situations. This will minimize duplication of effort, thus keeping project resources focused on providing maximum benefit to the City.

ARTICLE III

City Duties, Data Records, Work Products, Etc.

3.01 - Certain Duties of the City:

- A) In addition to its other duties under this Contract, the City shall, to the extent permitted by law for each Account, promptly provide access to all the data and records in the possession of the City and provide copies of any documents in the possession or control of the City or available to the City which are requested by WCA and are reasonably necessary for WCA to perform its duties under this Contract. CSIS data shall be in two forms. First, a monthly download (transmitted via FTP or written to CD) of select fields of Account data generated by an automatic script or macro. Second, a VPN link to the CSIS for the viewing and extracting of "real time" information. At no time will WCA be able to input a change or modification to an Account by way of this link.

- B) Upon execution of this Contract by all parties, the City will coordinate a post-award meeting with WCA and all designated management personnel representing the City under this Contract in order to fully explain all the aspects of this Contract.
- C) The City shall review all Work Orders submitted by WCA under Section 2.01 (B) hereof and within ten (10) working days of the date of submittal, the City shall advise WCA of the disposition of the Work Order request (approved or denied).
- D) The City shall timely implement the recommended corrective action identified in the Work Order once approved and notify WCA of this action once complete and the date of completion. Changes to account data such as billing code changes shall be accomplished within thirty calendar days. Should this not occur within the time frame specified, the City shall issue to WCA written notification of a fifteen day extension. Work Orders that involve changes to physical service shall be expedited with all reasonable haste. Both parties recognize and agree that the purpose and intent of the project cannot be realized until approved changes have been implemented and accounts are fairly and accurately billed. If account changes are not completed by the City within the time frames described, the City shall approve and pay an estimate of the WCA Share (ref 5.02 C).
- E) The Contract Administrator shall assist WCA in its dealings with any City department.
- F) The City shall acknowledge that WCA has Documented the Find pursuant to Section 2.01 (C) (1), by promptly entering the appropriate information related to the Account within the "CIS" System, or by whatever other method the City chooses. Once documented, the City shall not deny approval of a Work Order due to any action taken by the City during the approval process.
- G) Matters not specifically covered by this Contract will have procedures established by mutual agreement of WCA and the Contract Administrator.
- H) At all times, the spirit of this Contract will be upheld by both the City and WCA. WCA is performing a service to the City by increasing revenue to the City. The City has given WCA authorization to perform the defined duties of this Contract and will not hinder, restrict, delay or compete with WCA's performance of these duties.

ARTICLE IV

Indemnification and Insurance

4.01 - Indemnification

WCA hereby agrees at all times to defend, indemnify and hold the City harmless from and against any and all liability, losses or costs arising from claims for damages, or suits for loss or damage, including without limitation out-of-pocket costs and reasonable attorneys fees, which arise as a result of WCAs negligence or failure to properly perform this Contract, whether such claims are asserted before or after the termination of this Contract.

4.02 - Insurance

Throughout the term of this Contract, WCA shall carry and maintain the following insurance coverage with a company or companies reasonably satisfactory to the Director, and policies of insurance that meet the requirements of the State. The City shall be named as an additional insured on all such policies for this Contract, and the policy shall provide that the Director will be given at least ten (10) days notice in case of cancellation. Such insurance coverage shall have the minimum limits of liability in not less than the following amounts:

- A) Comprehensive General Liability Insurance including Contractual Liability:
 - Bodily Injury & Property Damage
 - \$ 1,000,000 per occurrence

- \$ 2,000,000 aggregate
- B) Worker's Compensation with Employees Liability including Broad Form All States
Endorsement: \$ 1,000,000

ARTICLE V

Payment

5.01 - Limitation of Funds

Any and all fees due to WCA under this Contract shall be payable solely from the funds collected pursuant to this Agreement. WCA acknowledges and agrees that the City's liability for any and all payments hereunder shall be limited by this provision. No other funds are available nor will they be appropriated for the purpose of this Contract.

5.02 - Payment for Services

- A) If any Work performed by WCA to an Account results in Increased Revenues to the City, WCA shall be entitled to a WCA Share for such Work equal to 60% of all Increased Revenues (as defined in Article I of this Contract) for a term of 36 months thereafter, referred to in 6.01 TERM as Phase Two. The 36 month term may be suspended in the event that the account problem persists which eliminates Increased Revenue and restarted following remedy.
- B) Documentation substantiating and calculating Increased Revenue shall be reviewed and approved by the City within thirty calendar days of submission and thereafter processed for payment within the time frame stipulated by Statute. Interest on all amounts remaining unapproved and/or unpaid beyond the time frame stipulated by Statute shall accrue at a rate of 10% per annum until paid.
- C) If all of the data necessary to compute the WCA Share is not available in time to make such payment when due, or if the condition described in 3.01 D) occurs, the City shall approve a good faith estimate of such Increased Revenue and compute the WCA Share accordingly. Adjustments to such WCA Share shall be made on succeeding monthly payments after actual Increased Revenues are determined.

5.03 - Arbitration

The City and WCA shall promptly notify each other of any controversy which shall arise with respect to the computation of any payments or fees due to WCA hereunder. Each party shall act in good faith and shall make its best reasonable effort to resolve the dispute within thirty (30) days after receipt of any invoice disputing such payments or fees. In the event the parties are not able to resolve the dispute within such thirty (30) day period, the controversy shall be considered and resolved by majority vote of an arbitration panel ("Panel") consisting of three (3) persons selected and designated as follows:

1. The City shall within ten (10) days thereafter designate an independent certified public accountant which may be the independent auditors regularly retained by the City;
2. WCA shall within ten (10) days thereafter designate an independent certified public accountant which may be a certified public accountant regularly retained by WCA; and
3. The two (2) certified public accountants and/or independent auditors thus designated shall agree upon and promptly designate a third certified public accountant and/or independent auditor which shall not have then or previously had any significant relationship with the City or WCA.

The parties agree that the arbitration procedure provided above shall be the sole remedy for dispute of the payments or fees due WCA hereunder and shall be binding on the parties thereto; provided, however, in the event the City's certified public accountant and WCA's certified public accountant cannot agree upon a third accountant, or the Panel does not resolve the controversy within a reasonable period, not to exceed one hundred twenty (120) days from the date the independent certified public accountants are retained by the parties, either party may pursue any other remedy provided by law. Each party shall bear the expenses of its designated accountant, and the expense of the third accountant shall be borne equally by the parties.

ARTICLE VI

Term and Termination

6.01 - Term

The Contract term is initiated by the City upon the issuance of the Notice to Proceed. The term of the Contract is divided in two phases. Phase one is the operations period when WCA is performing the Work and shall continue for a primary term equal to thirty six (36) months. At the end of the primary term of phase one, the phase one term may be renewed for successive periods of twelve (12) months, upon written agreement of both parties. Phase two is the period of time, on a Work Order by Work Order basis, during which the WCA Share is determined (reference 5.02 A). Therefore the Contract Term is the total time from the date of the Notice to Proceed, through phase one, including any renewal periods, and including phase two which is the 36 month revenue sharing period for each Find approved by the City.

6.02 - Termination

Either party may terminate phase one (the operations period) of this Contract by giving a thirty day written notice to the other party of the intent to terminate. The City agrees that for three (3) years after termination of this Agreement, however brought about, the City shall, during normal business hours, provide WCA with access to and the determination of fees and payments owed to WCA hereunder.

6.03 - Earned Fees

The duties and obligations of the City to pay WCA under the terms of Article V shall continue in full force and effect as outlined therein and shall survive the completion of phase one (the operations period) of this Contract.

ARTICLE VII

Miscellaneous Provisions

7.01 - Independent Contractor

The relationship between WCA and the City shall be that of an independent contractor.

7.02 - Business Structure and Assignments

Other than by operation of law, WCA shall not delegate or assign any portion of this Contract without the written consent of the Director, which shall not be unreasonably withheld. WCA however may assign any portion of its WCA Share under this Contract. Before an assignment of this sort can become effective, WCA shall furnish reasonable proof of the assignment by providing a notice to the Director containing the following information: a) the name, address and telephone number of WCA with clear reference to this Contract; b) the name, address and

telephone number of assignee; and c) the identity of the fees to be assigned. If reasonable proof as described above is not provided to the Director, the City may continue to pay the assignor.

7.03 - Subcontractors

WCA may subcontract any part of its performance under this Contract with the approval of the Director or Contract Administrator. Any subcontractor shall be treated under the Contract as if they were employees of WCA, except in regard to fees.

7.04 - Parties in Interest

This Contract shall not bestow any rights upon any third party, but rather, shall bind and benefit the City and WCA only.

7.05 - Non-waiver

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on or to enforce by any appropriate remedy strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

7.06 - Applicable Laws

This Contract is subject to all laws of the State of domicile of the City, the City Charter and Ordinances of the City, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body having jurisdiction.

7.07 - Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Services post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have therefore prescribed by notice to the sending party.

7.08 - Equal Employment Opportunity

WCA will comply with all laws, ordinances and policies set by the City in reference to Equal Employment Opportunities.

7.09 - Force Majeure

In the event either party is rendered unable, wholly or in part, by Force Majeure to perform under this Contract, it is agreed that, upon such party's giving notice specifying such Force Majeure in writing or by telefax to the other party as soon as possible after the occurrence of the Force Majeure, the obligations of the party giving such notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to cure the Force Majeure and resume performance at the earliest practicable time, shall be suspended during the continuance of the Force Majeure, but for no longer extended by the period of time during which either party was unable to perform its obligations hereunder as a result of the occurrence of a Force Majeure.

7.10 - Approvals; Authority

An approval by the Director, or by any other instrumentality of the City, of any part of WCA's performance shall not be construed to waive compliance with this Contract or to establish a

standard of performance other than required by this Contract or by law. No party is authorized to vary the terms of this Contract.

7.11 - Remedies Cumulative

The rights and remedies contained in this Contract shall not be exclusive but shall be cumulative of all other rights and remedies, now or hereafter existing, whether by statute, at law, or in equity; provided however, that none of the parties shall terminate this Contract except in accordance with the provision hereof.

7.12 - Representations

- A) WCA represents that it and its employees, agents and subcontractors are fully competent and qualified to perform all the service required to be performed under this Contract. WCA represents that it has experience in performing all of the services to be performed hereunder and these services shall be of the highest professional quality.
- B) The City represents that it is a duly authorized and empowered to enter into this Agreement and to carry out its obligations hereunder. By proper action of its members, the City has duly authorized the execution, delivery and performance by this Agreement.

7.13 - Captions

The captions at the beginning of the Articles of this Contract are guides and labels to assist in location and reading such Articles and, thereto, will be given no effect in construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any article, section or part of this Contract.

7.14 - Personnel of WCA

WCA shall replace any personnel assigned to provide services under this Contract which are deemed unsuitable by the Director or Contract Administrator.

7.15 - Entire Agreement

This Contract contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties.

7.16 - Amendment

This Contract may be modified or amended by written agreement signed by all parties hereto.

7.17 - Exclusive Contract

WCA shall have the sole and exclusive franchise, license and privilege to provide the services described in this Contract within the bounds of the Contract service area.

Witnesseth:

WCA

ISI WATER COMPANY

By: _____

Title: _____

Date: _____

CITY

CITY of FRANKLIN

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

Paul Rotzenberg

From: Jesse Wesolowski [jweslaw@aol.com]
Sent: Wednesday, October 15, 2014 12:27 PM
To: Paul Rotzenberg
Cc: Steve Olson; Ron Romeis
Subject: Re: Contract Review - Water Utility proposal
Attachments: contract boilerplate.doc; ATT00001.htm

Follow Up Flag: Follow up
Flag Status: Completed

Went through 3 (circa 1977) organic paper files from Engineering re: the creation of the "Franklin Water Utility"; found no PSC documents, though City documents reference the PSC authority for the utility to proceed; found no statutory references as to the manner of utility creation; checked the PSC site and found nothing other than the "Franklin Municipal Water Utility" ID; and searched the DFI site and found nothing. Checked the Stats. and Code. Below is the Mun. Code sec. 207-5. I mentioned the last time we talked about the subject. Also below is a League article on the subject, highlighted on point(s). You advise that the practice has been to present all contracts to the Common Council. The Code sec. cited reads to delegate that authority. Perhaps under that practice scenario, the subject matter of authority be presented to the Council. I know questions about the ultimate authority of the Board have arisen through the years, but don't recall any ultimate and final review and conclusion. I do recall the answer generally being through the years when a subject matter was before the Council, that it was because it involved "City property", i.e., a water tower. Finally, also below is a copy of the standard City contract provisions (ref. "Engineer" as the service provider) which we always recommend. Please call with any questions. Thanks.

Mun. Code sec. 207-5. Board of Water Commissioners. ***

H. Limitations of powers. The Board shall be limited only in the case where a capital investment requires the borrowing of money which will become a general obligation of the City. For this limitation, the consent of the City Council shall first be required.

June 2013 Legal Comment
Municipally-Owned Utility Legal Issues: An Introduction

By Daniel M. Olson, Assistant Legal Counsel

A common feature of contemporary cities and villages is a municipally-owned utility that provides water, electricity, transportation or some other good or service to the general public. There are many potential benefits to a city or village from such ownership. However, a municipally-owned utility also generates significant legal issues for municipal officials.

The universe of municipally-owned utility legal issues is substantial and it is not possible to provide even a nominal review of them all in a magazine article. However, it is feasible to review some key issues regarding the creation, management and financing of municipally-owned utilities and, thus, provide a basic foundation that city and village officials can use to start to understand how a municipally-owned utility does or might function in their community.

Utility Creation: Sources of Authority

Municipal ownership or regulation of essential utilities and urban services was a major theme of the Progressive Movement from the late 1800s into the twentieth century. In urbanized areas, key services such as water, gas,

public transportation, and electricity were viewed as "natural monopolies" that prevented effective competition. Concerned that private companies could dominate delivery of these types of services to the detriment of consumers and governments, reformers in the late eighteenth century pushed municipal ownership as a solution.

However, in the early stages of the municipal ownership movement, state laws expressly authorizing cities and villages to own and operate water or other public utilities did not exist. Accordingly, municipalities in Wisconsin and elsewhere relied on non-specific authority for the power to create and operate a municipally-owned utility.

Notably, the Wisconsin Supreme Court determined fairly early that Wisconsin municipalities do not need explicit statutory authorization to create a municipally-owned utility. In 1895, the Court held that "it is not necessary to seek an expressed delegation of power to the city to build a water works and an electric lighting plant, because the power expressly granted to the city to pass ordinances for the preservation of the public health and general welfare includes the power to use the usual means of carrying out such powers, which includes municipal water and lighting services."¹ Thus, a general grant of authority to act for the public health or general welfare is adequate legal authority for Wisconsin cities and villages to create and operate a municipally owned utility.

Presently, Wisconsin cities and villages are vested by the state legislature with very broad general authority. For example, Wis. Stat. sec. 62.11(5), the general authority statute for city councils, provides:

Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language.

A similar delegation of authority by the state legislature is provided to Wisconsin village boards by Wis. Stat. sec. 61.34(1). These grants of power are substantial and give the governing body of a city or village "all the powers that the legislature could by any possibility confer upon it."² Therefore, there is little doubt that secs. 62.11(5) and 61.34(1) are sufficient to vest city councils and village boards with the power to create a municipally-owned utility subject to important limitations.

The general authority granted by secs. 62.11(5) and 61.34(1) may be limited or preempted by the state.³ In general, the authority granted by secs. 62.11(5) and 61.34(1) may not be exercised where: the legislature has expressly withdrawn the power of municipalities to act; municipal action would logically conflict with state legislation; municipal action would defeat the purpose of state legislation, or; municipal action would go against the spirit of state legislation. Nonetheless, municipalities may enact ordinances in the same field and on the same subject covered by state legislation where such ordinances do not conflict with, but rather complement, the state legislation.⁴

The exercise of authority under secs. 62.11(5) or 61.34(5) must also serve a legitimate public purpose. This is usually not a significant bar to action because Wisconsin courts have adopted a very expansive view of public purpose.⁵ The public purposes that may be served by creating a municipally-owned utility are consequently also quite broad and include the health, safety and general welfare of the public as well as the commercial benefit of the municipality. For example, the Wisconsin Supreme Court found in *Libertarian Party v. State of Wisconsin*, 199 Wis.2d 790, 546 N.W.2d 424 (1996), that expenditures for baseball park facilities serve the public interest by providing recreation, as well as encouraging economic development and tourism, and reducing unemployment.

Wisconsin cities and villages need not always rely on their general grants of authority to create a municipal utility. As in other states, the Wisconsin legislature has specifically authorized many types of municipally-owned utilities by statute. These include water utilities (Wis. Stat. sec. 66.083(1)(a) and sewerage systems (Wis. Stat. sec. 66.0821). Municipal bus transportation systems (66.0801(2)(a), electric companies (66.0825) and parking systems (66.0829) are also specifically authorized. Broad descriptions or definitions of public utility also authorize the creation of municipally-owned utilities to "furnish water, light, heat or power to the municipality or its inhabitants" (66.0801(1)(a)) as well as "any revenue producing facility or enterprise owned by a municipality and operated for a public purpose . . . including garbage incinerators, toll bridges, swimming pools, tennis courts, parks, playgrounds, golf links, bathing beaches, bathhouses, street lighting, city halls, village halls, town halls, courthouses, jails, schools, cooperative educational service agencies, hospitals, homes for the aged or indigent, child care centers, regional projects, waste collection and disposal operations, sewerage systems, local professional baseball park facilities, local professional football stadium facilities, local cultural arts facilities, and any other necessary public works projects undertaken by a municipality" (66.0621(1)(b)).

It is also possible that a city or village may rely on its constitutional home rule authority to create a municipal utility. This authority is found in Article XI, Sec. 3 of the Wisconsin Constitution, adopted in 1924, which provides, "Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature." However, municipalities have historically not fared well in asserting constitutional home rule in the courts, which suggests, for the time being, that it may be the least important source of authority for creating a municipally-owned utility when compared to the general and specific authority provisions identified above.

So, how does a municipality create a municipally-owned utility? Notably, the laws authorizing creation of a municipally-owned utility provide a variety of methods for establishing such an enterprise.

If a city or village relies on its general authority under secs. 62.11(5) or 61.34(1) respectively, the methods for creating a municipal utility are stated in broad terms. Under sec. 62.11(5), a city council may carry out the powers granted to it by that section "by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means." Similarly, a village board may carry out the powers granted by sec. 61.34(1) "by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means." Thus, both general authority statutes authorize creation of a municipally-owned utility by a number of general methods.⁶

Statutes granting specific authority to create a municipal utility may also describe the process for creating a municipal utility in broad terms. For example, section 66.0803, which specifically authorizes cities and villages to create utilities that furnish water, light, heat or power, states that cities and villages "may construct, acquire or lease any plant and equipment located in or outside the municipality, including interest in or lease of land, . . . acquire a controlling portion of the stock of any corporation owning private waterworks or lighting plant and equipment; and may purchase the equity of redemption in a mortgaged or bonded waterworks or lighting system, including cases where the municipality in the franchise has reserved right to purchase" for such purposes.

Significantly, while the sec. 66.0803(1)(a) process for creating a municipal utility that furnishes water, light, heat or power is described broadly, there is a specific step that must be met in most cases. Except for the acquisition by dedication or without monetary or financial consideration of any plant, equipment or public utility for furnishing water, the method of payment for the initial construction, acquisition, etc. of a sec. 66.0803(1)(a) municipal utility must be submitted to public referendum for approval pursuant to Wis. Stat. secs. 66.0803(1)(b), (c), (d) and (e).

Some statutes that specifically authorize creation of a municipal utility also specify a particular method for creating it. For example, cities and villages are authorized to create electric utility systems by Wis. Stat. sec. 66.0825(4). Notably, the authorizing statute specifies that such systems are to be created by a combination of municipalities "by contract with each other."

Lastly, it should be noted that utilizing constitutional home rule amendment authority to create a municipal utility will require compliance with some very specific steps. Constitutional home rule amendment authority must be implemented by charter ordinance in accordance with the process established by Wis. Stat. sec. 66.0101. The sec. 66.0101 process includes enactment of a charter ordinance by a two-thirds vote of the members-elect of the city council or village board which is subject to a public referendum as provided by the statute.

Utility Management: **Divided Authority**

Municipal utility legal concerns do not end when the utility is created. Management of the utility also generates important legal issues for local officials, which can be federal, state or local in origin because direct or indirect utility management authority is divided amongst all three levels of government.

A number of federal agencies are empowered to regulate public utility management and operation. These include the Federal Communications Commission, the Federal Energy Regulatory Commission, and the Department of Energy. Accordingly, federal law may impact the management and operation of a municipally-owned utility.

Some state agencies also have power to affect public utility management and operation through a wide range of state laws. The most significant state agency is probably the Public Service Commission of Wisconsin (PSC). The PSC is empowered to "supervise and regulate" public utilities in Wisconsin that furnish "water, light, heat and power," including those that are municipally-owned. Wis. Stat. sec. 196.02(1).

Legal issues related to utility management or operation also arise at the local level. They frequently surface when the utility operation and management involves a utility commission exercising authority under Wis. Stat. sec. 66.0805 while also subject to governing body oversight.

Section 66.0805(1) states that "[e]xcept as provided in sub. (6), the governing body of a city shall, and the governing body of a village or town may, provide for the nonpartisan management of a municipal public utility by creating a commission under this section." It further provides that "[t]he board of commissioners, under the general control and supervision of the governing body, shall be responsible for the entire management of and shall supervise the operation of the utility." Lastly, the statute states that "[t]he governing body shall exercise general control and supervision of the commission by enacting ordinances governing the commission's operation."

The plain language of 66.0805(1) makes clear that a utility commission has "entire charge and management" of and is to "supervise the operation" of the utility. On the other hand, the municipal governing body has "general control and supervision" of the commission pursuant to enacted ordinances, which eliminates the possibility of a governing body exercising control of utility operations through specific resolutions and second guessing of commission decisions. While significant, the authority granted to utility commissions by sec. 66.0805(1) however should not be read too broadly because it is subject to significant legal limits.

One important limitation restricts the power of a utility commission to enter into contracts. In League Opinion Public Utilities 316, League

counsel concluded that a utility commission is not "an independent autonomous body with the authority to enter into contracts and bind the city." Rather, a utility commission "is merely an agency of the city . . . with no defined, separate corporate status."⁷ Accordingly, in cities and villages with utility commissions, the governing body, not the utility commission, holds final authority over a contract between a municipally-owned utility and a third party, unless the governing body specifically delegates contract authority to the utility commission.

The statutory authority granted to governing bodies to exercise "general control and supervision" over a sec. 66.0805 utility commission is another important limitation on utility commission power. In League Legal Opinion Commissions 165, League counsel concluded this governing body authority applies wherever a utility commission does not have "specific authority" under sec. 66.0805, allowing a governing body for example to establish sick leave and vacation policies for utility employees because a sec. 66.0805 utility is only specifically authorized to "employ and fix compensation" of subordinates. In League Legal Opinion Public Utilities 316, League counsel also determined that governing body supervisory authority "extends to matters of budgetary control and general utility policy relating to the provision of services and service areas." Thus, the authority to decide whether to extend water utility services outside the jurisdiction of a city or village pursuant to sec. 66.0813 belongs to the city council or village board, not a sec. 66.0805 utility commission.

Can the statutory relationship between a city council or village board and a sec. 66.0805 utility commission be altered? Notably, section 66.0805 does not provide a method for modifying the division of authority between utility commissions and governing bodies it creates. Thus, a city council or village board must look for a different source of authority to alter the legal relationship between it and a 66.0805 utility commission. A potential source of authority is the constitutional home rule amendment power of cities and villages.

The constitutional home rule power vested in cities and villages by Article XI Section 3 must be exercised pursuant to Wis. Stat. sec. 66.0101(4). Section 66.0101(4) provides that a city or village "may elect in the manner prescribed in this section [sec. 66.0101] that the whole or any part of any laws relating to the local affairs and government of such city or village other than such enactments of the legislature of statewide concern as shall with uniformity affect every city or every village shall not apply to such city or village, and thereupon such laws or parts thereof shall cease to be in effect in such city or village."

In League Legal Opinion Public Utilities 316, League counsel concluded that the provisions of sec. 66.0805 providing for the management of municipally-owned public utilities are a matter of local concern and can be amended or modified by charter ordinance under sec. 66.0101 to vest a governing body with greater control over a utility commission's operation or management of a municipally-owned utility. In the opinion, League counsel opined that a "city council can confer on itself greater authority over the utility commission by the enactment of a charter ordinance" and observed that the conclusion was not undermined by the Wisconsin Supreme Court ruling in *Schroeder v. City of Clintonville*,⁸ because the ordinance challenged in the case, which attempted to alter the 66.0805 utility scheme, was an ordinary ordinance and the Court "neither mentioned nor addressed the issue of what effect a charter ordinance would have on the provisions of sec. [66.0805]." This, according to the League counsel, meant that "*Schroeder* cannot be construed as authority to

preclude the modification of sec. [66.0805] by charter ordinance."

Subsequent opinions of League Counsel have however raised some doubt about the use of constitutional home rule authority to alter the relationship between sec. 66.0805 utility commissions and governing bodies. In League Legal Opinion Commissions 162, League counsel specifically questioned the use of constitutional home rule authority in relation to water utility commission authority given the significant state control over water utility functions pursuant to the PSC's authority under Chapter 196 of the Wisconsin Statutes. Significantly, this reasoning raises the same home-rule power question for any other sec. 66.0805 utility commission that manages a municipally-owned utility subject to PSC regulation under Chapter 196.

The home rule authority question raised by PSC Chapter 196 regulation prompts one other point on sec. 66.0805. The sec. 66.0805 utility commission structure, which divides operation and management authority between utility commissions and governing bodies, does not apply to all types of municipally-owned utilities. The term "public utility" in sec. 66.0805 is defined by Wis. Stat. secs. 66.0801(1)(b) and 196.01(5). Under these provisions, a 66.0805 "public utility" is limited to toll bridges, heat, light, water or power facilities, and natural gas delivery or telecommunications operations. This means a municipally-owned public utility service that does not fall within this definition (e.g., municipal swimming pool, community center, baseball facility) is not within the scope of sec. 66.0805 or subject to PSC regulation. Thus, a governing body has much greater discretion to create unique management structures for a non-sec. 66.0805 utility since sec. 66.0805 does not apply to such a utility.

Utility Financing: Sources

Cities and villages can tap a wide range of sources for financing a municipally-owned utility. These include property taxes, special assessments, user fees and revenue bonds. Notably, a city or village is not limited to a single source for financing a city or village utility.⁹ Not only does this allow a diversified financing base, it also permits a municipally-owned utility to apply different payment methods to different groups of utility users or beneficiaries.¹⁰

a. Property Taxes

Cities and villages are generally empowered by secs. 62.11(5) and 61.34(1) respectively to use their tax levy to implement the general authority granted them by the state legislature. This means cities and villages have general authority to use property tax revenue to finance a municipally-owned utility.

Specific authority to use the tax levy to finance a municipally-owned utility also exists in some cases. For example, the statute authorizing the creation of certain utility districts, Wis. Stat. sec. 66.0827, requires in subsection (2) that the "fund of each utility district shall be provided by taxation of the property in the district."

Although authorized, using property taxes to finance a municipally-owned utility would force utility operations to compete with non-utility government services for a portion of property tax revenue that is severely constrained by the property tax levy limits imposed by the state legislature. This circumstance is avoidable because cities and villages may use other non-tax revenue sources to operate a municipally-owned utility and, in some cases, generate additional revenue for non-utility purposes.

b. Special Assessments

Like property taxes, cities and villages are generally empowered to use their special assessment powers to implement the general authority granted them by the state legislature.¹¹ So, cities and villages have general authority to use special assessments revenue to finance a municipally-owned utility.

Specific authority to use special assessments to finance a municipally-owned utility also exists. For example, sewerage and storm water system related activities authorized by Wis. Stat. sec. 66.0821(2) may be funded in whole or part by special assessment revenue.¹² In addition, Wis. Stat. sec. 66.0723 provides specific authority to fund the construction, extension or acquisition of "a distribution system or a production or generating plant for the furnishing of light, heat or power to any municipality or its inhabitants" in whole or in part by special assessment.

In general, special assessments are charges levied by municipalities against real property to recover some or all of the costs of a public work or improvement that benefits such property. Special assessments may be levied against any property, including tax exempt parcels, for all or a portion of the cost of a public work or improvement as long as the following basic requirements are met:

1. the property is in fact specially benefited by the improvement; and
2. the amount of the assessment is made on a "reasonable basis."¹³

The procedure for levying special assessments is set forth in the statutes at Wis. Stat. sec. 66.0703, and must be strictly followed. However, the statutes also allow a common council or village board to establish local special assessment procedures by ordinance provided the ordinance includes provisions for reasonable notice and hearing.¹⁴ The League has published a manual, *Special Assessments in Wisconsin*, which contains detailed information about special assessment procedures in Wisconsin and some useful forms and is available for purchase.

As authorized, special assessment revenue may be used for the infrastructure and other capital expenses of a municipally-owned utility and is an extremely valuable non-tax alternative for these purposes. But, special assessment revenue is not available for the day-to-day operation expenses of a municipally-owned utility. Funds for these purposes must come from a different source, which is most commonly user fees or charges.

c. User Fees

It is well established that when a municipality provides a service through its own public utility, it has the right to charge users for the service. General authority for user fees can be found in the general authority delegations to cities and villages, which declare that they may exercise and carry out the powers granted to them by "other necessary or convenient means."¹⁵ This language is sufficiently broad to encompass user fees for utility charges.

Some state laws specifically authorize user fees. For example, section 66.0809(1) grants authority to city councils and village boards to set rates for the services provided by a sec. 66.0801(1)(b) utility (water, light, heat or power facilities) and provide for their collection. Section 66.0821(3)(a) specifically authorizes the use of user fees to fund a municipally-owned sewer or storm water utility operated under that section. In addition, a city council and village board are authorized by sec. 66.0621(4)(i) to adopt ordinances containing provisions for "the rates or charges to be made for service" provided by a 66.021 utility ("any revenue producing facility or enterprise owned by a municipality and operated for a public purpose.")

User fees are payment for the service received from the municipally-owned utility. Usually, fees are payable only when a service is used and as long as the service is not requested a fee cannot be demanded.¹⁶ However, the Wisconsin court of appeals ruled in *City of River Falls v. St. Bridget's Catholic Church*, 182 Wis.2d 436, 512 N.W.2d 673 (Ct. App. 1994), that charging user fees for making water available for fire protection services was valid, even though the party assessed the fee had not used the water.

In addition, there are some statutory exceptions to the rule that a demand for payment requires service. For example, Wis. Stat. sec. 66.0809(1) specifically authorizes that utility "rates may include standby charges to property not connected but for which public utility facilities have been made available."

Whereas, special assessments may be used only for utility capital improvements, user fees can be used for capital costs and operation expenses.¹⁷ However, user fees are not limited to paying the capital and operational expenses of a municipally-owned utility.

Notably, user fees for municipally-owned utilities may include a profit or return on investment.¹⁸ For example, sec. 66.0621(4)(h) specifically authorizes that the rates for services rendered by a 66.021 municipally-owned utility include "a sufficient and adequate return upon the capital invested." Section 66.0811(2) also reflects this point by permitting excess income of a municipal public utility to be placed in the municipality's general fund. Thus, utility user fees may provide a non-tax revenue stream for cities and villages that may be used for non-utility purposes.

Utility user fees are subject to some important restrictions. One of the most significant is state oversight through the PSC.

In general, the PSC oversees the adequacy and cost of services provided to utility customers. Pursuant to Wis. Stat. sec. 196.03(1), PSC approval is required before any municipally-owned utility that furnishes heat, light, water, or power may set new rates. PSC rate-setting decisions are guided by Chapter 196 of the Wisconsin Statutes and agency rules found in the Wisconsin Administrative Code.

Even if not subject to initial PSC approval, user fees or rates may be subject to PSC oversight. For example, if a sewer utility user thinks sewer rates, which may be set without PSC review, are "unreasonable or unjustly discriminatory" the user may file a complaint with and have the rates reviewed by the PSC. Wis. Stat. sec. 66.0821(5)(a).

Limitations on user fees may also be imposed by statutory language. For example, user fees imposed to finance revenue bonds for a 66.0621 municipally-owned utility "shall be reasonable and just" under Wis. Stat. sec. 66.0621(4)(h). Thus, statutes authorizing user fees should be closely reviewed for any specific limitation.

d. Borrowing: Revenue Bonds

Another important source of funding for municipally-owned utilities is borrowing, which may be done under a number of mechanisms.¹⁹ However, one method of borrowing is specifically linked to municipal utility financing, revenue bonds or obligations, which feature at least three key characteristics important to general municipal financing.

Revenue bonds may be used for a wide range of activities related to municipally-owned utilities. Under Wis. Stat. sec. 66.0621, a municipality may issue revenue bonds for the purpose of:

[P]urchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility, motor bus or other systems of public transportation . . .

Thus, like user fees, revenue bond money may be used for a broad range of purposes including municipal utility capital improvements and operating costs.²⁰

A "revenue obligation" is one that is issued to finance a "public utility" and whose repayment is made solely from revenues generated by the utility. So, unlike other borrowing mechanisms, revenue obligations have no claim on the taxes or general revenues of the issuing municipality and are not "an indebtedness of the municipality, and shall not be included in arriving at the constitutional debt limitation."²¹ Therefore, revenue bond debt for a public utility is not subject to the five percent debt limit imposed on cities and villages by Article XI Section 3 paragraph (1) of the Wisconsin Constitution.²²

Lastly, municipalities are required by Wis. Stat. sec. 66.0621(4)(c) to create a system of funds for utility operations and servicing the revenue bond debt it authorizes:

The governing body of a municipality shall, in the ordinance or resolution authorizing the issuance of bonds, establish a system of funds and accounts and provide for sufficient revenues to operate and maintain the public utility and to provide fully for annual debt service requirements of bonds issued under this section. The governing body of a municipality may establish a fund or account for depreciation of assets of the public utility.

A special redemption fund is also specifically required by Wis. Stat. sec. 66.0621(4)(e) which provides:

The governing body of a municipality shall by ordinance or resolution create a special fund in the treasury of the municipality to be identified as "the . . . special redemption fund" into which shall be paid the amount which is set aside for the payment of the principal and interest due on the bonds and for the creation and maintenance of any reserves established by bond ordinance or resolution to secure these payments.

In some instances, the funds required by sec. 66.0621 may accumulate a surplus. If so, the surplus may be dispersed under Wis. Stat. sec. 66.0621(4)(f), which provides:

At the close of the public utility's fiscal year, if any surplus has accumulated in any of the funds specified in this subsection, it may be disposed of in the order set forth under sec. 66.0811(2).

Notably, the disbursement order in 66.0811(2) authorizes excess monies "may be paid into the general fund."

Therefore, excess revenues generated by fees that have been imposed to pay the principal and interest for general revenue bonds may provide yet another non-tax revenue source for cities and villages that may be used for non-utility purposes.

Conclusion

Municipally-owned utilities are an important part of local governance and are a common feature in Wisconsin cities and villages. While municipally-owned utilities may provide significant benefits to consumers and local governance, they also generate significant legal issues for local officials. Some of the key legal issues associated with a municipally-owned utility relate to the authority to create a utility, management of the utility in light of divided management authority and utility financing. The introduction to these issues in this comment will hopefully give local officials and others a better understanding of how municipally-owned utilities fit into Wisconsin local government.

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1. *Ellinwood v. Reedsburg*, 91 Wis. 131 (1895).
2. *Hack v. Mineral Point*, 203 Wis. 215, 219, 233 N.W.82, 84 (1931).
3. See *Anchor Savings & Loan Ass'n v. Equal Opportunities Comm'n*, 120 Wis.2d 391, 355 N.W.2d 234 (1984); *DeRosso Landfill Co. v. City of Oak Creek*, 200 Wis.2d 642, 651, 547 N.W.2d 770, 773 (1996).
4. *Johnston v. City of Sheboygan*, 30 Wis.2d 179, 184, 140 N.W.2d 247, 250 (1966).
5. See *State ex rel. Hammermill Paper Co. v. La Plante*, 58 Wis. 2d 32, 55, 205 N.W.2d 784 (1973). ("Public purpose is not a static concept. The trend of both legislative enactments and judicial decisions is to extend the concept of public purposes in considering the demands upon municipal governments to provide for the needs of the citizens.")
6. It should be noted though that some of the methods identified only generally by Wis. Stat. secs. 62.11(5) and 61.34(1) are subject to specific procedures by other statutes. For example, use of special assessment power to provide public utility infrastructure would need to comply with the specific special assessment procedures in

Wis. Stat. secs. 66.0701 et seq.

7. See *Flottum v. Cumberland*, 234 Wis. 654, 664, 291 N.W. 777 (1940); and 65 OAG 243, 245 (1976) (municipal utility commission not a body corporate separate from the city).

8. 90 Wis.2d 457, 280 N.W.2d 166 (1979).

9. See *Rubin v. City of Wauwatosa*, 116 Wis.2d 305, 342 N.W.2d 451 (Ct. App. 1983) and see e.g., Wis. Stat. sec. 66.0821(3)(a) (statute provides explicit authority to use combination of revenue sources to fund sewerage and storm water systems).

10. *Id.*

11. See e.g., Wis. Stat. sec. 62.11(5).

12. Wis. Stat. sec. 66.0821(3)(a).

13. *CIT Group v. Village of Germantown*, 163 Wis.2d 426, 471 N.W.2d 610 (Ct. App. 1991).

14. Wis. Stat. sec. 66.0701.

15. See Wis. Stat. secs. 61.34(1) and 62.11(5).

16. See *City of De Pere v. Public Service Comm.*, 266 Wis. 319, 63 N.W.2d 764 (1954).

17. See Wis. Stat. sec. 66.0621(4)(h) (The rates for all services rendered by a public utility . . . shall . . . tak[e] into account and consideration . . . the cost of maintaining and operating the public utility.")

18. In this sense, utility user fees must be distinguished from regulatory fees, which are limited to the cost of regulation and cannot be designed to generate excess revenue. See *Edgerton Contractors, Inc. v. City of Wauwatosa*, 2010 WI App 45, 324 Wis.2d 256, 781 N.W.2d 228. This regulatory fee principle is reflected in Wis. Stat. sec. 66.0628(2) ("Any fee that is imposed by a political subdivision must bear a reasonable relationship to the service for which the fee is imposed.")

19. In addition to others, borrowing methods that might be used to finance some aspect of a municipally-owned utility include general obligation bonds under Wis. Stat. sec. 67.04(2)(a), general obligation promissory notes under Wis. Stat. sec. 67.12(2) and special assessment bonds under Wis. Stat. sec. 66.0713.

20. Revenue bond money however cannot be used for every purpose that is somehow connected to a municipal utility. See *Roberts v. City of Madison*, 250 Wis. 317, 27 N.W.2d 233 (1947) (Use of revenue bonds to repay general fund expenditures by city not allowed).

21. Wis. Stat. sec. 66.0621(3) and see Wisconsin Constitution art. XI sec. 3 para. (5).

22. Significantly, the term "public utility" as used in Wis. Const. Art. XI, Section 3 paragraph (5) is broadly construed by Wisconsin courts "to include all plants or activities which the legislature can reasonably classify as public utilities in the ordinary meaning of the term." *Payne v. City of Racine*, 217 Wis. 550, 555, 259 N.W. 437, 439 (1935).