

CITY OF FRANKLIN
COMMON COUNCIL MEETING*
FRANKLIN CITY HALL COUNCIL CHAMBERS
9229 W. LOOMIS ROAD, FRANKLIN, WISCONSIN
AGENDA**
TUESDAY, SEPTEMBER 20, 2011, 6:30 P.M.

- A. Call to Order and Roll Call
- B. Citizen Comment Period
- C. Approval of Minutes
 - 1. Approval of regular meeting of September 6, 2011.
- D. Hearings
 - 1. Public hearing relating to proposed Industrial Development Revenue Bond financing to benefit Steele Solutions Properties, LLC Project.
- E. Organizational Business
- F. Letters and Petitions
- G. Reports and Recommendations
 - 1. Consideration of Final Resolution Authorizing the Sale and Issuance of Not to Exceed \$5,400,000 in Industrial Development Revenue Bond Financing to Benefit Steele Solutions Properties, LLC Project.
 - 2. Request from Franklin Trails Committee for approval to proceed with the Safe Routes to School mini-grant application.
 - 3. Resolution to replace the Civil Service System "Manual of Personnel Rules" (January 1, 1990) with a Civil Service System Personnel Administration Program (September 6, 2011), including, but not limited to, changes to expand its application to all employees eligible per Wisconsin Statutes, to satisfy legal requirements of Wisconsin Acts 10 and 32, to revise Disciplinary and Disciplinary Grievance Procedures to eliminate the "Just Cause" Standard, and to establish a process for review of Workplace Safety Concerns.
 - 4. Resolution Awarding Contracts to the Lowest Responsible Bidders for the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project, to wit: Contract C02006-C01, Super Excavators, Inc., in the amount of \$5,435,671.00; Contract C02006-C02, Super Excavators, Inc., in the amount of \$3,338,775.00; Contract C02006-C03, D.F. Tomasini Contractors, Inc., in the amount of \$5,374,692.00; and Contract C02006-C04, Globe Contractors, Inc., in the amount of \$4,797,210.00.
 - 5. Resolution Authorizing Certain Officials to Execute a Contract Between the City of Franklin and the Milwaukee Metropolitan Sewerage District Concerning Provision of Engineering Services During Construction of the Ryan Creek Interceptor Sewer.
 - 6. Resolution Authorizing Certain Officials to Execute an Agreement Between Owner And Engineer for Professional Services for Bidding Phase, Construction Phase, Clean Water Fund Administration Assistance and Construction Review for the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project with Ruckert & Mielke, Inc.

7. Resolution awarding contracts to the lowest bidder, Black Diamond Group, in the amounts of \$40,505.00 and \$24,897.50, for the installation of final pavement surface on S. Avian Way and private roads W. Greyhawk Lane and W. Greyhawk Court.
8. Resolution authorizing officials to execute a Local/County Agreement for the funding of the adjustment of manholes as part of the improvement of W. College Avenue (CTH ZZ) from S. 27th Street to corporate limits (at approximately S. 43rd Street).
9. Acquisition of easement rights and interests in property for the location, extension, installation and maintenance of public sanitary sewer facilities to provide sanitary sewer service to the southwest area of the City of Franklin by way of the Ryan Creek Interceptor sewer installation upon property in the area from the intersection of South 60th Street and West Ryan Road generally following the Ryan Creek to the intersection of West Ryan Road and South 112th Street, thence westerly along West Ryan Road to the west City limits, upon the following 2 properties identified by Acquisition Map Parcel No., Tax Key Numbers and address, respectively, as follows: 1) 21, 894-9999-001 and 9733 W. Ryan Road; 2) 40, 894-9999-004 and 9733 W. Ryan Road. The Council may enter closed session pursuant to Wis. Stat. §19.85(1)(e), to consider the terms and negotiation of the public acquisition of easement(s) for public sanitary sewer service for the extension of the Ryan Creek Interceptor Sewer project, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

H. Licenses and Permits

1. Miscellaneous Licenses.

I. Bills

1. Vouchers and Payroll approval.

J. Adjournment

*Notice is given that a majority of the Personnel Committee may attend this meeting to gather information about an agenda item over which the Personnel Committee has decision-making responsibility. This may constitute a meeting of the Personnel Committee per State ex rel. Badke v. Greendale Village Board, even though the Personnel 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:

September 22	Plan Commission	7:00 p.m.
October 3	Committee of the Whole	6:30 p.m.
October 4	Common Council	6:30 p.m.

<p>APPROVAL</p> <p><i>SLW</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>9/20/11</p>
<p>PUBLIC HEARING</p>	<p>Public Hearing – on the proposed sale and issuance of not to exceed \$5,400,000 in Industrial Development Revenue Bond financing to benefit Steele Solutions Properties, LLC Project</p>	<p>ITEM NUMBER</p> <p><i>D.1.</i></p>

A Public Hearing has been scheduled the on the proposed sale and issuance of not to exceed \$5,400,000 Industrial Development Revenue Bonds, (Steele Solutions Properties, LLC Project) for Tuesday September 20, 2011.

Lynda Templen of Whyte Hirschboeck Dudek S.C. will present information on behalf of her client Steele Solutions, Properties LLC consideration of IDRB funding of \$5.4 Million from the City of Franklin.

COUNCIL ACTION REQUESTED

This item is to hold a Public Hearing on the request for Industrial Development Revenue Bonds for Steele Solutions Properties, LLC Project.

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<p style="text-align: center;">APPROVAL</p> <p><i>SLW</i> <i>CAF</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;">9/20/11</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p style="text-align: center;">Consideration of a Final Resolution Authorizing the sale and issuance of not to exceed \$5,400,000 in Industrial Development Revenue Bond financing to benefit Steele Solutions Properties, LLC Project</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G.1.</i></p>

Background

On July 5, 2011 City of Franklin adopted the initial bond resolution authorizing a bond issue of not to exceed \$5,400,000.

Steele Solutions is now requesting the approval of a final resolution in conjunction with the sale of not to exceed \$5,400,000 of Bonds. Payment of the costs of our City Attorney, if any, special Bond Counsel charges, \$1,000 in accordance with our IDR policy for staff time incurred and reimbursement for all out of pocket expenses.

Steele Solutions bond counsel, Lynda Templen of Whyte Hirshbock Dudek S.C. will be at the meeting to answer any questions.

Recommendation

Quarles and Brady, our Special Bond Counsel, has reviewed each of the documents and is recommending adoption of the final resolution (See Attached).

Section 2.11, Section 5.06, 6.08 and Section 6.09 of the bond document are excerpted and attached. An electronic copy of the entire bond agreement is available to the elected officials, upon request.

Fiscal Impact

There is no fiscal impact on the issuance of these bonds on the City of Franklin.

COUNCIL ACTION REQUESTED

Motion to approve Resolution No. 2011-_____ Authorizing the sale and issuance of not to exceed \$5,400,000 in Industrial Development Revenue Bond financing to benefit Steele Solutions Properties, LLC Project.

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

COMMON COUNCIL OF
CITY OF FRANKLIN, WISCONSIN

RESOLUTION NO. 2011 - _____

**FINAL RESOLUTION AUTHORIZING THE SALE AND ISSUANCE
OF NOT TO EXCEED \$5,400,000 IN
INDUSTRIAL DEVELOPMENT REVENUE BOND FINANCING
TO BENEFIT STEELE SOLUTIONS PROPERTIES, LLC PROJECT**

BE IT RESOLVED by the Common Council of the City of Franklin, Wisconsin (the "Issuer"), as follows:

Section 1 Recitals.

1.01 Under Wisconsin Statutes, Section 66.1103, as amended (the "Act"), the Issuer is authorized and empowered to issue revenue bonds to finance eligible costs of qualified "projects" (as defined in the Act), and to enter into "revenue agreements" (as defined in the Act) with "eligible participants" (as defined in the Act).

1.02 Pursuant to an Initial Resolution duly adopted on July 5, 2011, the Issuer expressed its intention to issue industrial development revenue bonds of the Issuer in an amount not to exceed \$5,400,000 (the "Bonds") to finance a project on behalf of Steele Solutions Properties, LLC, a Wisconsin limited liability company (the "Borrower") consisting of financing the (i) construction of an approximately 34,000 square foot addition to an existing approximately 41,000 square foot facility located at 9909 South 57th Street in the City of Franklin, Wisconsin (the "Facility") which is used by Steele Solutions, Inc., a Wisconsin corporation, to manufacture custom structural steel platforms and structures, (ii) acquisition and installation of equipment at the Facility, (iii) refunding of existing debt issued to finance the construction of the Facility and (iv) payment of certain costs of issuance (collectively, "Phase I"); and the (i) possible construction of a second story office addition to the Facility, (ii) acquisition and installation of equipment at the Facility and (iii) payment of certain costs of issuance (collectively, "Phase II" and together with Phase I, the "Project"). Notice of adoption of the initial resolution adopted on July 5, 2011 was published as provided in the Act, and no petition requesting a referendum upon the question of issuance of the revenue bonds has been filed.

1.03 Pursuant to Wisconsin Statutes, Section 66.1103, as amended, the Issuer may finance a project which is located entirely within the geographic limits of the Issuer.

1.04 Drafts of the following documents have been submitted to this Common Council and are ordered filed in the office of the City Clerk:

- (a) a Bond Agreement (the "Bond Agreement"), proposed to be entered into among the Issuer, the Borrower, Town Bank, Elm Grove, Wisconsin, as trustee (the "Trustee") and Town Bank, Elm Grove, Wisconsin, as original purchaser (the "Original Purchaser");
- (b) a Promissory Note from the Borrower to the Issuer, and assigned to the Trustee; and
- (c) a No Arbitrage Certificate.

Section 2 Findings and Determinations.

It is hereby found and determined that:

- (a) based on representations of the Borrower, the Project constitutes a "project" authorized by the Act;
- (b) a public hearing has been duly held on September 20, 2011 in accordance with the provisions of Section 147(f) of the Internal Revenue Code of 1986, as amended, at which residents of the City of Franklin, Wisconsin were given an opportunity to be heard in regard to the proposed issuance of the Bonds and the nature and location of the proposed Project;
- (c) the purpose of the Issuer's financing costs of the Project is and the effect thereof will be to promote the public purposes set forth in the Act;
- (d) it is desirable that a series of revenue bonds in the aggregate principal amount not to exceed \$5,400,000 be issued by the Issuer upon the terms set forth in the Bond Agreement, under the provisions of which the Issuer's interest in the Bond Agreement (except for certain rights as provided therein) and the loan repayments will be assigned to the Trustee as security for the payment of principal of and interest on and premium, if any, on all the Bonds outstanding under the Bond Agreement;
- (e) the loan payments provided for in the Bond Agreement, and the formula set out for revising those payments under the Bond Agreement as required under the Act, are sufficient to produce income and revenue to provide for prompt payment of principal of and interest on and premium, if any, on Bonds issued under the Bond Agreement when due; the amount necessary in each year to pay the principal of and interest on the Bonds is the sum of the principal and interest on the Bonds due in such year, whether on a stated payment date, a redemption date, or otherwise; the Bond Agreement provides that the Borrower shall provide for the maintenance of the Project in good repair, keeping it properly insured; and
- (f) under the provisions of the Act, the Bonds shall be limited obligations of the Issuer and the Bonds do not constitute an indebtedness of the Issuer, within the meaning of any state constitutional or statutory provision, and do not constitute nor give rise to a charge against the Issuer's general credit or taxing powers or a pecuniary liability of the Issuer.

Section 3 Approvals and Authorizations; Authentication of Transcript.

3.01 This resolution shall constitute the approval of the Bonds within the meaning of Section 147 (f) of the Internal Revenue Code of 1986, as amended, and the Bonds are hereby approved. There is hereby approved the issuance by the Issuer of its industrial development

revenue bonds (specifically, the Bonds) in an aggregate principal amount not to exceed \$5,400,000 for the purpose of financing the Project.

The Issuer shall proceed to issue its Industrial Development Revenue Bonds, Series 2011 (Steele Solutions Properties, LLC Project), in the aggregate principal amount not to exceed \$5,400,000, in the form and upon the terms set forth in the Bond Agreement, which terms, including without limitation, interest rates, redemption provisions and maturity, are for this purpose incorporated in this resolution and made a part hereof. The terms are hereby approved without further action by the Issuer, and the Mayor and City Clerk are authorized and directed to execute and deliver the documents listed in Section 1.04 herein which are hereby approved, together with such subsequent changes as may be requested and approved by bond counsel and the Issuer's attorney, and such other documents, agreements, instruments or certificates as are deemed necessary or desirable by the Issuer's attorney and bond counsel, including an Internal Revenue Service Form 8038.

The Mayor and the City Clerk are authorized and directed to execute and seal the Bonds as prescribed in the Bond Agreement and to deliver them to the Trustee (together with a certified copy of this resolution and any other documents required by the Bond Agreement) for authentication and delivery to the original purchaser.

3.02 The publication in the official newspaper of the Issuer of the notice for the public hearing referred to in Section 2(b) of this resolution, and such notice of public hearing as so published, are hereby ratified.

3.03 The Issuer hereby elects to have the provisions of Section 144(a)(4)(A) of the Internal Revenue Code of 1986, as amended, apply to the Bonds.

3.04 The Mayor and the City Clerk and other officers of the Issuer are authorized to prepare and furnish to the Trustee and bond counsel certified copies of all proceedings and records of the Issuer relating to the Bonds, and such other affidavits and certificates as may be required by the Trustee and bond counsel to show the facts relating to the legality and marketability of the Bonds as such facts appear from the books and records in the officers' custody and control or as otherwise known to them.

3.05 The approval hereby given to the various documents referred to in this resolution includes the approval of such additional details therein as may be necessary and appropriate for their completion and such modifications thereto, deletions therefrom and additions thereto as may be approved by the Issuer's attorney and bond counsel. The execution of any document by the appropriate officer or officers of the Issuer herein authorized shall be conclusive evidence of the approval by the Issuer of such document in accordance with the terms hereof.

3.06 Town Bank, Elm Grove, Wisconsin shall initially assume and perform the duties of Trustee.

3.07 Notice of sale of the Bonds, in the form attached hereto as Exhibit A, shall be published in the official newspaper of the Issuer as a class 1 notice under Chapter 985 of the Wisconsin Statutes.

3.08 The Bonds shall be limited obligations of the Issuer payable by it solely from revenues and income derived by or for the account of the Issuer from or for the account of the Borrower pursuant to the Bond Agreement. As security for the payment of the principal of, premium, if any, and interest on the Bonds, the Issuer shall pledge and assign to the Trustee all of its right, title and interest in and to the trust estate described in the Bond Agreement.

3.09 All out-of-pocket costs of the Issuer, including attorneys' fees, in connection with the issuance and sale of the Bonds shall be paid from the proceeds of the Bonds or by the Borrower.

Introduced at a regular meeting of the Common Council of the City of Franklin this 20th day of September, 2011 by Alderman _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 20th day of September, 2011.

APPROVED:

Thomas M. Taylor, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

Excerpts from the Steele Sollutions Bond Document

Section 2.11 **Bonds to be Limited Obligations of the Issuer.** The Bonds shall be limited obligations of the Issuer payable by it solely from the Pledged Revenues. The Bonds shall not constitute a debt or obligation of the Issuer, the county in which it is located, the State of Wisconsin or any political subdivision thereof within the meaning of any State of Wisconsin constitutional provision or statutory limitation and shall not be a charge against its or their respective general credit or taxing powers and shall not give rise to a pecuniary liability of the Issuer. In making the agreements, provisions and covenants set forth in this Bond Agreement, the Issuer has not obligated itself, except to the extent that the Issuer is authorized to act pursuant to Wisconsin law and except with respect to the Pledged Revenues. The Issuer and any of its officials, officers, employees, members or agent shall have no monetary liability arising out of the obligations of the Issuer hereunder or in any connection with any covenant, representation or warranty made by the Issuer herein and neither the Issuer nor its officials shall be obligated to pay any amounts in connection with the transactions contemplated hereby other than from Pledged Revenues or other monies received from the Borrower.

Section 5.06 Performance by Issuer. Notwithstanding anything in this Bond Agreement to the contrary, the Issuer shall be under no obligation to take any action or execute, prepare or deliver any instrument or document until it shall have received assurances satisfactory to it that the Borrower or the Trustee shall pay in advance or reimburse it (at the Issuer's option) for its reasonable expenses incurred or to be incurred in connection with the taking of such action, (including reasonable attorneys' fee) and shall be indemnified against any possible liability arising out of the taking of such action..

Section 6.08 Indemnification. The Borrower agrees to indemnify and save harmless the Issuer, the Original Purchaser and the Trustee and each of their respective officers, agents and employees from and against any and all losses, damages, costs, charges, expenses (including attorney's fees), causes of action, suits, claims, demands, judgments and liabilities arising from: (CAP Note **Subsections (a) thru (j) not reproduced**

Section 6.09 Indemnification and Non-Liability of the Issuer.

(a) The obligations of the Issuer created by or arising out of this Bond Agreement shall not be general obligations of the Issuer, do not constitute or give rise to charges against its general credit, and are not payable in any manner from revenues raised by taxation.

(b) Whether or not caused in whole or in part by the action or inaction of any indemnified party, the Borrower will pay, and will protect, indemnify and save the Issuer and its officers, governing body members, agents and employees harmless from and against any and all liabilities, losses, damages, costs, charges and expenses (including attorneys' fees and expenses of the Issuer), causes of action, suits, claims, demands and judgments of whatever kind and nature (including those arising or resulting from any injury to or death of any person or damage to property) arising from or in any manner directly or indirectly growing out of or connected with the following:

(i) the use, non-use, condition or occupancy of any of the Project, any repair, construction, alteration, renovation, relocation, remodeling and equipping thereof or thereto, or the condition of any of the Project, including adjoining sidewalks, streets or alleys and any equipment at any time located on the Project or used in connection therewith, but which are not the result of the negligence or willful misconduct of the Issuer;

(ii) violation of any agreement, warranty, covenant or condition of this Bond Agreement;

- (iii) violation of any contract, agreement or restriction by the Borrower relating to the Project;
- (iv) violation of any law, ordinance, regulation or court order affecting any of the Project or the ownership, occupancy or use thereof;
- (v) any state or federal audit, examination or investigation of the Bonds;
- (vi) the administration or enforcement of any of the provisions of the Bond Agreement; and
- (vii) any other event or circumstance relating to the Project or the Bonds.

Such indemnity shall extend to each person, if any, who "controls" the Issuer, as that term is defined in Section 15 of the Securities Act of 1933, as amended.

The Issuer shall promptly notify the Borrower in writing of any claim or action brought against the Issuer, or any controlling person, as the case may be, in respect of which indemnity may be sought against the Borrower, setting forth the particulars of such claim or action, and the Borrower will assume the defense thereof, including the employment of counsel reasonably satisfactory to the Issuer, or such controlling person, as the case may be, and the payment of all expenses.

In its discretion, the Issuer or any such controlling person shall have the right to employ separate counsel in any circumstances described in this Section. The fees and expenses of such legal counsel shall be included within the costs indemnified pursuant to this Section, irrespective of whether the Borrower shall have consented to such separate representation or any settlement of any such action.

All amounts payable to or with respect to the Issuer under this Section shall be deemed to be fees and expenses of the Issuer for purposes of the provisions hereof dealing with assignment of the Issuer's rights hereunder.

The obligations of the Borrower under this Section 6.08 shall survive the termination of this Bond Agreement.

(c) Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the Issuer created by or arising out of this Bond Agreement do not give rise to a pecuniary liability of the Issuer or a charge against its general credit or the Issuer's taxing powers, including, but not limited to (i) liability for failure to investigate or negligence in the investigation of the financial position or prospects of the Borrower, a user of the Project or any other person or for failure to consider, or negligence concerning, the adequacy of terms of, or collateral security for, the Bonds or any related agreement to protect interests of holders of the Bonds; and (ii) any liability in connection with the issuance or sale of the Bonds. In addition, this Bond Agreement shall not give rise to any personal liability of any member of the Issuer's Governing Body or of any officers, agents, employees or officials of the Issuer of the Bonds or for any act or omission related to the authorization or issuance of the Bonds.

Section 4.13 Fees and Expenses of Issuer. The Borrower covenants and agrees to pay to or on behalf of the Issuer the reasonable fees and expenses, including reasonable attorneys' fees, of the Issuer in connection with this Bond Agreement, the Project or the Bonds, including, without limitation, any and all fees and expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds, the administration of the Bonds, and any examination, investigation or audit of the Bonds, and any assessments, levies, fines, fees or penalties assessed by any governmental agency or authority in connection therewith

Cal Patterson

From: Speckhard, Rebecca A. [rebecca.speckhard@quarles.com]
Sent: Tuesday, September 13, 2011 12:51 PM
To: Cal Patterson
Subject: RE: Steele Solutions - Final Resolution & Agenda Language

Hi, Cal,

Yes, we have reviewed all the documentation for this issue, and the resolution is acceptable for consideration by the Council.

Thanks, Rebecca

From: Cal Patterson [mailto:cpatterson@franklinwi.gov]
Sent: Tuesday, September 13, 2011 12:46 PM
To: Speckhard, Rebecca A.
Subject: RE: Steele Solutions - Final Resolution & Agenda Language

Rebecca,

Does this mean you have finished your work and this resolution is okay to go to Council?

Cal Patterson
City of Franklin
Director of Finance & Treasurer
414-427-7510

From: Speckhard, Rebecca A. [mailto:rebecca.speckhard@quarles.com]
Sent: Tuesday, September 13, 2011 12:04 PM
To: 'Albrecht, Kate L. KA (5516)'
Cc: Sandi Wesolowski; Cal Patterson; Templen, Lynda R. LRT (5505)
Subject: RE: Steele Solutions - Final Resolution & Agenda Language

Thanks, Kate, that's good to know. Rebecca

From: Albrecht, Kate L. KA (5516) [mailto:KAlbrecht@whdlaw.com]
Sent: Tuesday, September 13, 2011 11:57 AM
To: Speckhard, Rebecca A.
Cc: swesolowski@franklinwi.gov; cpatterson@franklinwi.gov; Templen, Lynda R. LRT (5505)
Subject: RE: Steele Solutions - Final Resolution & Agenda Language

Hi, Rebecca:

The TEFRA Notice which was published included the Phase II project, which was added at the request of the Borrower/Borrower's Counsel. Please see attached the confirmation from the newspaper which includes the text of the notice of the public hearing as published.

Thanks, Rebecca.

Kate L. Albrecht
Paralegal Specialist
Whyte Hirschboeck Dudek S.C.
555 East Wells Street, Suite 1900
Milwaukee, WI 53202
Phone: (414) 978-5516
Fax: (414) 223-5000

From: Speckhard, Rebecca A. [mailto:rebecca.speckhard@quarles.com]
Sent: Tuesday, September 13, 2011 11:42 AM
To: Albrecht, Kate L. KA (5516); Templen, Lynda R. LRT (5505)
Cc: swesolowski@franklinwi.gov; cpatterson@franklinwi.gov
Subject: RE: Steele Solutions - Final Resolution & Agenda Language

Lynda and Kate,

It looks like the Final Resolution restores Phase II of the project, but Phase II was not included in the draft of the Public Hearing Notice we reviewed (dated August 16). Can you look into this and let us know whether it was included in the Notice as published?

Thanks, Rebecca

<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;">09/20/11</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p style="text-align: center;">REQUEST FROM FRANKLIN TRAILS COMMITTEE FOR APPROVAL TO PROCEED WITH THE SAFE ROUTES TO SCHOOL MINI-GRANT APPLICATION</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G.2.</i></p>

At their September 8, 2011, meeting the Franklin Trails Committee discussed applying for a Spring 2012 Safe Routes to School mini-grant. Mini-grants fund activities that help schools identify their safe walking and bicycle needs and enact related activities that address those needs. The mini-grants are for \$1,000 with no match required from the City. Funds may be spent on items such as promotional materials, educational materials, safety items (e.g. reflective vests and bands, bicycle helmets, bicycle lights), bicycle racks, and professional services (e.g. safety trainers). Additional examples can be found in the application materials attached.

The Trails Committee discussed using funds, if awarded, to purchase and install crosswalk pedestrian flags at key intersections. Pedestrian flags are typically removable yellow or orange flags available at intersections for pedestrians to carry as they cross the street. The flags help to increase drivers' visibility of pedestrians and show drivers the clear indication of pedestrians' desire to cross the street. The Trails Committee discussed installing flags at West Drexel Avenue and South 51st Street, West Rawson Avenue and South 51st Street, South 76th Street and West Imperial Drive/West Brunn Drive, West Drexel Avenue and South Forest Meadows Drive, and West Drexel Avenue and the Oak Leaf Trail, depending on the cost of installation. Maps are attached illustrating these locations as well as a case study from Salt Lake City, Utah implementing a pedestrian flag program.

Applications are due Wednesday, October 19, 2011 for the Spring 2012 mini-grants.

COUNCIL ACTION REQUESTED

Approval to proceed with the writing and application process for the Spring 2012 Safe Routes to School mini-grants.



Call for Applications

Apply now for a Spring 2012 mini-grant or download a pdf of the application.

The National Center for Safe Routes to School is now accepting applications for 25 mini-grants of \$1,000 each. These mini-grants support the goal of Safe Routes to School (SRTS) programs, which is to enable and encourage children to safely walk and bicycle to school. SRTS programs are implemented nationwide by parents, students, schools, community leaders, and local, state, and tribal governments.

Mini-grants fund activities that range from the nuts and bolts that help start or sustain a program to new ideas that explore the range of benefits of safe walking and bicycling. Selected mini-grant proposals will fit a school's identified needs and interests around safe walking and bicycling. The mini-grant activities should occur between January 1, 2012, and the end of the Spring 2012 semester.

Applications are due **Wednesday, October 19, 2011.**

Who can apply for a mini-grant?

Eligible applicants include:

- ◆ Adult-supervised elementary or middle school groups or club; Faculty, staff, or parent volunteers at elementary or middle schools;
- ◆ Local and Tribal governments; and/or
- ◆ Non-profit organizations that will work with a school to improve safety and/or increase participants.

Ideas for getting started

The goal of the National Center's mini-grant program is to help schools identify their safe walking and bicycling needs and/or interests and enact related activities that address these needs/interests. The National Center also encourages applicants to engage student leaders and/or harness students' creativity in these steps. There are many right answers, and creativity and innovation are encouraged.

Collecting student travel data can be a great way to get started.

While it is not required, applicants may want to collect student travel and parent survey data as part of their application. Information on current rates and perceptions of walking and bicycling to school may help to inform the applicant's needs, interests, and potential activities. For more on data collection, student travel tallies and parent surveys, and the National Center's online system, which is a public service offered to local communities and schools, visit www.saferoutesinfo.org/data.

Looking for examples of school goals and activities that can help to reach them?

Explore the [Eligible Activities page](#) to see examples of the many reasons to create a safe walking and bicycling program and the related activities that schools have proposed. Applicants may also consider engaging students in safe walking/bicycling activities through additional approaches, such as service-learning projects and community service requirements.

For examples of activities that have been funded in the past, [browse activity summaries included in previous mini-grant award announcements](#).

What can recipients do with the money?

The mini-grant funds are federal funds, and there are rules about how federal funds may be spent. Because of the small award size, the restrictions on these mini-grant funds are slightly different than spending guidelines associated with State SRTS grants. Below are examples of items that can and cannot be purchased using the mini-grant funds. *Please note that these lists are not exhaustive*. If you have questions about funding eligibility for specific activities or items, please email info@saferoutesinfo.org.

Yes! Mini-grant funds CAN be spent on items like these:

- ◆ Promotional materials*
- ◆ Educational materials*
- ◆ Safety items (e.g., reflective vests and bands, bicycle helmets, bicycle lights)
- ◆ Bicycle racks
- ◆ Bicycles that benefit groups of students
- ◆ Bicycle rentals
- ◆ Digital camera rental
- ◆ Video camera rental
- ◆ Helmet camera rental
- ◆ iPad rental
- ◆ Professional services (e.g., safety trainers)

No, Mini-grant funds CANNOT be spent on items like these:

- ◆ Food and refreshments
- ◆ Staff salaries
- ◆ Stipends for volunteers
- ◆ Fund-raising activities
- ◆ Gift cards

Call for Applications | National Center for Safe Routes to School

- ◆ Contests, prizes, and incentives
- ◆ Bicycles for specific individuals
- ◆ Digital camera purchase
- ◆ Video camera purchase
- ◆ Helmet camera purchase
- ◆ iPad purchase

** Modest-cost promotional/educational materials with the broadest reach are more likely to be competitive in the application process.*

Activities must be completed by June 15, 2012, or by the end of the Spring 2012 semester, whichever is later.

What information should applicants provide?

The National Center seeks clear, well-thought-out application responses that:

- ◆ Identify the school's safe walking and bicycling needs or interests;
- ◆ Propose activities that can address the identified walking/bicycling needs/interests and that have the potential to have a broad reach and lasting impact;
- ◆ Demonstrate a reasonable connection between activities and desired outcomes, and include a plan for measuring those outcomes; and
- ◆ Include a clear description of how funding will be used for these activities.

As a group, the applications that are selected for funding will represent a broad geographic distribution and a diversity of community characteristics.

What happens once applications are selected?

Mini-grant recipients will be notified by **Wednesday, November 16, 2011**, and will be formally announced in **December 2011**. To accept the award, recipients complete a form accepting these funds for the proposed activities. Checks are disbursed approximately six weeks after receipt of the form. Activities must be completed by June 15, 2012, or by the end of the Spring 2012 semester, whichever is later.

The National Center requires that mini-grant recipients submit two reports:

1. An informal report on activities midway through the implementation period; and
2. A final report in at the end of June 2012 that describes activities and budget expenditures accompanied by at least three digital pictures.

Application Attachments

If you want to include attachments to your application, please submit the application and then email no more than three pages of an attachment to info@saferoutesinfo.org. In the email text, please include the name of the primary contact person, the school name, and the city and state.

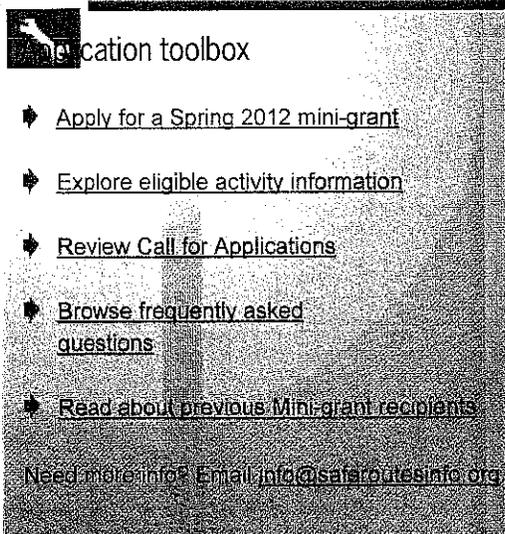
Additional Questions

Call for Applications | National Center for Safe Routes to School

Please email questions or requests for assistance to info@saferoutesinfo.org. For more information, browse the [FAQs \(frequently asked questions\) page](#).

[Apply now](#) for a Spring 2012 mini-grant or [download a pdf](#) of the application.

Attachment	Size
Spring_2012_Mini-Grant_Application.pdf	180.34 KB
Spring_2012_Mini-Grant_Eligible_Activities.pdf	183.13 KB
Spring_2012_Mini-Grant_FAQs.pdf	175.69 KB



Navigation toolbox

- ▶ [Apply for a Spring 2012 mini-grant](#)
- ▶ [Explore eligible activity information](#)
- ▶ [Review Call for Applications](#)
- ▶ [Browse frequently asked questions](#)
- ▶ [Read about previous Mini-grant recipients](#)

Need more info? Email: info@saferoutesinfo.org

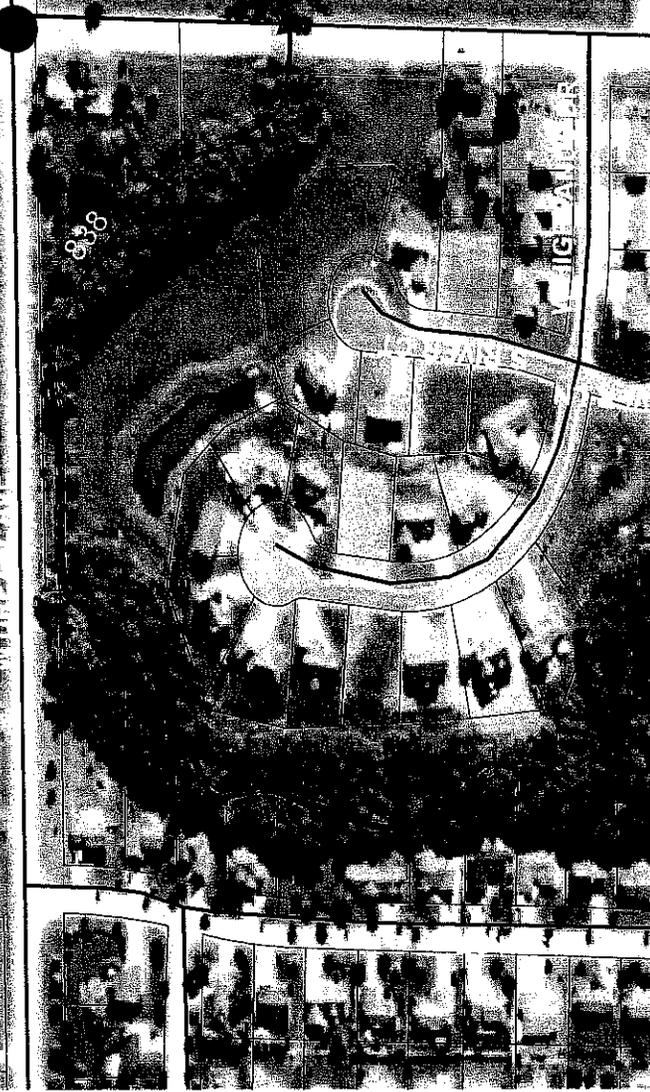
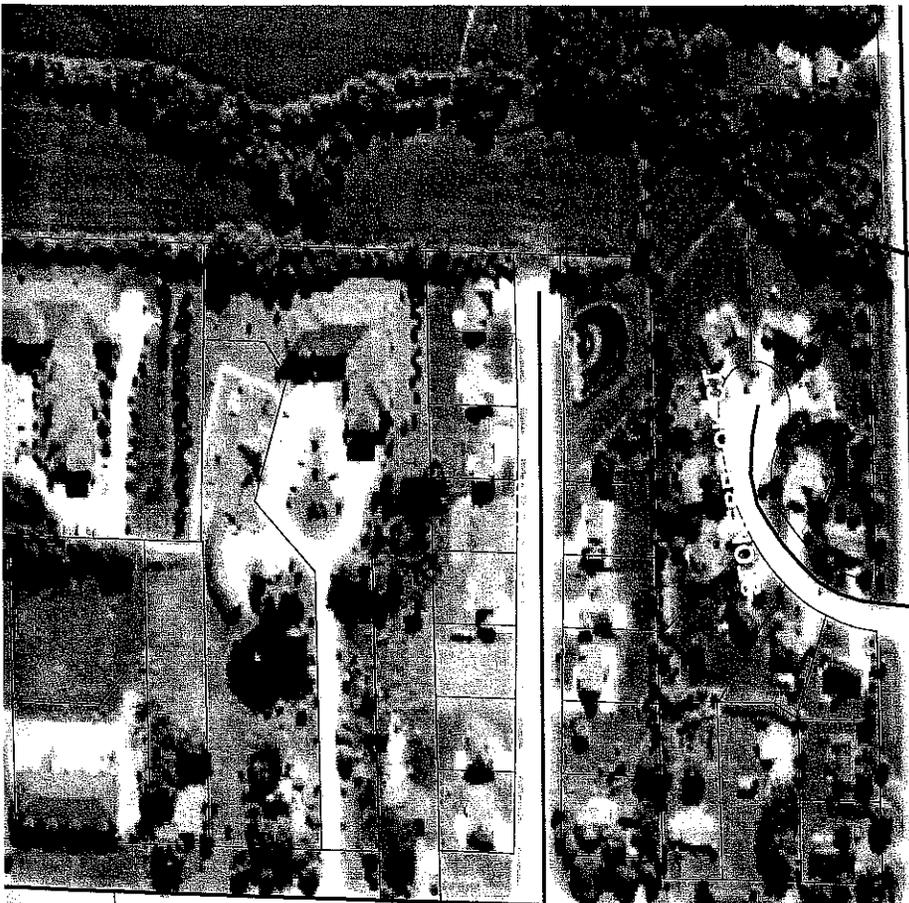
Need more information?

Click on your home state & contact the state coordinator for answers.

Choose your state:

Alabama





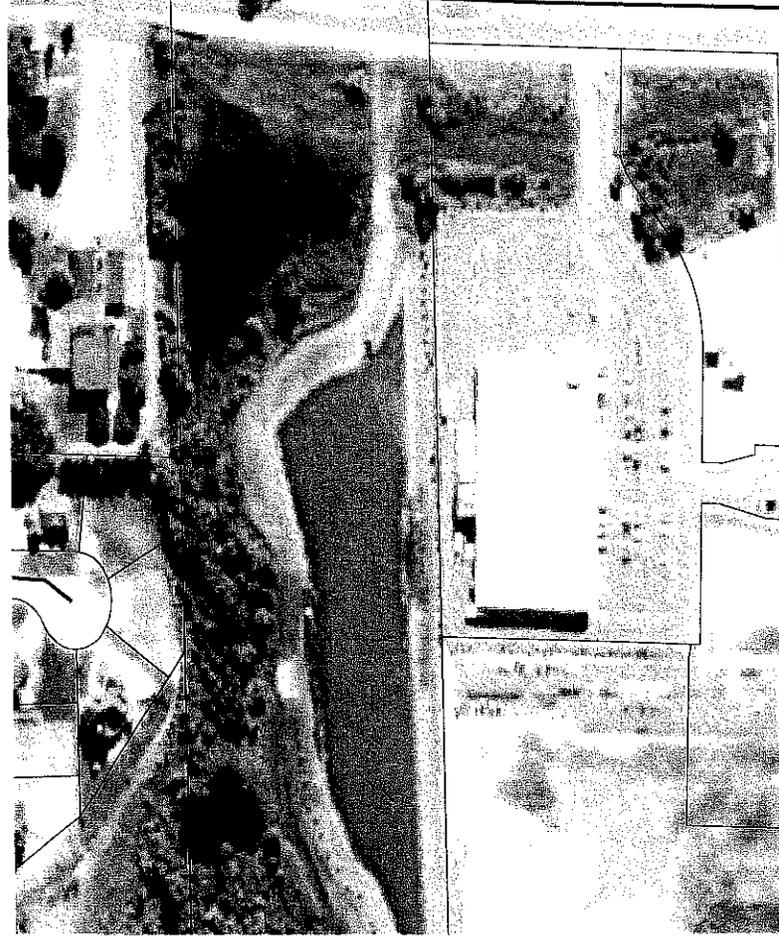
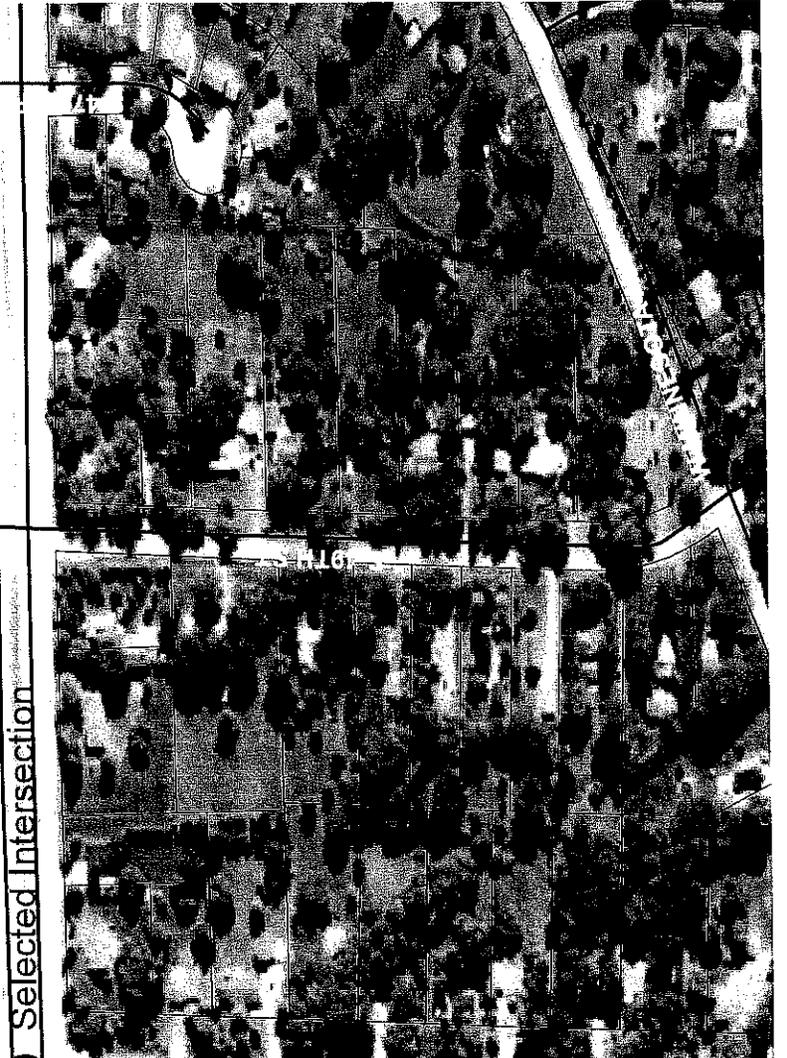
Selected Intersection

198

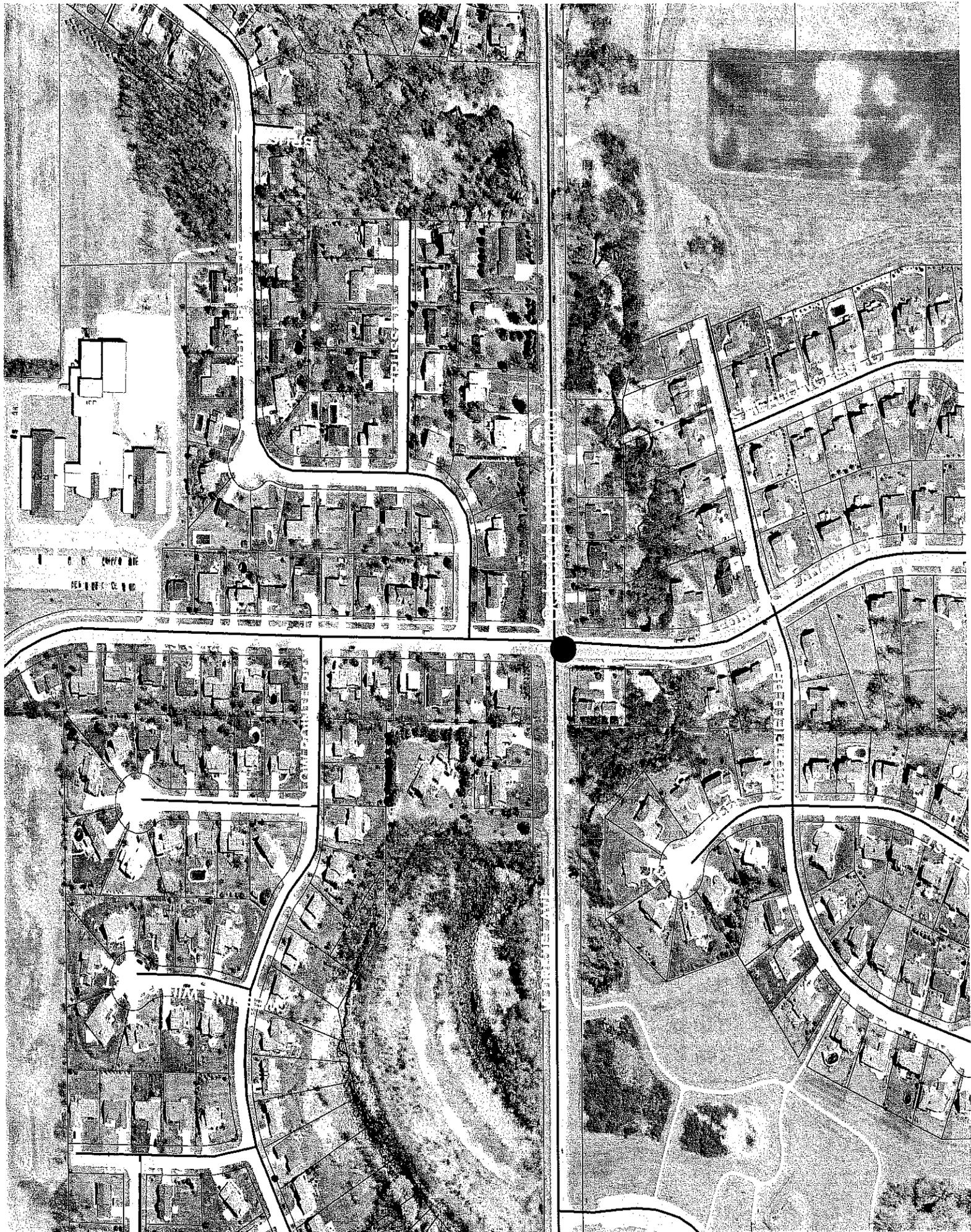
938

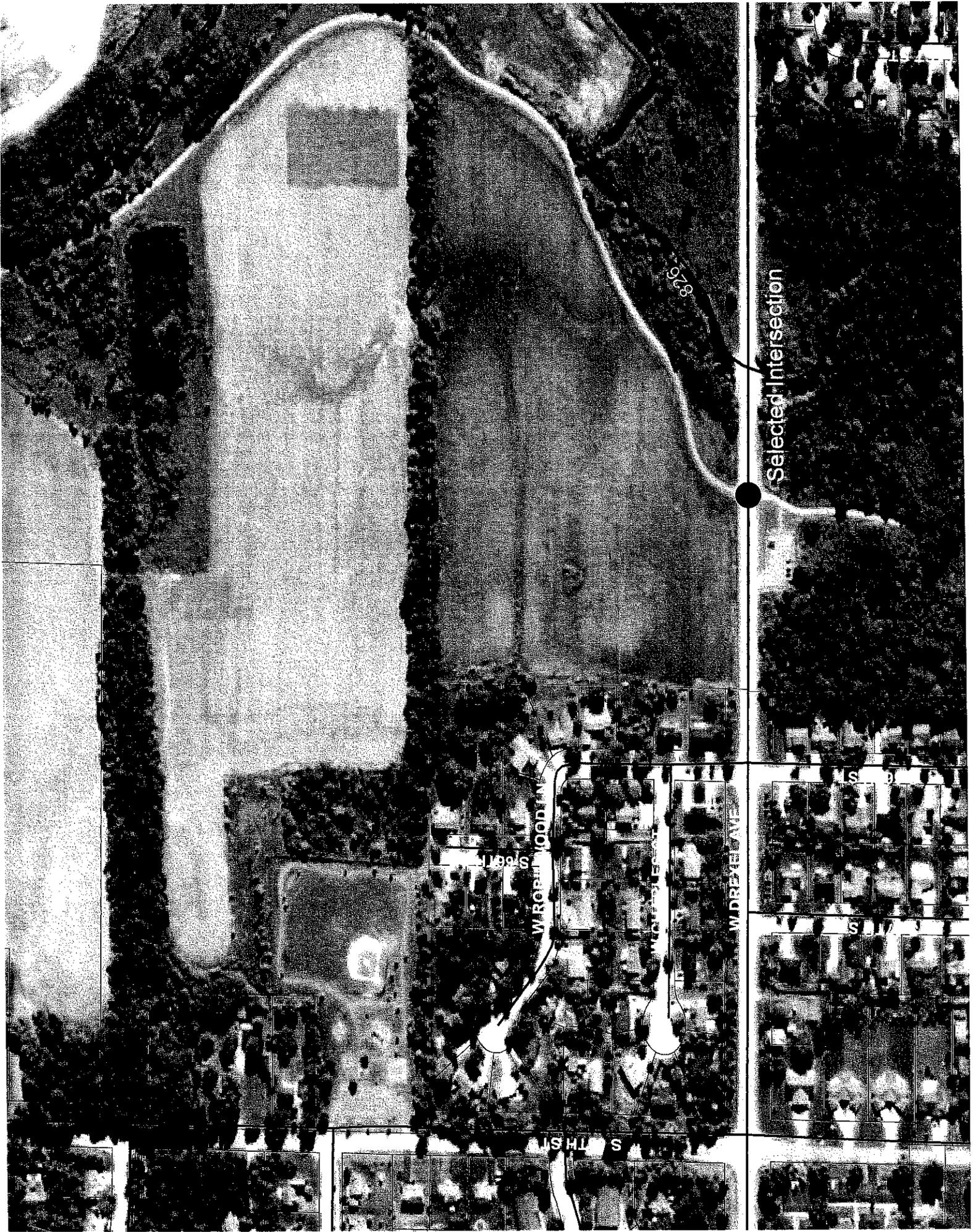
WINDY HOLLOW

WINDY HOLLOW



Selected Intersection





Selected Intersection

826

W. ROBIN WOOD LN

W. CYPRESS LE SEAT

W. DREXEL AVE

S. 117th St

S. 118th St

S. 119th St



Crosswalk Flags and the Adopt-a-Crosswalk Program



Pedestrian and Bicycle
Information Center

Problem

Motorists' inability to see pedestrians crossing at various road and crosswalk types created an unsafe environment for pedestrians.

Background

The Mayor of Salt Lake City in 2000, Rocky Anderson, responded to a national study that declared Salt Lake City as "not pedestrian friendly" by creating a Pedestrian Safety Committee aimed at reducing pedestrian injury accidents. The committee implemented several different safety measures, including crosswalk flags and the Adopt-a-Crosswalk Program.



Flags used in the program.

Solution

Removable orange flags were installed at crosswalks to increase drivers' visibility of pedestrians. The flags increased visibility and showed a clear indication of pedestrians' desire to cross the street. It was shown that both pedestrians and drivers thought there was a benefit of the simple presence of the flags in their holders at the crosswalk. Pedestrians take the flags from one end of the crosswalk to increase their visibility as they cross the street and then return them to the other holder.

Six initial crosswalks were outfitted with flags in August of 2000. By 2007 there were 40 city-maintained downtown flag locations. Due to the lack of available funds and an increased demand of crosswalks with flags, the city began an Adopt-a-Crosswalk program in January 2001. The Adopt-a-Crosswalk program allows individuals or businesses within a one block radius of a marked crosswalk to "adopt" the crosswalk. This program requires that the sponsor monitors the flags and purchases replacement flags when needed. The city installs the flag holders and usage signs, and provides the initial supply of flags at no cost; replacement flags are available for \$0.50 each.



Pedestrians cross the street using flags to increase visibility.

City ordinances were also modified to increase penalties for drivers who fail to yield for disabled pedestrians, pedestrians carrying orange flags, and school crossing guards. For these violations, the drivers were required to appear before the Justice Court Judge and were charged a fine between \$1 and \$750, with a recommended fine of \$425.

Results

As of spring 2007 there were 134 adopted crosswalks; 46 adopted by schools and 88 adopted by residents and businesses. Salt Lake City estimated that the crosswalk flag program costs the city \$30,000 annually. After the initial crosswalk flags were installed observations and interviews revealed that 11 percent of pedestrians were using the flags. Approximately six months later it was estimated that approximately 14 percent of pedestrians were using the flags. The installation of crosswalk flags also created a significant amount of local and national media coverage that increased public awareness about pedestrian safety education. The crosswalk flag program and the Adopt-a-

Crosswalk Flags and the Adopt-a-Crosswalk Program — Salt Lake City, UT

Crosswalk program, along with several other pedestrian safety measures, resulted in a 31 percent decrease in city-wide pedestrian injury crashes, based on 2000 data.

Contact

Dan Bergenthal
Transportation Planner
349 South 200 East, Suite 450
Salt Lake City, Utah 84111
(801) 535-6630

Image Source

*ITE Pedestrian Project Award Submittal. Pedestrian Safety Committee.
<http://www.ite.org/awards/pedproject/SaltLakeCity.pdf>*



<p>APPROVAL</p> <p><i>slw</i> </p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>9/20/11</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>A Resolution to Replace the Civil Service System “Manual of Personnel Rules” (January 1, 1990) with a Civil Service System Personnel Administration Program (September 6, 2011), Including, but not Limited to, Changes to Expand its Application to all Employees Eligible per Wisconsin Statutes, to Satisfy Legal Requirements of Wisconsin Acts 10 and 32, to Revise Disciplinary and Disciplinary Grievance Procedures to Eliminate the “Just Cause” Standard, and to Establish a Process for Review of Workplace Safety Concerns</p>	<p>ITEM NUMBER</p> <p><i>G.3.</i></p>

At their meeting of September 6, 2011, the Common Council laid over the above titled item until this meeting.

Attached is the full packet that was included at the meeting of September 6, 2011. Additionally, in front of that packet, is a memo from the Director of Administration with supporting letters from three municipal labor attorneys that addresses the 4 items raised by AFSCME representative, John English.

The following motion repeats the motion presented at the prior meeting.

COUNCIL ACTION REQUESTED

Motion to approve Resolution No. 2011-____, A Resolution to Replace the Civil Service System “Manual of Personnel Rules” (January 1, 1990) with a Civil Service System Personnel Administration Program (September 6, 2011), Including, but not Limited to, Changes to Expand its Application to all Employees Eligible per Wisconsin Statutes, to Satisfy Legal Requirements of Wisconsin Acts 10 and 32, to Revise Disciplinary and Disciplinary Grievance Procedures to Eliminate the “Just Cause” Standard, and to Establish a Process for Review of Workplace Safety Concerns.

A STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2011- 6748

A RESOLUTION TO REPLACE THE CIVIL SERVICE SYSTEM "MANUAL OF PERSONNEL RULES" (JANUARY 1, 1990) WITH A CIVIL SERVICE SYSTEM PERSONNEL ADMINISTRATION PROGRAM (SEPTEMBER 6, 2011), INCLUDING, BUT NOT LIMITED TO, CHANGES TO EXPAND ITS APPLICATION TO ALL EMPLOYEES ELIGIBLE PER WISCONSIN STATUTES, TO SATISFY LEGAL REQUIREMENTS OF WISCONSIN ACTS 10 AND 32, TO REVISE DISCIPLINARY AND DISCIPLINARY GRIEVANCE PROCEDURES TO ELIMINATE THE "JUST CAUSE" STANDARD, AND TO ESTABLISH A PROCESS FOR REVIEW OF WORKPLACE SAFETY CONCERNS

WHEREAS, amendments to Wisconsin Statutes as adopted in Acts 10 and 32, 2011, require certain amendments to Civil Service Systems for those municipalities operating with such a system; and

WHEREAS, the City of Franklin operates under a Civil Service System as established by the City's Charter Ordinances and set forth within Section 64 thereof; and

WHEREAS, the Personnel Committee is charged with administering the Civil Service System; and

WHEREAS, the Personnel Committee has reviewed and recommended amendments to the Civil Service System Manual of Personnel Rules and the Director of Administration has provided further recommendations and clarifications as provided to the Common Council for its consideration; and

WHEREAS the proposed amendments are found to be in the best interest of the City of Franklin, including the amendments which eliminate a "just cause" standard for disciplinary actions and grievance procedures, and thereby eliminates the related property rights and interest rights in employment, and substitutes a "reasonable and appropriate, not arbitrary and capricious" standard.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that the Civil Service System Personnel Administration Program, dated September 6, 2011, to replace in its entirety the January 1, 1990 Manual of Personnel Rules, is hereby approved and adopted.

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

Introduced at a regular meeting of the Common Council of the City of Franklin this 20th day of September, 2011 by Alderman Wilhelm.

Passed and adopted by the Common Council of the City of Franklin this 20th day of September, 2011.

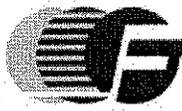
APPROVED:

Thomas M. Taylor, Mayor

ATTEST:

Sandra L. Wesolowski, Director of Clerk Services

AYES ___ NOES ___ ABSENT ___



Date: September 16, 2011
To: Mayor and Aldermen
From: Mark W. Luberda
Director of Administration
RE: Response to AFSCME Concerns on Civil Service System

I was asked to prepare a written comment on the concerns presented by John English from AFSCME during the public comment period at the last Common Council meeting. Following is a paraphrasing of each of his concerns and my related comment. Each of the first three issues is addressed in two paragraphs. The final issue, just cause, is much more complicated and significant than those and merits a greater response.

1) Mr. English is concerned that Article 13 "Employee Complaints" does not provide the option for an employee to have a representative, while such an option is provided for in Article 12 "Employee Grievances." RESPONSE: The allowance for a representative within Article 12 was added at the direction of the Personnel Committee, who made no such direction for Article 13. It appeared the Personnel Committee was concerned that since Article 12 deals with matters of discipline the potential impact upon the employee can be more severe. In short, since discipline can lead to termination there was greater need to ensure that the employee, who may not be able to express himself/herself clearly in a potentially stressful situation, be able to have someone assist them in the process.

Such a potentially grave impact will not be the outcome for an Employee Complaint. Employee Complaints will largely deal with managerial and administrative issues, such as was a vacation day request unfairly denied, was overtime not paid out accurately, was overtime assigned to the wrong employee first, etc. These issues do not threaten an employee's job and do not warrant a provision for allowing outside representation. The process will generally be to get clarification or correction on a matter of administrative policy. Our employees should be expected to be able to express issues of concern related to their job. Lastly, it is worth noting that State law eliminated the requirement to allow a union employee (except Police and Fire) to have an outside arbitrator hear and decide such matters. Similarly, there is no significant reason to burden internal administrative and management issues with external representation in such non-disciplinary matters.

2) Mr. English is concerned that layoffs are not guaranteed to be based upon seniority. RESPONSE: Section 11.2.2 provides for "layoff of employees based upon performance and prior performance evaluations in order to retain the employees that are in the best interest of the City with regard to service delivery..." This is a provision or theory that I strongly support: we are a service organization and should strive to have and retain employees who best enable us to provide our services. The City does need to improve its performance evaluation process and tools before I would be comfortable ensuring we are in a place to make every layoff based upon performance. (A poor performance evaluation system risks layoffs of a discriminatory nature.) Recognizing this, I incorporated language that indicates that "...unless the Common Council or Mayor directs that the layoff occur based upon the employees in the authorized classes of positions who have the least amount of continuous service, in the inverse order of their continuous service." (which means seniority). The section also specifies that if "there is not a clear distinction in performance records for employees...or in the event there are multiple employees with similar performance records..." seniority will be used. The safeguard Mr. English requested is already in place in the language. Mr. English, however, wants to eliminate any reference to a performance-based goal and leave only a reference to a seniority-based requirement in place until the performance evaluation process is substantially improved. I believe our goal should be performance-

based layoffs. I also believe it would be misleading to leave our goal out of the language; therefore, the safeguard option has been built in. Employees should not be lead to believe that performance doesn't matter, only seniority does. The new standard or goal needs to be clearly included in the policy and until the Mayor and Common Council are satisfied that layoffs can be performance-based, the seniority-based alternative needs to be included as well. This is just what the policy does as written.

3) Mr. English requests the whole item be laid over. RESPONSE: The bottom line is that the issues of addressing grievances, complaints, and workplace safety have to be adopted and in place by October 1st. That is the law, and as such, the policy should not be laid over. Those components are incorporated into the Civil Service System Personnel Administration Program that you are considering.

The state law also requires that the City address these matters through its Civil Service System. The Civil Service System rules were last adopted in 1990. Twice between 2000 and 2006, the Personnel Committee tried to revise and update the rules, but no final action was taken. It is necessary to update the rules because they reference practices that haven't been part of the administrative process for years and have many sections that are inconsistent with the Employee Handbook. The inconsistencies have not been an issue because the Union contracts have prevailed; however, with the impending evaporation of the vast majority of each union contract, the inconsistencies cannot be allowed to persist. It is necessary to begin to update the Civil Service System Personnel Administration Program so that the conditions of employment are clear. This version is a first effort to do that while at the same time complying with the October 1st statutory deadline. More revisions will be necessary as other union contracts expire, but the document before you creates a solid starting point and meets the statutory requirement. It should be passed prior to October 1st and should not be laid over beyond that date.

4) Mr. English recommends the City retain the standard of "just cause" in all disciplinary matters. RESPONSE: Following are discussion points on why retaining "just cause" is not in the best interest of the City of Franklin.

a) The Employee Handbook indicates that the City is an "at will" employer. The "Receipt for Employee Handbook" that new employees are expected to sign indicates the following:

"I understand that The City of Franklin is an 'at will' employer and as such employment with The City of Franklin is not for a fixed term or definite period and may be terminated at the will of either party, with or without cause, and without prior notice. "

"At will" employment is the functional opposite of "just cause" employment. This conflict needs to be rectified.

b) In addressing "just cause", the only reference made in the handbook is as follows: "The tenure of all City employees shall be based on reasonable standards of job performance and personal and professional conduct. Failure or refusal to meet these standards shall constitute just cause for disciplinary action." As written, the handbook's reference to "just cause" is not the standard usage, but, in fact, appears to redefine "just cause" as "reasonable standards." "Just Cause", however, is a term of art that is now broadly interpreted by courts, case law, and arbitative determinations. The court's version of "just cause" is much more stringent and technical than the handbook's "reasonable" standard. The new recommended language, therefore, reconciles this discrepancy by retaining and clarifying "reasonable" as "reasonable and appropriate, not arbitrary and capricious," while eliminating the potentially confusing usage of "just cause".

c) Mr. English implied that the "just cause" standard is the basis for employment in Wisconsin which is absolutely not the case. Wisconsin is, without question, an "at will" state. Each employee has a job that is given and retained at the discretion of the employer...unless the employer gives that right away. That is the point to which Mr. English refers: in municipal labor union contracts most Cities have given up their right to

be an "at will" employer and have typically provided "just cause" employment. Nonetheless, the basis for employment in Wisconsin is "at will," not "just cause," and, by far, most employees in Wisconsin are "at will" employees.

d) Courts have determined that the "just cause" standard creates a property interest in the job and gives the employee a right to a job and, therefore, demands full due process in order to remove somebody from their job. In other words, under a just cause standard, the job is the employee's job, and the City must meet very stringent standards and procedures, often interpreted by someone else (a judge or arbitrator), in order to remove the employee from the job. Under "just cause" the City bears the burden of proof. As Wisconsin is an "at will" state and, as our handbook indicates, Franklin is an "at will" employer, it seems the policy needs to reflect this standard whereby the job is the City's to control, not the employee's.

e) Some of the basic tenets of "just cause" and due process have been built into the process. For example, the policy provides that "Employees will be provided a written or verbal notice of the allegations and provided an opportunity to be heard, prior to imposition of discipline." and "The Employee will be afforded a reasonable opportunity...to be represented by one individual..." So, these components have been retained without retaining all of the full burden of the court's and arbitrator's history of interpreting "just cause".

f) "Just cause" and "Due process" are very difficult to argue against because, on their face, they seem very American. If anyone reads one of the seven tests as to whether just cause is being applied and then follows it with "I don't see what's wrong with that," it seems very difficult with which to argue. What is wrong, however, is that the courts and arbitrators have taken what appears to be a reasonable standard and made it unreasonable, or at best very challenging and burdensome. The bar has been raised too high, and the standards are too stringent, and, typically, someone else is acting as the judge or arbitrator. As an analogy, it is like telling someone to sing the national anthem...after all, what could be wrong with that, it is our national song. It is very easy to sing, but after you sing it, you are judged as to whether you sang it well. If you didn't sing it well, you lose. Although it is a very easy song to sing, it is a very hard song to sing well. That is analogous to the problem with "just cause." In fact, the United Electrical, Radio and Machine Workers of America (not one of our unions) comes right out and says it in their website: "Our main contractual weapon in discipline and discharge cases is usually the requirement that the boss must have 'just cause' to take action against an employee." Following is an example they provide: "**Example:** If an employee is told to stop using vulgar language and told that if he continues he will be disciplined, that may be adequate warning. However, if a boss comes up to an employee and says "I'm tired of your swearing, cut it out", and then the next day fires the employee for swearing again, that may not be adequate warning." To me it seems that in the example the union misses the point of making the employee responsible for their actions.

Interpretations such as this lead to head-scratching results like reinstating a Cedarburg school teacher who used the school computer for pornography. It is these head-scratching conclusions, and there are many of them, that have lead **every municipal labor attorney with which I have spoke or to whom I have listened to recommend to every one of their clients that they should discard the "just cause" standard.** These municipal attorneys are the ones who have to fight to protect a municipality's actions. These are the professionals who have to deal with the impacts of the "just cause" standard and the burden of proof requirement that it places on management. The burden of "just cause" goes beyond reasonable. After all, I have recommended "reasonable and appropriate, not arbitrary and capricious" but you are being told that "reasonable and appropriate" isn't good enough. Given the uniformity with which these attorneys have recommended not retaining a "just cause" standard, I asked three to provide me with a brief letter indicating why they are recommending to their clients that the "just cause" standard not be retained in the policies or manuals (see attached). I think point 4 of Jim Korom's letter is particularly interesting. There is an apparent unanimous recommendation from the attorneys representing cities, counties, and schools. I recommend following their advice relative to discontinuing "just cause" as the standard.

**one will be provided at the meeting*

CITY OF FRANKLIN

2011 SEP 16 PM 1:12

vonBriesen

von Briesen & Roper, s.c. | Attorneys at Law

TAGLaw International Lawyers

James R. Korom
Direct Telephone
414-287-1231
jkorom@vonbriesen.com

September 15, 2011

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

Re: Just Cause Standard

Dear Mr. Luberda:

You have asked for an explanation as to why we recommend that the legal standard of "Just Cause" be avoided in your new grievance procedure under Act 10. Let me assure you that virtually every employment attorney regularly called upon to defend management's decisions on discipline and discharge agree that the "Just Cause" standard should be avoided at all costs. There are many reasons for this conclusion.

First, the standard is incapable of precise definition. When making personnel decisions, your administrative team needs predictability. There is no single, universally accepted definition of Just Cause. While many arbitrators follow the well-known "Seven Tests" (which can be reviewed, for example, in Section 62.13(5) applicable to police and fire department employees), other arbitrators use a variety of other standards to determine whether "Just Cause" has been met. Moreover, even within the traditional "Seven Tests" analysis, different arbitrators will place greater emphasis on some of the standards. In virtually every case I have tried, I have been able to find arbitration decisions applying "Just Cause" that come to different results on nearly the same facts. To expect your supervisory staff to make disciplinary decisions without knowing what standards might be applied to those decisions later is an unfair burden on your supervisors. It is one of the main reasons that in the past, supervisors would simply fail to supervise problem employees.

Second, application of the "Just Cause" standard has lead to famously absurd results. The most well known is the Cedarburg School District case involving a teacher who was using District computers to view pornography while at work. An arbitrator believed a written reprimand was appropriate under a "Just Cause" standard. On every level of appeal to the courts, all of them expensive, that decision was rejected.

Those absurd results are likely a result of a third problem with the "Just Cause" standard. That standard was originally established as a way of balancing the interests of the employer against the interests of the employee and the Union in a private sector environment. The standard was applied to public sector employers later. The problem with that balancing is that it ignores the public good. Note that police

Mr. Mark Luberda
September 15, 2011
Page 2

and fire commissions under Section 62.13, before deciding on final discipline for police and fire employees must make two decisions. First, they must determine whether the Seven Tests of Just Cause as set forth in the statute have been met. But then they must also decide what penalty “the good of the service” requires. This provision of Section 62.13 reflects a legislative recognition that the public good must be considered, and that the “Just Cause” concept does not take into account that public good.

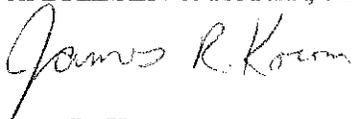
A fourth reason to avoid the Just Cause standard is that it is unnecessary to protect employees from truly bad decisions. There is nothing preventing the City from informally telling its supervisory personnel that it expects them to make decisions using commonly accepted notions of fairness. However, that is different than giving an individual employee the legal right to enforce a Just Cause standard, as that Just Cause standard might be viewed by some third party. If the end result of a grievance is a determination that the discipline was not “arbitrary and capricious,” that does not preclude the City from choosing to override a bad decision of a supervisor. However, to give to an individual employee the right to sue the City for violation of the “Just Cause” standard would subject the City to unpredictable results as well as expensive litigation.

In conclusion, if you seek to enhance the predictability of outcomes, reduce litigation costs, and feel confident your supervisors will be empowered to hold employees accountable to work for the public good, you should avoid using the “Just Cause” standard. A grievance procedure with the “arbitrary and capricious” standard will be sufficient to identify any true injustices which have occurred, allowing the City to correct those injustices, without creating an independent and unpredictable legal right.

If you need any further information, please contact me at your convenience.

Very truly yours,

von BRIESEN & ROPER, s.c.



James R. Korom

JRK:jmd



Fourth Floor
1 South Pinckney Street
P.O. Box 927
Madison, WI 53701-0927

Phone • (608) 257-9521
Fax • (608) 283-1709

Steven C. Zach
Direct Dial Number • (608) 283-1736
szach@boardmanlawfirm.com

September 16, 2011

Privileged Attorney - Client Communication

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

RE: Grievance System

Dear Luberda:

You asked for my recommendation regarding the standard to be applied by the City with respect to any Grievance System adopted pursuant to 2011 Wisconsin Act 10. Under this law, the City has full discretion to adopt any standard to utilize in discipline or termination matters involving employees not subject by statute or contract to another standard.

I recommend that the City utilize an "arbitrary and capricious" standard; that is, a disciplinary action or termination cannot be overturned through an Act 10 grievance process unless that action was "arbitrary and capricious."

"Arbitrary or capricious action ...occurs when it can be said that such action is unreasonable or does not have a rational basis. Arbitrary action is the result of an unconsidered, wilful and irrational choice of conduct"

Balcerzak v. Board, 2000 WI App 50, ¶13. Under this standard, the City must articulate a reasonable and rational basis for its disciplinary action even though other options or actions were available and/or equally reasonable. Under this standard, it is clear that an independent hearing examiner cannot substitute the examiner's judgment for a reasonable judgment made by the City.

The "just cause" standard in my view is a higher standard which has developed an implied meaning among arbitrators and hearing examiners. Most arbitrators in Wisconsin have defined the "just cause" standard under a two-part test in which an employer must establish that the employee engaged in conduct in which the employer has a disciplinary interest, and that the discipline imposed reasonably reflects its disciplinary interest. A more formalistic definition of "just cause" involves application of seven factors:

1. Did the employer give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
2. Was the employer's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the employer's business?
3. Did the employer, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the employer's investigation conducted fairly and objectively?
5. At the investigation, did the employer obtain substantial evidence or proof that the employee was guilty as charged?
6. Has the employer applied its rule, orders and penalties even-handedly to all employees without discrimination?
7. Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee in his or her service with the employer?

Under either definition, the "just cause" standard requires the employer to prove elements of process and substance not required under the "arbitrary and capricious" standard. In particular, under the "just cause" standard, the employer is required to show an element of process which provides an employee formal warning of expected conduct or performance; in particular, the "just cause" standard carries with it a requirement of progressive discipline. As applied through years of arbitrations, the "just cause" standard has also been used by independent hearing examiners to second guess the judgment of employers and substitute their judgment of the disciplinary action for that of the employer.

Page 3
September 16, 2011

I believe the City should be held to a standard by which its disciplinary actions are reviewed by an independent party for purposes of providing a mechanism to ensure that disciplinary actions have an articulated, reasonable basis. I do not believe the City should adopt a standard which creates a higher burden and invites an independent hearing examiner to second guess or overturn the City's action if the examiner disagrees with that action even if a reasonable basis exists for it.

It is my understanding that the "arbitrary and capricious" standard is being adopted by the vast majority of municipalities in their Act 10 grievance systems.

Very truly yours,

Boardman, Suhr, Curry & Field LLP

By

/s/

Steven C. Zach

SCZ/maz

<p>APPROVAL</p> <p>SLW </p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>9/06/11</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>A Resolution to Replace the Civil Service System "Manual of Personnel Rules" (January 1, 1990) with a Civil Service System Personnel Administration Program (September 6, 2011), Including, but not Limited to, Changes to Expand its Application to all Employees Eligible per Wisconsin Statutes, to Satisfy Legal Requirements of Wisconsin Acts 10 and 32, to Revise Disciplinary and Disciplinary Grievance Procedures to Eliminate the "Just Cause" Standard, and to Establish a Process for Review of Workplace Safety Concerns</p>	<p>ITEM NUMBER</p> <p>G.11.</p>

Part of Act 10, as adopted, requires certain actions prior to October 1st relative to local governments establishing certain procedures to incorporate some grievance and workplace safety protections into the municipality's policies for those employees who may have lost such rights following the expiration of existing labor agreements. A primary factor in what needs to be completed and how it may be completed by 10/1 is whether or not the local government operates under a Civil Service System. The City of Franklin currently operates under a Civil Service System. Under the new statutory provisions, the City is now required to maintain the Civil Service System and address the new issues within that System. The City's Civil Service System rules specifically provides for the ability to modify the rules, procedures, or policies as needed by the City.

The existing City of Franklin Civil Service System rules were last modified in 1990. The Civil Service System's primary impact on the organization has been its impact on the hiring process where a subcommittee of the Personnel Committee reviews entrance exam results and establishes lists for new positions. The remaining rules have been largely over shadowed by existing labor contracts that have been controlling over the Civil Service System Rules. As each labor contract expires, except Police and Fire, the language that has provided the employees with explanations of their wages, hours, and working conditions also expires or evaporates. Through the Civil Service System, the Employee Handbook, and wage and salary resolutions or ordinances, the City needs to then reconstitute the administrative and personnel structure that applies to the employee's job.

Staff prepared a recommended revision to the Civil Service Rules, including revising the title to Civil Service System Personnel Administration Program. The Personnel Committee, which by ordinance serves as the Civil Service Commission, reviewed the draft extensively over two long meetings on August 15, 2011 and August 29, 2011. A meeting with employees, which ended up lasting four hours, was also made available on a date between the two Personnel Committee meetings (August 23, 2011). The Personnel Committee made a few recommendations that have been incorporated into the attached version.

PLEASE NOTE THAT "COMMENTS" INCLUDED IN THE MARGIN ARE FOR REFERENCE PURPOSES AND ARE NOT PART OF THE FINAL DOCUMENT UNDER CONSIDERATION AND WILL NOT BE INCLUDED IN THE FINAL PRINTED OR ON-LINE VERSION.

Following is a listing of some of more significant changes incorporated into the proposed document revision:

1. Section 1.2.2: The scope was clearly limited to those 9 areas provided for in the statute. Topics not falling into these categories were removed and will be addressed in the Employee Handbook revision which is soon to follow.
2. Section 1.5 to 1.6: Supervisors have been identified as "Unclassified Service" as required by statute. All other employees are "Classified Service". The Classified Service is then broken down to "Certified" (where an "examination" is given) or "Non-certified" (certain limited-term positions where no test is required).
3. Throughout Section 3.3: Compensation schedules are defined with flexibility such that they can be merit ranges or step and grade plans, etc. The compensation plan(s) itself will be set up by resolution (or ordinance, but ordinances will be avoided in the future), so this document is not committing the City to a certain pay plan structure or system at this time. The Compensation Plans themselves will have to be addressed in the near future.
4. Throughout Document: Library staff are included because the City's authorizing ordinance did not specifically eliminate the Library from inclusion as is allowable under the statute. That is probably a good thing, because if they were excluded, the Library Board would have to independently follow all of the required statutory steps required under Act 10. I have tried to delegate authority back to the Library Board where it seemed appropriate given our current expectations and practices regarding the Library Board.
5. Section 3.3.6 Workers Compensation language limits individuals to benefits not in excess of their normal take home pay (as we have been trying to get into all of the contracts). Retaining the one-year eligibility period at 100% increased the potential allowance for a few non-reps who will now be in Civil Service.
6. Incorporated special provisions related to a union group with an expired contract. See, for example, Section 3.4.2.1. As new union contracts expire before 1/1/12, it will likely be necessary to revise the document to incorporate any special provisions in those contracts that the City determines is in its best interest to retain.
7. Section 3.4.2.2 Library Assistants: The Personnel Committee's recommendation does not match the current practice of the Library where all Library Assistants that work on Sundays receive time and one-half.
8. Note that Article 3 "Compensation" generally addresses the compensation aspect of each leave type, whereas Article 10 generally addresses the administration and management (non-fiscal) side of each leave type.
9. Section 3.16: Longevity was converted to one scale for all groups. The scale will bring eventually Inspectors and DPW to the same scale as everyone else. The estimated cost including roll-ups is approximately \$1,500 per year.
10. Section 5.5: Internal promotion opportunities for limited-term employees will be restricted to identified career paths where the promotion opportunity is pre-identified (on an approved list) as in line with each limited-term position. (Example a part-timer in the Clerk's office may have preference over external candidates for a full-time position in the Clerk's office, but may not for a full-time position in the Fire Department.)
11. Section 5.7.3: The Veterans Adjustment language was modified to reflect current statute.
12. **Article 9 Discipline:** Incorporates a significant change moving from a "just cause" standard to a "reasonable and appropriate, not arbitrary and capricious" standard for disciplinary action. Eliminating "just cause" eliminates the employee's property interest in their job and eliminates the high standard of review and administrative burdens associated with just cause and full due process. This standard may not be the same as an "at will" standard, which provides for complete, unfettered authority including acts considered arbitrary and capricious.

13. Section 10.1 does provide flexibility for the Mayor or Common Council to consider 4 ten-hour days in lieu of the regular 5 eight-hour days. Similarly, the office hours of departments remain flexible but under the authority of the Mayor or Common Council.
14. Section 10.6.7 was added to set the stage to more aggressively pursue sick leave abuse. This language may need to be modified overtime.
15. Section 11.2.2 provides that layoffs may occur based upon performance, not necessarily seniority, if a valid performance monitoring system is in place and unless otherwise directed by the Common Council. Also, Section 11.2.2.2 restricts bumping rights during a layoff to those instances where authorized by the Common Council.
16. Article 12 sets up a grievance procedure that applies ONLY to matters of discipline. The Personnel Committee is the final step of the process, unless there is a financial impact beyond budgetary levels, in which case the Common Council retains authority over the fiscal portion. Again, the just cause standard has been eliminated, which also removes the requirements for "full due process."
17. Article 13 Employee Complaints: This section is intended to cover additional requirements of Act 10. It effectively provides a grievance process for everything else other than disciplinary actions. For example, if an employee thinks he wasn't paid properly or a department head inappropriately refused a vacation day request. As most of these issues are managerial in nature, the Mayor is the final arbiter. DOA review is used to monitor consistency across departments. The title "Complaints" is potentially confusing; the Common Council may wish to re-title the section "Personnel Administration Concerns" patterning the "Workplace Safety Concerns" nomenclature of Article 14.
18. Article 14 adds Workplace safety as is required by Act 10. This article includes Police and Fire as well. As a managerial process it is administered similarly to the complaint process in Article 13. The Common Council retains purse string control. It is written to be broad in scope and is not restricted only to violations of workplace safety statutes or administrative regulations.
19. Throughout: The Director of Administration is inserted in areas where human resources principles require monitoring consistency of application or implementation across the entire organization.

In addition to the above items, the following changes have also been incorporated based on my recommendation and additional guidance or legal advice that has been obtained since the Personnel Committee meeting. If the Common Council wishes them not to be incorporated, the final motion should direct they be removed.

1. The date was changed on the cover page.
2. A footer was added (Date and "This document should be considered in conjunction with the Employee Handbook")
3. "Permanent" and "Temporary" have been replaced with "Extended-Term" and "Limited-Term" to avoid confusion related with the removal of a property right or property interest in the job in conjunction with the elimination of "just cause" as an employment or disciplinary standard.
4. "Probation" and "Probationary" have been changed to versions of the word "Introductory" to avoid potential linkages to property rights that may have become associated with these terms over the years.
5. Language setting and clarifying the "reasonable and appropriate, not arbitrary and capricious" standard and providing the opportunity to be heard was copied from Article 12 Grievances and repeated in Article 9 Discipline, as it should apply to both stages of the disciplinary process.
6. Conflicting statements as to the deadline in 12.3.2 were reconciled and clarification of the employee deadline was made to 12.3.3.
7. The following clarification was added to Article 12 Grievance: "Timelines expressed with "should" are intended to provide flexibility to the City in meeting the referenced deadline."

8. Section 10.1.2.1 and 10.1.3.3: Clarification was added that this authority extends to the Common Council as well as the Mayor.
9. Section 11.2.2.3 The reference to "Reappointment List" was corrected to "Reinstatement List" as used elsewhere throughout the document.
10. Section 12.1: The Grievance process failed to identify who presented first during the process. The following language was added: "The burden of proof shall be upon the employee, who shall present first at each step in the grievance process." It also didn't specify the following, which has been added: "If an Employee does not meet established deadlines, the grievance shall be considered resolved."
11. Section 14.1: The ability to amend the policy to redefine "workplace safety" was clearly retained.
12. Various typos

Please note that until further action is taken, the following applies: Extended-Term Part-Time Employees/Positions with Benefits and Extended-Term Part-Time Employees/Positions without benefits will continue to be distinguished based upon the number of hours regularly worked per week until such time that a clear, non-discriminatory basis for distinguishing such differences can be put forth.

This document will continue to be revised in the coming weeks and months. For example, revisions are expected prior to the expiration of the current DPW and Inspection contracts. ALSO, COMPENSATORY TIME WAS NOT ADEQUATELY ADDRESSED WITHIN THE DOCUMENT. Nonetheless, it was necessary to take the best, first effort at incorporating the new statutory requirements while updating the language to be more consistent with current practices. To that end, this revision will probably constitute the most substantial revision.

COUNCIL ACTION REQUESTED

Motion to approve Resolution No. 2011-____, A Resolution to Replace the Civil Service System "Manual of Personnel Rules" (January 1, 1990) with a Civil Service System Personnel Administration Program (September 6, 2011), Including, but not Limited to, Changes to Expand its Application to all Employees Eligible per Wisconsin Statutes, to Satisfy Legal Requirements of Wisconsin Acts 10 and 32, to Revise Disciplinary and Disciplinary Grievance Procedures to Eliminate the "Just Cause" Standard, and to Establish a Process for Review of Workplace Safety Concerns.

THE CIVIL SERVICE SYSTEM
PERSONNEL ADMINISTRATION PROGRAM

(Also Known as the "Civil Service Rules")
(Previously the "Manual of Personnel Rules")

As Approved by the
PERSONNEL COMMITTEE
And
COMMON COUNCIL
Of the
CITY OF FRANKLIN, WISCONSIN

THIS DOCUMENT SHOULD BE CONSIDERED IN
CONJUNCTION WITH THE EMPLOYEE HANDBOOK

DATED: September 6, 2011

CITY OF FRANKLIN, WISCONSIN
PERSONNEL COMMITTEE

The Civil Service System
Personnel Administration Program

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CITY OF FRANKLIN, WISCONSIN

THE CIVIL SERVICE SYSTEM

PERSONNEL ADMINISTRATION PROGRAM

PREAMBLE

The Common Council of the City of Franklin ordained, within the Charter Ordinances, that “Pursuant to the provisions of Sections 62.11(5), 66.01, and 66.19 of the Wisconsin Statutes, there is hereby created a Civil Service System of selection, tenure and status” and that “The Civil Service System created pursuant to Section 64.01 of the Charter Ordinance No. 64 shall be administered by the Personnel Committee established pursuant to Ordinance No. 2001-1687, in part amending and as set forth within 10-12 of the Municipal Code, as set forth under such ordinance, which Personnel Committee, for such duties, shall be the Civil Service Board or Committee, as contemplated by Section 66.0509(4), Wis. Stats.”

PART I

ARTICLE 1 CIVIL SERVICE RULES

Section 1.1 ORIGINATION AND ADOPTION: The Personnel Committee shall prepare or cause to be prepared and revised as necessary rules governing all phases of the Personnel Administration Program of the City as it applies to the City’s classified employees and as is allowable under the scope of a Civil Service System authorized by the State of Wisconsin. Such rules shall be submitted to the Common Council for review and adoption after which the rules shall have the force of law.

Comment [M1]: NAME CHANGE TO AID IN CLARIFYING THAT THERE ARE PERSONNEL RULES THAT MAY APPLY OUTSIDE OF CIVIL SERVICE.

Comment [M2]: Term has new meaning

Section 1.2 PURPOSE AND SCOPE:

1.2.1 PURPOSE - It is the purpose of these rules to supplement, interpret, and otherwise to give effect to provisions of Chapter 6 of Code of Ordinance.

Comment [m3]: What is the statutory and municipal code requirements for what needs to be in a civil service ordinance.

1.2.2 SCOPE - The scope of these rules shall be restricted to classified or covered employees and to the provisions in respect to the following topics and areas of personnel administration, including any such related topics and areas as determined by the Personnel Committee as appropriate, as authorized by state statute for inclusion in a Civil Service System:

- (a) employee selection,
- (b) employee tenure,
- (c) employee status,
- (d) attendance
- (e) leave regulation
- (f) compensation and payrolls
- (g) a grievance procedure that addresses employee terminations,
- (h) employee discipline, and
- (i) workplace safety

Comment [M4]: Required purpose of 66.0509

Comment [M5]: Allowable provisions under 66.0509

Comment [M6]: Requirements added by Act 10

Section 1.3 AMENDMENT: The Personnel Committee shall submit proposed amendments of these rules to the Common Council whenever such amendments are deemed necessary by the Committee or as directed by the Common Council. Any such amendments shall not be inconsistent with the provisions of Chapter 6 of Ordinance, and following their adoption by the Common Council, the Committee shall properly make available or transmit such amendments to Appointing Authorities and classified employees.

Section 1.4 DEFINITION OF TERMS: The words and terms hereinafter mentioned, whenever used in these rules or in any regulations in force thereunder, shall be construed as follows:

- 1.4.1 APPOINTING AUTHORITY – shall mean the Common Council, Mayor, or any City Department Head having the authority by ordinance to make appointments to any subordinate office or position in a department of the City Government.
- 1.4.2 COMMITTEE – shall mean the City of Franklin Personnel Committee.
- 1.4.3 CITY – shall mean the City of Franklin, Wisconsin.
- 1.4.4 EXTENDED-TERM FULL-TIME EMPLOYEE – shall mean an employee who has been appointed as a result of a certification to an extended-term, full-time position and who generally works at least 37.5 hours weekly and is expected to work 1950 hours or more per year, including paid leaves.
- 1.4.5 EXTENDED-TERM FULL-TIME POSITION – shall mean a position where the employee is expected to generally work at least 37.5 hours weekly and 1950 hours or more per year, including paid leaves, in a position authorized by the Common Council as an “Extended-term Full-Time” position.
- 1.4.6 EXTENDED-TERM PART-TIME EMPLOYEE WITH BENEFITS – shall mean an employee who has been appointed as a result of a certification to an extended-term, part-time position and who generally works less than 37.5 hours weekly and is not expected to work 1950 or more hours per year, including paid leaves, and whose category within a position classification has been designated by the Common Council as receiving benefits.
- 1.4.7 EXTENDED-TERM PART-TIME POSITION WITH BENEFITS – shall mean a position where the employee is generally expected to work less than 37.5 hours weekly and is not expected to work 1950 or more hours per year, including paid leaves, and whose category within a position classification has been designated by the Common Council as receiving benefits.
- 1.4.8 EXTENDED-TERM PART-TIME EMPLOYEE WITHOUT BENEFITS – shall mean an employee who has been appointed as a result of a certification to an extended-term, part-time position and who generally works less than 37.5 hours weekly and is not expected to work 1950 or more hours per year,

Comment [M7]: This might need to change depending how I list the unclassified people

Comment [M8]: This new language allows for the possible consideration that the Common Council may determine a specific job designation does not warrant benefits, possibly due to market considerations, even if the hours worked exceeds 20 per week.

including paid leaves, and whose category within a position classification has been designated by the Common Council as not receiving benefits.

1.4.9 EXTENDED-TERM PART-TIME POSITION WITHOUT BENEFITS – shall mean a position where the employee is generally expected to work less than 37.5 hours weekly and is not expected to work 1950 or more hours per year, including paid leaves, and whose category within a position classification has been designated by the Common Council as not receiving benefits. Most typically such a position is scheduled for 19 or fewer hours per week.

1.4.10 LIMITED-TERM FULL-TIME EMPLOYEE – shall mean an employee who has been appointed without certification to a full-time position and who generally works at least 37.5 hours weekly and would be expected to work 1950 hours or more per year, including paid leaves, if annualized, but whose position is authorized for a limited duration, which is not expected to exceed nine continuous months of employment.

Comment [M9]: Previously these positions did "not have civil service status." Now they must be incorporated into the Civil Service System, but the broader steps of certification do not also need to be applied.

1.4.11 LIMITED-TERM PART-TIME EMPLOYEE – shall mean an employee who has been appointed without certification to a limited-term part-time position and who generally works less than 37.5 hours weekly and is not expected to work 1950 or more hours per year, including paid leaves, if annualized, but whose position is authorized for a limited duration, which is not expected to exceed nine continuous months of employment.

Comment [M10]: Recommendation to extend this from the current 6 months indicated in the Handbook so that it can cover a full Spring – Fall position. The previous six month standard likely stems from past state arbitrator decisions and the 600 hour WRS restriction. VERIFY THERE IS NOT 6-month REQUIREMENT

Comment [M11]: Do I really need to Define "... Position"

1.4.12 EMERGENCY EMPLOYEE – shall mean an employee appointed without certification for short-term employment which may be required for special projects, unusual work loads, or emergency circumstances.

Comment [M12]: Consider defining this term

1.4.13 INTRODUCTORY PERIOD – shall mean the period when an appointed employee is required to demonstrate the fitness for the position by actual performance of duties.

Comment [M13]: See Dana's note and ensure there is a section on the rules of probation, which rules probably aren't best suited for the "definitions" section

Section 1.5 UNCLASSIFIED SERVICE: The following offices and positions in the public service of the City shall be designated as "unclassified service" and are not covered within the scope of the Civil Service System, except to any extent otherwise specified.

All officials elected by the citizens of the city,

Members of the Judiciary,

All members of any board or commission, including election officials,

Employees who are employed pursuant to a special contract or separate employment agreement with the City if also falling within another category set forth in this section,

All members of the Fire and Police Departments subject to Section 62.13 of the State Statutes and under the jurisdiction of the Police and Fire Commission, except to the extent as provided herein for workplace safety,

Comment [M14]: State Statute says "the system may be made applicable to all municipal personnel except the chief executive and members of the governing body, members of boards and commissions including election officials, employees subject to s. 62.13, members of the judiciary and supervisors"

Officers of the City as set forth in Wisconsin Statutes Chapter 17, a list of which positions shall be maintained by Human Resources.

#64 Charter Ordinance itemizes some titles, which list has become outdated over time.

All supervisors of the City, a list of which shall be maintained by Human Resources, but not including positions identified as "lead workers" by the City,

Comment [M15]: Required addition by Act 10

Section 1.6 CLASSIFIED SERVICE: All offices and positions in the public service of the City, not included in Section 1.5, shall be designated as "classified service".

Comment [M16]: This exclusion is specified in 66.0509 but was not excluded by reference previously

1.6.1 UNCERTIFIED SERVICE: The following offices and positions in the classified service of the City shall be designated as "uncertified service" or "uncertified positions" and are covered within the scope of the Civil Service System, to the extent as specified herein, but do not require testing or certification in the filling of the positions, which positions may be filled in a manner as prescribed by the Municipal Code or, if not so prescribed, in a manner determined by the Director of Administration, as subject to the review of the Mayor.

Consider adding a definition or cross reference to 111.70

Limited-term, full or part-time employees,

Comment [M17]: I NEED TO REMOVE UNION EMPLOYEES, BUT ALSO NEED TO ADDRESS THOSE UNIONS THAT ARE STILL EFFECTIVE WITH JUST A WAGE RATE ADJUSTMENT. LOOK AT WHERE NANCY PERKY SAID THEY COME FROM.

Emergency employees authorized by the Mayor,

Employees who are employed pursuant to a special contract or separate employment agreement with the City,

1.6.2 CERTIFIED SERVICE: All offices and positions in the classified service of the City not included in 1.6.1 shall be designated as "certified service" or "certified positions".

Comment [M18]: Comparing to the Handbook are their other categories that we need to be concerned about being "classified"

Section 1.7 DESIGNATION OF AGENT: The Director of Administration shall be designated as agent for the Committee and empowered to act for the Committee in routine administration, implementation, and interpretation, where required, of these rules. The Director of Administration will have no authority to abridge rules as provided for herein or to implement rules not provided for herein, and all such actions may be subsequently reviewed and approved, disapproved, or allowed to remain unaltered by the Committee.

Comment [M19]: Added to provide more clear distinction so that an "interpretation" is not misconstrued as abridging or implementing new rules.

Comment [M20]: Same reason as above and to remove confusion as to "new" rules.

ARTICLE 2 POSITION CLASSIFICATION PLAN

Section 2.1 CLASSIFICATION OF POSITIONS: The Director of Administration shall propose amendments or revisions of the classification system to the Committee based on duties, responsibilities, and employee qualifications of all certified positions in the classified service. The Committee shall submit classification recommendations to the Common Council for approval. All personnel budget records, financial records,

employee records and communications shall denote the appropriate titles established in the classification plan adopted by the Common Council. The Director of Administration shall review position classification matters and make recommendations to the Committee.

Section 2.2 CLASS SPECIFICATIONS: The Director of Administration shall prepare position classification specifications for every authorized class of positions in the classified service. The Committee shall review and authorize these specifications. The Director of Administration will submit approved specifications to appointing authorities.

Section 2.3 REVISIONS OF POSITIONS: The Director of Administration shall study the duties, responsibilities, and necessary employee qualifications for each requested new or revised position. Based on findings of the study, the Director of Administration may recommend to the Personnel Committee the appropriate classification to fit the duties, responsibilities, and employee qualifications.

2.3.1 Whenever a change of substance or significance is made in the duties and responsibilities of a position involving either the addition of new assignments or the taking away or modification of existing assignments, such changes shall be reported by the supervisor or Appointing Authority to Human Resources who will investigate such changes. If the investigation reveals the changes to be permanent and of such a nature that reclassification is justified, the Director of Administration will make a recommendation to the Committee which will subsequently recommend the appropriate class for the position to the Common Council for final action.

Comment [M21]: There needs to be some standard for the change; it can't be EVERY change in duty, no matter how small.

2.3.2 An employee in a certified classified position may request the consideration of a reclassification of the employee's position. The employee shall initially make a written request, setting forth the employee's reason for the change to the Appointing Authority. The Appointing Authority shall then forward such request to the Director of Administration, who shall proceed thereafter in a manner consistent with 2.3.1.

Section 2.4 EFFECT OF REALLOCATION OF POSITIONS: An employee occupying a position which is reclassified to a different class, as a result of approval by the Common Council, shall continue in the position only if eligible for or if acquiring eligibility to the new position in accordance with the rules governing promotion, transfer, or demotion.

Section 2.5 CLASSIFICATION DETERMINATION DISCLOSURE: An employee may seek information from the Director of Administration as to how the classification of a position(s) was derived. The Director of Administration will disclose the methods used.

ARTICLE 3 COMPENSATION PLAN

Section 3.1 ORIGINATION AND REVISIONS:

3.1.1 The Director of Administration is responsible to prepare and to revise an equitable compensation plan fixing a salary structure, such as but not limited to a minimum salary, salary range, single wage rate, or a wage schedule, for each class of positions in the certified classified service, except those referenced in 3.1.2. The Director of Administration shall submit such salary structure recommendations to the Common Council for approval. The salary structure shall be maintained annually in accordance with 3.3.2.

Comment [M22]: Enables consideration of step and grade plans as is most common in our current structures

3.1.2 The Library Director is responsible to prepare and to revise an equitable compensation plan fixing a salary structure, such as but not limited to a minimum salary, salary range, single wage rate, or a wage schedule, for each of the Municipal Library's class of positions in the certified classified service. The Library Director shall submit such salary structure recommendations to the Library Board for approval of a recommendation to the Common Council for final approval. The salary structure shall be maintained annually in accordance with 3.3.2.

Comment [M23]: Enables consideration of step and grade plans as is most common in our current structures

Section 3.2 ADMINISTRATION:

3.2.1 BASIS OF SELECTION OF A SALARY STRUCTURE: A salary structure shall be directly related to the position-classification plan and determined with due regard to the structure of compensation for other classes.

3.2.2 APPOINTMENT RATE: Appointments to positions in the classified service shall normally be made at the established minimum rate of compensation. Appointments above the established minimum rate of compensation may only be made following recommendation by the Appointing Authority and the Director of Administration and with final approval by the Mayor for those positions addressed in 3.1.1 and by the Library Director for those positions addressed in 3.1.2; however, in each case sufficient funding must be available within the adopted budget. Appointments at a rate below the established minimum rate may not be made.

Comment [M24]: Consistent with the Salary Administration Policy.

3.2.3 ADVANCEMENT: Where the minimum and maximum limits of compensation are established for a position in the certified classified service or where consistent with the salary structure as adopted, advancement to the next higher rate within the limits of compensation for such position shall be based entirely upon meritorious performance during tenure in the position at the last rate of compensation and upon any other such factor incorporated into the salary structure for that position. The Appointing Authority shall prepare a written efficiency evaluation and conduct an evaluation interview with each employee at least annually. Recommendations as to any merited advancement to the next higher rate of the applicable compensation shall be based on the written evaluation and upon any other such factor incorporated into the salary structure for that position. The Appointing Authority will submit the efficiency evaluation

Comment [m25]: Existing language seems to assume a step and grade plan, but requires satisfactory performance. See 3.6.

Comment [m26]: Reconcile with contracts

Comment [M27]: Enables annual steps as is currently common, if so approved in a salary structure.

report and recommendation to Human Resources. The Director of Administration or his/her designee will review all evaluations and will approve advancement only when advancement is clearly justified, recommended by the Appointing Authority, and the compensation increase will not exceed the budgetary limit for the department as approved by the Common Council for the current fiscal year. Advancements in the same classification may not be made more frequently than one (1) time per year, without the approval of the Mayor, except that an introductory employee at the completion of the introductory period who demonstrates ability exceeding the compensation rate, may advance to a proper rate in line with such demonstrated ability.

Comment [M28]: Consistent with current non-rep plan. Verify.

3.2.4 PROHIBITED PRACTICES: No employee may accept or receive reward, gift, or other form of remuneration of any consequence, consistent with standards as set forth in State Statutes, in addition to regular compensation from any source for the performance of their duties.

Comment [M29]: Section 3.2.5 "work week" removed as not consistent with Section 1.2

Section 3.3 COMPENSATION:

3.3.1 CONVERSION OF MONTHLY RATES TO HOURLY RATES: Hourly rate equivalents of monthly salaries shall be determined according to the following conversion table:

<u>Salary Base</u>	<u>Hourly Rate Equivalent</u>
40 hour week	1/173 of monthly salary

All hourly rate equivalents of monthly salaries shall be reported to the nearest one (1) cent but shall be computed based upon the level of accuracy of the payroll system (for example, four decimal places).

3.3.2 COMPENSATION SCHEDULES: The compensation of employees occupying certified classified positions shall be on the basis of appropriate schedules of monthly salaries or hourly rates prescribed for the respective classes of positions. The schedules of monthly and hourly rates will be recommended by the Director of Administration and adopted by the Common Council in a separate "Salary Ordinance" or by separate resolution. The Salary Ordinance and/or resolution shall be reviewed at least annually and recommendations of revisions or modifications will be submitted by the Director of Administration to the Common Council whenever the Director of Administration deems necessary. At any time the Salary Ordinance or resolution is revised all employees occupying positions affected will automatically advance to the new rate as appropriate within the salary structure, provided the employee is maintaining satisfactory performance, in order to maintain the same place within the salary schedule. All such compensation increases shall be effective as specified by the Common Council in the Salary Ordinance or resolution. In accordance with Section 15.2, the compensation schedules and Salary Ordinance or resolution shall incorporate and may not conflict with the

Comment [M30]: Delete: "Each monthly salary and hourly rate schedule shall consist of at least a minimum rate, intermediate rate, and a maximum rate." As not consistent with "salary structure" language as set in 3.1.

Comment [m31]: Cross Each monthly salary and hourly rate schedule shall consist of at least a minimum rate, intermediate rate, and a maximum rate. reference to performance

provisions of an approved labor agreement, to the extent allowable under Wisconsin statutes.

3.3.3 COMPENSATION SCHEDULES DETERMINATION DISCLOSURE: An employee may seek information from the Director of Administration on how the compensation schedules were determined. The Director of Administration will disclose the methods used.

3.3.4 COMPENSATION BASIS: The monthly salary and hourly rate structure or ranges set forth in the Salary Ordinance or resolution shall be based on full-time employment at the established normal working hours for the respective classes of positions.

3.3.4.1 FULL-TIME WORK: All full-time employees shall be compensated consistent with the monthly salary or hourly rates prescribed in the Salary Ordinance or resolution for their respective classes of positions.

Comment [m32]: "at" was wrong since schedules or ranges may be involved.

3.3.4.2 PART-TIME WORK: Compensation to employees occupying part-time, limited-term, or emergency positions shall be based on the established hourly rates and/or the hourly rate equivalent of approved salary as provided in Section 3.3.1, if so established.

Comment [M33]: These positions are not typically in the salary ordinance and, in fact, weren't even included in the prior ordinance so it isn't clear how this sentence could be here. Nonetheless, if one is established, it should be followed.

3.3.5 SALARY ORDINANCE – EMPLOYEE FRINGE BENEFITS: For positions addressed in 3.1.1, the Personnel Committee will review and recommend and the Common Council will review and establish employees' fringe benefits, including, but not limited to, health insurance, dental insurance, life insurance, pensions, severance pay, and clothing allowance; and from time to time approve amendments to such fringe benefits provided for City employees. For positions addressed in 3.1.2, the Library Director will review and recommend and the Library Board will review and establish such employee's fringe benefits. These provisions will be addressed and recorded elsewhere and not within the Civil Service System Personnel Administration Program.

3.3.6 WORKER'S COMPENSATION:

3.3.6.1 An employee who sustains an injury while performing within the scope of employment, as provided by Chapter 102 of the Wisconsin Statutes (Worker's Compensation Act), shall receive full net salary in lieu of Worker's Compensation payment for the period of time the employee may be temporarily totally or temporarily partially disabled because of said injury, but not to exceed one year from the date of injury. In no event will such supplemental pay and Worker's Compensation benefit exceed, in aggregate, the employee's normal net "take home" pay.

Comment [M34]: Dana, I like how this clearly limits the salary basis. What do you think?

Comment [m35]: Most groups receive 100% for 1 year but the current non-rep ordinance says only 30 weeks and the Teamsters contract only provides 80% of pay for 30 weeks.

3.3.6.2 Continued eligibility for Worker's Compensation shall be reviewed every thirty (30) days by the respective Department Head and Human Resources.

3.3.6.3 This policy shall not limit policies or actions of the City to promote a return to work or light duty.

3.3.6.4 When the City shall have made any such payment and the employee makes claim for damages against any third party or his/her insurer, the City shall be entitled to receive from any damages recovered by such employee reimbursement for such wages paid in the same proportions prescribed by Section 102.29, Wisconsin Statutes, for Workers Compensation payments.

Section 3.4 OVERTIME: All employees shall use time sheets so the total amount of time worked, including overtime, is clearly recorded.

3.4.1 **AUTHORIZATION:** An Appointing Authority, or duly authorized supervisor, may authorize short periods of overtime work in emergencies or to meet irregular day-to-day operational needs. Extended overtime work required by extraordinary circumstances over and above normal day-to-day operational needs must be approved by the Common Council if additional appropriations are required.

Comment [m36]: Consistent with current budgetary and statutory practices

3.4.2 **COMPENSATION OR EARNINGS RATE:** Full-time employees, who are not otherwise identified in a subsection hereto or who are not exempt in accordance with the Fair Labor Standards Act (FLSA), shall be paid at the rate of one-and-one-half (1½) times the base rate for all hours worked above the normal work day or normal forty-hour work week and at the rate of double time for all overtime work performed on Sundays and holidays. Overtime may be paid in compensatory time in a manner as prescribed herein. Employees called in on emergency duties or mandatory call-in (hours other than regularly scheduled hours) shall be guaranteed two (2) hours pay at the appropriate overtime rate. This two-hour guarantee shall not apply to call-ins which are consecutively prior to or subsequent to (in other words, "concurrent with") the employee's regular schedule.

Comment [M37]: REVISED RECOMMENDATION

Comment [M38]: Add a cross reference to the section number once written.

3.4.2.1 **DISPATCHERS:** Employees shall receive one and one-half (1-1/2) times their straight time hourly rate for all hours worked in excess of their normal, regular scheduled workday or work week, except for training time and schooling. Employees who are required to attend training sessions or classes during their off time will receive equivalent compensatory time off or pay at the straight time rate. Training sessions or classes during off time will be scheduled so that it does not require overtime payment or compensatory time at time and one-half pursuant to the FLSA. Exceptions will only be allowed if approved by the Police Chief or his designee. Mandatory call-in provisions of 3.4.2 also apply. Overtime management procedures shall be as established by the Mayor considering the recommendation of the Police Chief.

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

Section 3.5 RETURN FROM MILITARY SERVICE: Salaries following return from military service shall be as per a separate policy as adopted by the Common Council and incorporated into the Employee Handbook.

Comment [M39]: Altered to avoid confusion

Section 3.6 PROMOTION AND TRANSFER: When a regular employee is promoted to a position having a higher compensation schedule, the rate of compensation shall be adjusted to be at the lowest rate in the higher schedule that will provide an increase of at least five percent over the rate received immediately prior to such promotion. When a regular employee is transferred from one position to another position having the same compensation schedule, the rate of compensation will remain unchanged. Subsequent advancement, in either case, to the next higher rate in the compensation schedule may be only on the basis set forth in Section 3.2.3.

Comment [m40]: Assumes a step and grade plan which we don't have

Section 3.7 HOLIDAYS: Compensation for declared holidays for the City shall be as set forth herein.

3.7.1 EXTENDED-TERM FULL-TIME EMPLOYEES: Each extended-term full-time employee shall be compensated for the declared holidays, in addition to any time worked and based upon their regular schedule, provided that the employee meets the following conditions:

Comment [m41]: Holiday limited to extended-term employees

- (a) The employee has completed thirty (30) working days of continuous service as of the date of the holiday;
- (b) The employee has worked the last regular work day prior to and the next regular work day immediately following such holiday unless the holiday occurs during the following listing periods.
 - (1) A period of paid sick leave;
 - (2) An approved vacation period;
 - (3) When the employee is on jury duty as provided in Section 10.8;
 - (4) During the week in which the employee leaves for, or returns from, an approved leave of absence.

Eligible extended-term employees shall be entitled to eight (8) hours holiday compensation at their straight time hourly rate and/or hourly rate salary equivalent exclusive of shift and overtime premiums for each such holiday or, with approval of the Department Head, may take an alternate day off. If extended-term employees, except for the position classification of "Dispatcher", are required and authorized to work on any declared holiday listed in the Salary Ordinance, the compensation for time worked on such a holiday shall be deemed overtime and employees shall be compensated for such time at the rate of double time.

3.7.1.1 DISPATCHERS: Compensation for holiday pay for dispatchers shall be in accordance with Departmental Order 2/125.00 VIII, which may be amended by the Police Chief, with the approval of the Mayor, and which shall address circumstances under which a Dispatcher's holiday day shall be

paid out or rescheduled, but which may not alter the total holiday allotment to be paid or scheduled.

3.7.2 **PART-TIME, LIMITED-TERM, AND EMERGENCY EMPLOYEES:** Employees who are employed on an extended-term part-time, with-benefit basis shall be eligible for all declared holidays subject to the conditions set forth in Section 3.7.1; however, holiday compensation is in proportion to the scheduled time such employees normally work. If such extended-term part-time employees are required and authorized to work on any declared holiday, the compensation for time worked on such a holiday shall be deemed overtime and employees shall be compensated for such time as provided in Section 3.4.2. No non-extended-term part-time employees, limited-term employees, or emergency employees shall be eligible for holiday compensation.

Section 3.8 PERSONAL HOLIDAYS (PERSONAL DAY): Employees are paid their normal hourly rate, with no premium or multiplier, for each hour of Personal Holiday leave used.

Section 3.9 VACATIONS: Employees are paid their normal hourly rate, with no premium or multiplier, for each hour of Vacation leave used. The Salary Ordinance or resolution shall authorize the length or amount of vacation periods for civil service employees, which may be changed from time to time. Extended-term, part-time employees with benefits, who work a regularly-established number of hours per day, may be eligible for a period of vacation leave each year under the same conditions that an extended-term, full-time employee may be eligible, except that compensation for each week of vacation leave shall be reduced to coincide with the number of regular scheduled weekly hours. An employee who terminates or is terminated, dies or retires from City service, shall receive compensation for any unused portion of accumulated vacation leave up to the date of termination.

Section 3.10 MILITARY LEAVE: Compensation for each extended-term employee who is required to take a period of training for the purpose of retaining status as a member in an organized unit of the reserve corps of the United States Army, Navy, Air Force, Marine Corps, Coast Guard and the National Guard or who is ordered to active duty shall be addressed by a separate policy as adopted by the Common Council, which policy shall be incorporated into the Employee Handbook.

Section 3.11 SICK LEAVE: Each extended-term full-time employee and each extended-term part-time employee with benefits shall be eligible for compensable sick leave credit based upon periods of completed service with the City, which credit may be available for use after the first six (6) months of continuous service. Employees are paid their normal hourly rate, with no premium or multiplier, for each hour of Sick leave used. Compensable sick leave credits may be capped, which caps or maximum accruals will be specified in Section 10.6.3. No compensation is paid for any unused, accumulated sick leave credit if an employee resigns, is discharged, or is laid off.

Comment [M42]: CROSS REFERENCE THE LEAVE ADMINISTRATION SECTION TO SICK LEAVE.

Section 3.12 BEREAVEMENT LEAVE: All regular full-time and part-time employees with benefits shall receive payment at their normal hourly rate, with no

premium or multiplier, for each hour of Bereavement Leave granted in accordance with Section 10.7. X

Comment [M43]: CROSS REFERENCE THE LEAVE ADMINISTRATION SECTION TO SICK LEAVE.

Section 3.13 JURY DUTY LEAVE: All regular full-time and part-time employees with benefits shall receive compensation for Jury Duty leave in accordance with a policy as adopted by the Common Council and set forth within the Employee Handbook.

Section 3.14 LEAVES OF ABSENCE WITHOUT COMPENSATION: Leaves of absence without compensation may be granted and shall be administered in accordance with the policy as adopted by the Common Council and set forth within the Employee Handbook.

Section 3.15 FAMILY AND MEDICAL LEAVE: Compensation associated with Family and Medical Leave shall be in accordance with state and federal requirements and with a policy as adopted by the Common Council and set forth within the Employee Handbook.

Section 3.16 LONGEVITY: Longevity shall mean continuous and uninterrupted service, as defined in the Employee Handbook, as an employee of the City of Franklin. An employee who is continuously employed by the City shall receive the following increments of pay: 5 years, \$5.00 per month; 10 years, \$10.00 per month; 15 years, \$15.00 per month; 20 years, \$20.00 per month; and 25 years, \$25 per month.

Section 3.17: SPECIAL DUTY PAY OR MISCELLANEOUS COMPENSATION

Comment [m44]: This section will need to be added to prior to 1/1/12 for considerations that are in the current Inspection contract or DPW, as appropriate.

3.17.1 DISPATCHER – CERTIFIED TRAINER: A Dispatcher shall be paid an additional \$.50 per hour for all hours worked while assigned to train a new employee and designated as the training officer.

ARTICLE 4 EMPLOYMENT APPLICATIONS

Section 4.1 APPLICATIONS FOR EXAMINATION: All applicants for examination must satisfy all requirements in the announcement issued for each examination. Human Resources may require applicants to submit proof of age, citizenship, and military service at the time of examination. Applicants shall not be questioned in regard to race, color, religious or political opinions or affiliations, national origin, disability, marital status, membership in the armed services, sexual orientation, ancestry, pregnancy, or any other protected characteristic as established by law, except to the extent as necessary to track non-discrimination statistics as may be required. The Committee, or Human Resources acting on its behalf, may verify statements contained in any application and shall obtain any additional information relative to character and fitness as they deem necessary.

Section 4.2 DEFECTIVE APPLICATIONS: Human Resources, acting on behalf of the Committee, may return defective applications to applicants with notice to amend or correct the application. Such amended or corrected applications shall be considered as original applications provided they are resubmitted and received by Human

Resources, on the Committee's behalf, prior to the expiration of the time limit for receiving applications.

Section 4.3 REJECTION OF APPLICATIONS: The Committee, or Human Resources acting on its behalf, may reject any defective or incomplete application and may reject any application which indicated therein that the applicant does not possess the minimum qualifications for the position.

ARTICLE 5 EMPLOYMENT EXAMINATIONS

Section 5.1 ADMINISTRATION OF EXAMINATIONS: Absent specific action of the Committee, the Director of Administration or his/her designee shall identify and select the appropriate test to administer. The Human Resources Coordinator, acting on behalf of the Committee, shall administer written, oral, and/or performance examinations to determine the suitability of applicants for positions in the classified certified service of the City. Examination shall be administered on a competitive basis and, in order to avoid the possibility of discrimination, the identity of applicants shall be concealed in all examinations. Whenever they deem it necessary, the Committee shall have the authority to appoint, subject to funding as appropriated by the Common Council for such purpose, an examining agent experienced in the particular field or line of work for which candidates for a position are to be examined. The Committee may refuse to examine an applicant, or after examination may refuse to certify an eligible person and may remove the name from the eligibility list, for any of the following reasons:

- (a) Disability of such a manner that it reasonably relates to the applicant's ability to adequately undertake the job-related responsibilities of the employment, as set forth in Section 111.34 of the Wisconsin Statutes;
- (b) Addiction to the habitual use of intoxicating beverages to excess or use of drugs;
- (c) Conviction of a crime if the circumstances substantially relate to the circumstances of the particular job, as set forth in Section 111.335 of the Wisconsin Statutes;
- (d) Making a false statement of any material fact or practiced or attempt to practice deception or fraud in the employment application.
- (e) Cheating or deception on or in relation to an examination.

Section 5.2 PREPARATION OF EXAMINATIONS: The Committee shall establish adequate examinations for each class of positions in the City certified classified service. [The Committee shall establish a list of which classes of positions in the City certified classified service require a prepared test and which examination requires only a review by Human Resources as to meeting the established education, experience, and minimum qualifications as set forth in the job description. Examinations shall relate to those matters which, in the judgment of the Committee (or Human Resources acting on their behalf where necessary), will test fairly the ability and suitability of an applicant to perform, with reasonable efficiency, the duties of the positions for which examinations are administered. Examinations may be assembled or unassembled and

Comment [M45]: Worded to also address those positions where a prepared test is not available or used.

may include written, oral, physical, application review, or performance tests, or any combination of such tests. No question in any examination shall relate to race or religious or political opinions or affiliations.

Section 5.3 SCHEDULING EXAMINATIONS: The Human Resources Coordinator, on behalf of the Committee, shall schedule entrance, promotion, and transfer examinations to fill vacancies in the City certified classified service and/or to provide eligibility lists for positions where vacancies are likely to occur. The Human Resources Coordinator, on behalf of the Committee shall provide notice of the scheduling of each examination via mail, email, verbal discussion, or by some other commonly accepted communication to all qualified applicants.

Comment [M46]: This section was changed to reflect that we review applications prior to testing and do not simply publish a notice and administer a test to everyone who shows up.

Section 5.4 ENTRANCE EXAMINATIONS: Entrance examinations shall be opened to all applicants, except extended-term full-time and extended-term part-time with benefits City employees, who meet the minimum requirements fixed by the Committee with regard to experience, education, character, physical fitness, and such other factors as may be related to the ability and suitability of the applicants to perform with reasonable efficiency, the duties of the positions for which entrance examinations are scheduled.

Section 5.5 PROMOTION EXAMINATIONS: Promotion examinations shall be open to all extended-term full-time City employees eligible to receive benefits and to employees occupying positions as approved in 5.5.1. Additionally, each such employee must meet the minimum requirements fixed by the Committee with regard to experience, education, character, physical fitness, and such other factors as may relate to the ability and suitability of such employees to perform, with reasonable efficiency, the duties of the positions for which promotion examinations are scheduled. Promotion examinations may be limited to a single department or a subdivision thereof if deemed by the Committee to be in the interest of the City service.

Comment [M47]: This limits the potential negative impacts of only hiring from a sub-set of the population that could afford to have a part-time job for a while. (Ex. Kenosha Parks to DPW)

5.5.1 The Personnel Committee shall, from time to time, approve a listing of which part-time positions are eligible for promotion examinations identifying the positions to which promotion eligibility applies. The Personnel Committee shall consider the hours per week of the part-time position, the relationship between and nature of the work of each position, and other factors as the Personnel Committee deems necessary. Such listing shall be available for inspection at the Human Resources office.

Section 5.6 TRANSFER EXAMINATIONS: Transfer examinations shall be scheduled, as the Committee or Human Resources acting on their behalf deems necessary, for the purpose of determining if extended-term City employees, who have properly requested transfer to a position in the same class or to another class with the same maximum salary limit, have the necessary qualifications to perform, with reasonable efficiency, the duties of the positions to which they seek transfer.

Comment [M48]: A phrase used in a number of places to provide for administrative ease and to remove the strict bureaucratic structure that was typical of Civil Service Systems in the 1970's.

Section 5.7 METHOD OF RATING EXAMINATIONS: The Committee shall oversee the development and implementation of sound measurement techniques and procedures for the evaluation of the training and experience of applicants and for

Comment [M49]: Again, focus on language that addresses the Committee's scope of responsibility, but recognizes that it is paid staff that is assigned the tasks.

rating the results of tests used in all examinations for the purposes of rejecting unqualified applicants and establishing the names of eligible applicants on eligibility lists in proper order according to the relative ability and qualification of applicants. The Committee shall review the findings of each examining agent or committee and shall give due consideration to such findings when establishing eligibility lists.

5.7.1 POSITIONS REQUIRING A PREPARED TEST: The minimum rating by which eligibility may be achieved by such applicants in each examination shall be established by the Committee, individually or from time-to-time. Such minimum ratings shall also apply to the rating of each part of the examination; therefore, applicants shall be required to attain at least a minimum rating on each part of the examination in order to be considered eligible for employment. The total earned rating of each applicant shall be the total of the earned rating on each part of the examination in accordance with the weights established for each such part prior to the date of examination.

5.7.2 POSITIONS NOT REQUIRING A PREPARED TEST: For positions without a prepared test and only requiring a review by Human Resources, per Section 5.2, Human Resources shall evaluate each satisfactory application to determine if it meets the established education, experience, and minimum qualifications as set forth in the job description and shall rate each such satisfactory application as "Meets Minimum Qualifications" or "Does Not Meet Minimum Qualifications." To aid Appointing Authorities in selection, Human Resources may also provide a ranking or subjective review of those meeting minimum qualifications; however, such subjective review may not take into consideration any of the factors listed throughout this policy which may be considered potentially discriminatory but may consider the training and experience of applicants in order to determine the relative ability and qualification of applicants.

Comment [M50]: This section added to also address those positions where a prepared test is not available or used

5.7.3 VETERANS RATING ADJUSTMENT: A veteran, as defined in Section 230.16(7m) of the Wisconsin statutes, or the spouse of a veteran shall receive a veteran's preference on an examination, considered under 5.7.1, in accordance with Section 230.16(7) of the Wisconsin statutes, as may be amended from time to time. Proof of veteran status shall be provided by a veteran in the form of discharge papers, a certified or photostatic copy of such, or other satisfactory evidence of honorable military service and discharge as is necessary to prove standing under Section 230.16(7m). Veterans with a disability rating shall submit proof of such disability rating on such form as may be required by the Committee and the disability must be certified by the appropriate federal agency responsible for the administration of veterans' affairs. The burden and requirement of proof and of knowledge of a Veterans Rating Adjustment shall be entirely upon the applicant, and the City is not required to amend its process or reconsider actions taken to accommodate notification of Veterans status or preference that was not presented and proved in a timely manner. Veterans shall not be eligible for adjustment of total earned ratings on promotion or transfer examinations.

Comment [M51]: As such, a veterans preference doesn't come into play for non tested positions. In other words, the minimum qualifications are not reduced to accommodate a veterans rating adjustment.

Comment [m52]: Make it their requirement to ask, not ours to provide

Comment [M53]: Added this risk management language.

Section 5.8 NOTIFICATION OF EXAMINATION RESULTS: Each applicant who takes an examination shall be notified in writing as to whether the minimum rating was attained in such examination and, if attained, the applicant's standing on the eligibility list. Each such applicant shall be entitled to inspect their own rating and examination papers, but examination papers shall not be open to the general public. Such inspection shall only be permitted at such hours and in such places as specified by Human Resources. If the Committee makes a subsequent adjustment of the final rating of an applicant, Human Resources shall promptly notify the applicant of such adjustment, the reasons therefore, and any change made in the order in which the applicant's name appears on the eligibility list.

ARTICLE 6 ELIGIBILITY LISTS

Section 6.1 ORIGINATION: After each examination, Human Resources shall prepare, and the Committee shall approve in a final manner and form as they shall determine appropriate, an entrance, promotion, or transfer eligibility list of those candidates who have attained minimum ratings as established by the Committee for that examination. Names of eligible candidates shall be placed on the list in numerical order of final ratings starting with the highest rating. In case of ties in the final rating, names of such tied candidates shall be placed on the list in alphabetical order. Human Resources shall also prepare, and the Committee shall approve in a final manner and form as they shall determine appropriate, a list of employees on lay-off status who are eligible for reinstatement.

Section 6.2 ENTRANCE LIST: An entrance list shall consist of the names of all applicants who have attained the required minimum ratings as a result of an entrance examination. Such names shall be arranged in the numerical order of final rating.

Section 6.3 PROMOTION LIST: A promotion list shall consist of names of all extended-term City employees who have attained the required minimum ratings as a result of a promotion examination. Such names shall be arranged in numerical order of final rating.

Section 6.4 TRANSFER LIST: A transfer list shall consist of the names of extended-term City employees who have attained required minimum ratings as a result of a transfer examination. Such names shall be arranged in numerical order of final rating.

Section 6.5 REINSTATEMENT LIST: A reinstatement list shall consist of names of extended-term City employees who have been laid off from their positions in accordance with these rules and who are eligible for rehire. Such names shall be arranged in order of length of continuous service with the City starting with the longest period of continuous service.

Section 6.6 COMBINATION OF LISTS: Two eligibility lists of the same type and for the same class of positions may be consolidated by the Committee in a manner fair to eligible people on both lists.

Section 6.7 REMOVAL FROM LISTS: The Committee may remove the following from the eligibility list:

- (1) Any person certified to fill an extended-term position in the City classified service and who accepts such appointment or refuses such position when it is offered by the Department Head, or who fails to present him/herself for duty within such reasonable period of time as prescribed by the Appointing Authority;
- (2) Any person who made false statements, subsequently discovered in the application;
- (3) Any extended-term employee who refuses to accept a requested transfer;
- (4) Any extended-term employee on lay-off status who refuses reinstatement or who fails to report on reinstatement within the period of time prescribed by the Committee;
- (5) Any person who fails to notify the Committee in writing of a change of address.
- (6) Any person subsequently found to have cheated on the examination.

Section 6.8 DURATION OF LISTS: A list shall remain in force for one (1) year from the date on which originally established by the Committee except as follows:

- (1) Before the expiration date of the list, the Committee may extend the time for six (6) month periods during which a list remains in force when the needs of the City service so require, but such extended time may not exceed three (3) years from the date on which the list was originally established, and
- (2) The list may be decertified earlier by the Committee for any such, non-discriminatory reason that the Committee deems appropriate and in the best interest of the City.

Any action of the Committee reducing or extending the time period which a list shall be in force shall be duly entered in the meeting minutes of the Committee and the reasons for such extended time period shall be adequately explained therein.

Section 6.9 AVAILABILITY OF ELIGIBLE APPLICANTS: Each applicant listed on the eligibility list shall file with Human Resources any changes affecting availability for employment. Human Resources, acting on behalf of the Committee, may use whatever methods it deems proper to determine availability of applicants listed on an eligibility list. Whenever an eligible applicant submits a written statement to Human Resources or the Committee restricting the conditions of availability for employment, the name shall be withheld from any certification which does not meet the conditions specified, to the extent possible or practicable as determined by Human Resources. Such an eligible applicant may file a new written statement with the

Comment [M54]: Risk management addition

Committee in the duration of the eligibility list to modify or void any prior statement filed as to the condition(s) under which available for employment.

ARTICLE 7 RECRUITMENT

Section 7.1 PERSONNEL REQUISITION: A Department Head may submit a Personnel Requisition to Human Resources to fill a new position or vacancy in an existing position in the classified service, and Human Resources, acting at the direction of the Mayor, shall make the Committee aware of such requisition in a manner and form as prescribed by the Committee.

Section 7.2 CERTIFICATION OF ELIGIBLE APPLICANTS: Upon receipt of an approved personnel requisition for a position for which a valid eligibility list is in place, Human Resources, acting on behalf of the Committee, shall provide the names, addresses, and final ratings of three (3) eligible persons standing highest on the appropriate eligibility list. If the personnel requisition specifies more than one (1) position vacancy for the class of position, Human Resources shall in the same manner provide four (4) names more than the existing vacancies. In the event of a tie at the third or fourth position as indicated above, the Director of Administration shall use statistical methods and/or personnel management principles to narrow the list to the required number or may provide additional names and addresses.

The list as provided in Article 6 of these rules shall be used in the following order for certification:

- (a) Reinstatement list,
- (b) Transfer list,
- (c) Promotion list,
- (d) Entrance list.

Human Resources shall only provide names from a certified entrance list when no person is eligible for reinstatement, transfer, or promotion. If special requirements, skills, or knowledge are specified in the Position Specifications in the personnel requisition and the Committee after investigation deems that the facts and reasons specified show a need for the special requirements, skills, or knowledge for effective performance of the duties of the position, certification shall be limited to such qualified persons on the appropriate lists.

Section 7.3 APPOINTMENTS: The Appointing Authority shall examine the applications of certified applicants in regard to education, experience, and other applicable factors and may conduct individual interviews of such candidates, which interviews may not consider any of the discriminatory factors referenced in these rules except to the extent that they may specifically impact the ability to perform the essential functions of the job. Based upon the specific requirements of the position, examination results, and individual interviews, the Appointing Authority may make a decision as to which certified applicant or applicants will be chosen for the vacancy or vacancies and shall immediately inform Human Resources in writing of the resulting appointment or appointments. The Appointing Authority will establish a time period for reporting for duty, notify the appointed applicant of appointment and established

Comment [M55]: Language from Wis Stat 230.25 as to how the state Administrator determines the number of names on the list. Gives flexibility to deal with varying volumes of test results.

Comment [M56]: It is a toss up which order to set these two. The current Handbook encourages promotions for employees and states that lateral transfers will only be made if it benefits the City's service. Leaving it the way it is, however, does give the organizationally more senior employee an edge or the less organizationally senior person, which is not atypical. As such, I left it as previously stated.

Comment [M57]: "Continuous service of extended-term employees, if examination rating and all other qualifications are approximately equal, shall be the determining factor of the order by which the Committee shall make certifications from the promotion and transfer lists." Eliminated to give department heads greater ability to select from internal candidates based on performance factors.

Comment [M58]: This step has always occurred, but wasn't in the current text.

time period for reporting for duty, and specify the time and place of reporting as well as any other pertinent information.

Section 7.4 ACCEPTANCE OF APPOINTMENT: If a certified person presents him/herself for duty within a reasonable period of time as the Appointing Authority shall prescribe, that person shall be deemed to have accepted the appointment and been appointed, otherwise the person shall be deemed to have declined the appointment.

Section 7.5 LIMITED-TERM APPOINTMENTS: Limited-term appointments for short term employment may be made from eligibility lists intended for extended-term employment if an appropriate list is in place. If no appropriate list exists or if certification from lists is impractical because of non-availability of the eligible applicant for limited-term work, the Mayor may authorize the limited-term appointment of any qualified individual or Human Resources may elect to pursue establishment of an eligibility list through the Committee. Successive emergency appointments of the same person to the same position shall not total more than the equivalent of six (6) months full time work in a twelve (12) month period, unless specifically authorized by the Committee. The acceptance or refusal by an eligible applicant for a limited-term appointment shall not affect the applicant's standing on an eligibility list for an extended-term position. Any period of employment under a limited-term appointment is not part of the introductory service period in the event of subsequent appointment to a regular position.

Comment [M59]: Section adjusted to reflect flexibility with such positions that is more consistent with our current practices.

Section 7.6 EMERGENCY APPOINTMENTS: When an emergency condition makes it impossible to fill a position in the City classified service in accordance with these rules, the Mayor may appoint any qualified person to such position to prevent stoppage of public business, inability to adequately commence public business, or loss or serious inconvenience to the public. Any person so appointed shall only be employed during such emergency condition, which shall not exceed thirty (30) working days in any twelve (12) month period, unless otherwise approved by the Committee. There shall be no emergency if the Mayor had or, in the exercise of due diligence should have had, reasonable notice of a clear employment condition. The Mayor shall report all emergency appointments to the Committee and the Common Council as soon as reasonably possible following such emergency appointments. Any period of employment under an emergency appointment is not part of the introductory service period in case of subsequent appointments to a regular position.

Comment [m60]: Comma is in the wrong place

Section 7.7 NEPOTISM PROHIBITED: No person shall be appointed to any position in the City service subject to these rules who is related by blood (whether of whole or half blood), or through marriage to the appointing officer, or to any member of the appointing board or body or to any direct superior, or any elective or appointive City official who also is the appointing officer. This prohibition includes appointments to classified positions.

Relationship as here defined, shall extend to all persons related as closely as first cousin when the relationship is by blood, or more closely related than first cousin where the relationship is through marriage, cases of husbands of sisters-in-law and wives of brothers-in-law. In the event nepotism occurs after appointment (marriage),

within six (6) months after the event causing the nepotism, the employee concerned must seek a transfer, promotion, etc., or the City will unilaterally take action to eliminate this rule infraction.

ARTICLE 8 INTRODUCTORY SERVICE

Section 8.1 INTRODUCTORY PERIOD: All appointments, whether original, introductory, or by reinstatement or transfer to a position of a different class or in a different department than in which the employee had previously served and intended to be permanent shall be for an introductory period of six (6) months of actual continuous service. No transfer, promotion or appointment shall be deemed final until the appointee has satisfactorily completed the introductory period. An Appointing Authority with the approval of the Director of Administration may extend an introductory period for up to an additional 6 months based upon satisfactory need. The Committee may establish a longer introductory period for a position at the time of certification of the list if such extensions do not exceed one (1) year and if deemed to be in the interest of City service. The introductory period shall be regarded as an integral part of the selection process and shall be utilized by close observance of the employee's work and work habits for the purpose of obtaining the most effective adjustment to the position and for rejecting any employee whose work performance or work habits do not meet work standards.

Section 8.2 INTRODUCTORY PERIOD REPORTS: The Department Head shall, no less than two (2) weeks prior to the expiration of an employee's introductory period, report to Human Resources in writing as to whether or not the services and conduct of the employee have been satisfactory and whether or not the employee will continue in the position or whether the introductory period will be extended. Annually, Human Resources may provide the Committee with a summary report of the end of introductory period actions.

Comment [m61]: Reinstitute this as an administrative process..

Section 8.3 DISMISSAL DURING THE INTRODUCTORY PERIOD: The Appointing Authority, with approval of the Director of Administration, may dismiss an employee any time during the established introductory period if such employee, after adequate opportunity to qualify, shall be found incompetent, unqualified, or otherwise unsuited, in the opinion of the Appointing Authority, to perform satisfactorily the duties of the position, including but not limited to interacting well with others within the scope of the office or work environment. In the event of such dismissal, the Appointing Authority shall submit to Human Resources a written statement of reasons for dismissal together with such other service rating reports and forms as Human Resources may require. Any employee who, during the introductory period, is found to have been appointed through fraud or error, shall be dismissed within ten (10) working days of notification to or by Human Resources.

Section 8.4 RESTORATION OF UNSUCCESSFUL APPOINTEE TO FORMER POSITION: An extended-term City employee, appointed from a transfer or promotion eligibility list to a new position who does not successfully complete the introductory period in the new position shall be reinstated in the position, or in a position of the same class, or similar class if in the best interest of the City, occupied by the employee immediately prior to transfer or promotion in line with established

continuous service with the City. All other unsuccessful appointees shall be dismissed in accordance with other provisions of these rules. Actions under this Section 8.4 shall not be considered a demotion.

ARTICLE 9 DISCIPLINE: An overall intent of discipline is to maintain the efficiency and integrity of City service. The tenure of all City employees shall be based on reasonable standards of job performance and personal and professional conduct. As such, discipline may result when an employee's actions do not conform with generally accepted standards of good behavior, when an employee has misconduct or violates a policy or work rule (including, but not limited to, those in the Employee Handbook and in this Personnel Administration Program), when an employee's performance is not acceptable or exhibits incompetence, when the employee's conduct is detrimental to the interest of the City, or at any other such time as deemed reasonable by the City. Additional examples of actions warranting disciplinary action as listed in the Employee Handbook are incorporated herein by reference. This policy is intended to comply with Wis. Stats. Section 66.0509. A "just cause" standard is not required to be met in the issuance or review of disciplinary action, but disciplinary action taken should be reasonable or appropriate, and not arbitrary and capricious, given the circumstances associated with the disciplinary action.

Section 9.1 STEPS OF PROGRESSIVE DISCIPLINE: Disciplinary action will be progressive when appropriate and may include, but is not limited to, any of four steps: verbal warnings, written warnings, suspensions with or without pay, and dismissal (termination of employment). Employees will be provided a written or verbal notice of the allegation(s) and provided an opportunity to be heard, prior to imposition of discipline. The Employee will be afforded a reasonable opportunity, as determined solely by the City, to be represented by one individual, at the Employee's sole cost, during the employee's opportunity to be heard. It is the responsibility of each supervisor and Department Head, who may seek assistance from Human Resources, to evaluate the circumstances and facts of employee actions objectively and apply a reasonable form of discipline; however, failure of each supervisor or Department Head to do so shall not lessen the appropriate disciplinary action or forgive the employee's action. The nature and severity of the offense, and the employee's prior record, and any other factor deemed reasonable by the City on a case-by-case basis may be considered in administering disciplinary measures; however, there may be circumstances when one or more steps are bypassed. Certain types of employee actions or problems are serious enough to justify either a suspension or termination of employment without going through progressive discipline steps, even in the event when an employee's prior work record was clean. **The City reserves the right, in its sole discretion, to impose disciplinary action as it determines may be reasonable and appropriate to the particular circumstances.**

9.1.1 "I'M DISAPPOINTED MEMO" - An "I'm Disappointment Memo" is not a disciplinary action, but a method for informing an employee of concerns that could lead to disciplinary action. They may be considered as part of the employee's prior record, but are not grievable.

9.1.2 **VERBAL WARNING:** Verbal warnings are typically the first step of progressive discipline. In a verbal warning the employee is informed of their action or inaction that warranted the verbal warning and should be informed of

the performance expectation to avoid additional steps of progressive discipline. The issuance of a verbal warning should be documented in writing and should be provided to the employee. Failure to document a verbal warning does not eliminate it from future consideration, but it may impact its consideration in considering an employee's prior record.

9.1.3 **WRITTEN WARNING:** Written Warnings should be prepared by the supervisor involved and are to be signed by the employee and placed in the employee's personnel file. A copy of a written warning should be retained by the employee.

9.1.4 **SUSPENSION:** A Department Head may, for the purpose of discipline, suspend any employee in the City classified service under the Department Head's jurisdiction, with or without compensation for a reasonable period of time not to exceed thirty (30) calendar days in any twelve (12) month period. Prior to issuing the suspension, the Department Head must review all pertinent information specifying and supporting the reasons for discipline, the discipline to be imposed, the effective date, and summarizing the investigation that occurred with the Director of Administration, who must concur with the discipline to be imposed or else the matter shall be reviewed by the Mayor. A copy of such suspension statement shall be provided to the employee.

9.1.5 **DISMISSAL:**

9.1.5.1 A dismissal is a discharge or termination of employment made as a result of disciplinary action. A Department Head, for the purpose of discipline and with the approval of the Director of Administration, who may require such documentation as he determines is necessary, may dismiss an employee under the Department Head's jurisdiction, but no dismissal shall take effect until the Appointing Authority submits to such employee a written statement specifying the reasons therefor and files a copy of such statement, and other required forms, immediately with the Director of Administration.

9.1.5.2 A "dismissal" shall include action taken by the employer to terminate an individual's employment for misconduct or performance reasons, but shall not include the following personnel actions:

- (a) Voluntary quit,
- (b) Layoff or failure to be recalled from layoff at the expiration of the recall period,
- (c) Retirement
- (d) Job abandonment, "no-call, no-show" or other failure to report to work, or
- (e) Termination of employment due to medical condition, lack of qualification or license, or other similar inability to perform job duties.

Section 9.2 NOT DISCIPLINE: Discipline does not include the following:

- (a) Placing an employee on paid administrative leave pending an internal investigation,
- (b) Counselings, meetings, or other pre-disciplinary action,

- (c) Actions taken to address work performance, including use of a performance improvement plan or job targets.
- (d) Demotion, transfer, or change in job assignment, or
- (e) Other personnel actions taken by the employer that are not a form of progressive discipline.

Section 9.3 RIGHT TO GRIEVE: An employee who has received discipline in the form of a verbal warning, written warning, suspension, or dismissal may grieve the disciplinary action in accordance with Article 12.

Section 9.4 "LAST CHANCE AGREEMENT": Nothing in this Program shall prohibit the mutual resolution of disciplinary action or related grievance procedure from concluding with a "Last Chance Agreement," which agreement may eventually or ultimately result in a voluntary separation by an employee who commits the violation or action as specified in the "Last Chance Agreement."

ARTICLE 10 ATTENDANCE AND LEAVE REGULATION

Comment [M62]: THIS SECTION NEEDS TO BE EXPANDED TO COVER ALL TOPICS

Section 10.1 WORK WEEK AND HOURS OF WORK:

10.1.1 A work week is Sunday through Saturday. Most full-time employees will work 40 hours per week; however, all full time employees shall work at least 37.5 hours per week on average, except as otherwise noted herein. All part-time employees shall work less than 37.5 hours per week on average.

10.1.2 Except as otherwise noted herein, the normal work week shall consist of five (5) eight-hour work days, exclusive of authorized meal periods.

10.1.2.1 For full-time employees, the Common Council or Mayor may authorize deviations from 10.1.2 provided the hours for which the employee is paid adhere to 10.1.3 and the employee is only paid for hours worked and for other paid leave hours set forth herein. [For example an employee working from 7:00 a.m. to 5:00 p.m. would be paid for 9.5 hours if there were a one-hour lunch period or 10 hours if there were a one-half-hour lunch period.] Regular shifts or duty assignments established under this provision that exceed 8 hours in length shall not require overtime payments except as required by FLSA.

10.1.2.2 The work week for Dispatchers in the Police Department shall consist of five (5) workdays followed by two (2) off days, followed by five (5) workdays followed by three (3) off days, referred to as 5-2, 5-3 duty schedule, with shifts eight hours and 15 minutes long at times set forth by the Police Chief in department standard operating procedures.

10.1.3 **LUNCH PERIODS:** Except as otherwise set forth herein, full-time employees shall receive a one (1) hour lunch. Half of the lunch period is paid by the City, the other half is unpaid. [Example: Working 8:30 a.m. to 5:00 p.m with a 12:00 to 1:00 lunch is eight (8) hours worked.] Including the half

hour paid lunch period, the full-time employee must work at least 6 hours to receive the half-hour paid lunch period for that day, but the paid lunch period may not be at the beginning or end of the work period. [Therefore, a full-time employee starting at 8:30 must work until at least 3:00 in order to take a 1 hour lunch that includes the half-hour paid lunch period] The lunch period may be reduced to one-half hour, paid, in conjunction with a work schedule established under 10.1.2.1. Full-time employees who are FLSA exempt are not eligible to receive additional compensation or overtime if they work through the un-paid portion of a lunch period. Full-time employees who are not FLSA exempt do not receive overtime payment or double compensation if circumstances require that they work through their paid half-hour lunch period. Part-time employees are not qualified for a paid lunch period.

10.1.3.1 For Dispatchers in the Police Department the schedules in 10.1.2.2 shall include a thirty (30) minute paid lunch break during their tour of duty, during which time the employee shall be required to remain in the building subject to recall to their work station.

10.1.3.2 For Department of Public Works employees the lunch period shall be one-half hour unpaid, but employees will receive a 20-minute paid break period during the full work day, which will be administered as determined by the immediate supervisor acting under the authority or direction of the department head.

10.1.3.3 The Common Council or Mayor may approve a revised office-hours schedule, including deviations in the lunch period, for a department that, but such deviations shall remain consistent with the spirit of 10.1.3. The Director of Administration may approve extended term deviations from the lunch periods set forth herein to address special circumstances or departmental needs or schedules, but such deviations shall remain consistent with the spirit of 10.1.3.

10.1.3.4 Lunch periods for the Library shall be as established by the Library Director; however, any paid lunch period must be in compliance with an adopted policy of the Library Board.

Section 10.2 HOLIDAY LEAVE: The declared holidays for the City and the administration of holiday leave shall be addressed in the Employee Handbook.

Section 10.3 PERSONAL HOLIDAYS (PERSONAL DAYS): Except as otherwise specified herein, full-time employees will receive five (5) Personal Holidays per calendar year, except employees with less than 5-years of continuous service will receive four (4) Personal Holidays, which will be issued at the start of each calendar year. Personal Holidays must be taken within the calendar year at a time mutually agreed upon between the employee and the Department Head, except up to two days may be carried over with the approval of the Department Head and Director of Administration in the event of special circumstances, solely as determined by the City. Employees' requests for personal days shall be made twenty-four (24) hours in advance to the employee's supervisor, except in cases of emergency. The Department

Comment [M63]: Reflects a need of management.

Head shall not unreasonably withhold consent to take a Personal Holiday but may do so if required to serve the needs of the department. A new employee shall have their Personal Holiday allowance for the then current year prorated based upon the portion of the year remaining, as calculated by Human Resources. Personal Holiday's must be used for a minimum two-hour period.

10.3.1 DISPATCHERS: Dispatchers are eligible to receive and use four (4) personal days after one (1) year of service, and do not receive a prorated leave balance upon being hired. Administration of Dispatchers' Personal Holidays, including carry over restrictions, shall be in accordance with Departmental Order 2/125.00, which may be amended by the Police Chief, with the approval of the Mayor.

10.3.2 DEPARTMENT OF PUBLIC WORKS AND SEWER AND WATER DEPARTMENT: Department of Public Works and Sewer and Water Department employees shall receive four (4) Personal Holidays per calendar year and shall be required to observe a minimum four-hour period.

Section 10.4 VACATIONS:

10.4.1 ACCRUAL RATE: Except as otherwise set forth herein, each extended-term full-time employee and each extended-term part-time employee with benefits in the City service shall accrue vacation hours each payperiod. The accrual rate per pay period shall be 1/26th of the appropriate annualized benefit as listed in the Employee Handbook. A new employee is not eligible to use any vacation hours until after six (6) months of continuous employment. The length of the vacation period or vacation accrual rate of each eligible employee shall be based on the employee's years of continuous service as of their last anniversary date.

10.4.1.1 Dispatchers: Dispatchers shall accrue vacation leave once annually (lump-sum) on January first of each year, except a new employee shall receive their first lump-sum on their first anniversary date. An employee who separates employment prior to their anniversary date in any given year who has used all of their vacation allotment for that year is subject to an adjustment to their separation payout to reconcile for vacation used but not earned for the period between their separation date and their anniversary date.

10.4.1.2 EXTENDED-TERM PART-TIME EMPLOYEES WITH BENEFITS: Extended-term, part-time employees with benefits, who work a regularly-established number of hours per day, may be eligible for a period of vacation leave each year under the same conditions that an extended-term, full-time employee may be eligible, except that the accrual rate for each week of vacation leave shall be reduced proportionally to coincide with the number of regularly scheduled weekly hours. If a regularly-scheduled, part-time employee is duly certified, appointed and accepted as an extended-term employee, continuous service with the City service for vacation purposes shall be recomputed to establish a date which will reflect and be the equivalent of full-time service.

10.4.2. VACATION SCHEDULING: Each Department Head shall recommend to the Mayor, after consultation with Human Resources, a vacation scheduling policy that pays particular regard to the continuous service of employees (seniority) and the operating requirements of the Department or divisions thereof. Said plans will be submitted to the Mayor for approval and shall automatically be incorporated into the Employee Handbook without requiring separate action by the Common Council.

Said departmental Vacation Scheduling Policies shall incorporate the following provisions:

(a) Vacation leave credit may be applied, at the written request of the employee and with the approval of the Appointing Authority, to periods of absence due to sickness, injury, disability or Military leave.

(b) A holiday occurring during an employee's approved vacation period shall not be considered a day of vacation leave.

(c) An approved vacation period for an employee may not be rescinded for the sole purpose of granting a vacation period to a more senior employee.

Section 10.5 MILITARY LEAVE: Leave allowances and leave administration for each extended-term employee who is required to take a period of training for the purpose of retaining status as a member in an organized unit of the reserve corps of the United States Army, Navy, Air Force, Marine Corps, Coast Guard and the National Guard or who is ordered to active duty shall be addressed by a separate policy as adopted by the Common Council, which policy shall be incorporated into the Employee Handbook..

Comment [m64]: THIS SECTION WILL BE REDRAFTED TO REFLECT THE CURRENT ADOPTED POLICY

Section 10.6 SICK LEAVE:

10.6.1 ELIGIBILITY: Each extended-term full-time employee and each extended-term part-time employee with benefits shall be eligible for sick leave credit based upon periods of completed service with the City, which credit may be available for use after the first six (6) months of continuous service. The positions of Public Health Nurse, Planner, Police Department Administrative Assistant, Administrative Project Assistant, and Deputy City Clerk shall use, accrue, and administer their sick leave credits, incorporating all subsections of 10.6, in the manner authorized for supervisors in the Employee Handbook.

10.6.2 COMPUTATION OF SICK LEAVE CREDIT: Each eligible employee shall be credited with sick leave up to the maximum sick leave accumulation at the rate of the number of hours equivalent to one (1) average regular scheduled workday period (i.e., prorated), exclusive of overtime and authorized meal periods, for each month of completed service after becoming eligible. For the purpose of sick leave credit, completed service shall include absence due to declared City holidays, to approved vacation leaves, and to disability arising from injuries sustained in the course of City employment,

as evidenced by applicable worker's compensation payments. All other periods of absence shall not be included as completed service.

10.6.3 MAXIMUM SICK LEAVE ACCUMULATION: Except as set forth in 10.6.1, unused sick leave credit of any eligible employee may not exceed 180 days.

Comment [m65]: Consistent with most of our contracts.

10.6.4 SPECIAL SICK LEAVE CREDIT: If an employee has not taken sick leave during a specified four month period (January through April, May through August, and September through December), the employee shall receive a bonus of one sick day.

10.6.5 USE OF SICK LEAVE CREDIT: Eligible employees, upon the approval of their supervisor, may use sick leave credit in accordance with the provisions listed below, to claim compensation for periods of absence due to illness, injury, or quarantine due to contagious disease which could be communicated to other employees (except where Worker's Compensation applies):

Comment [m66]: Still need to provide wording so that current non-represented employees may continue to use sick leave to immediate family members living in the home. Also need to address doctors visits.

(a) Employees shall make every reasonable effort to inform their immediate supervisor of any such absence prior to the beginning of their work shift or as soon as possible thereafter. Failure to do so within twenty-four (24) hours from the beginning of their work shift on each day of absence may be cause for denial of use of sick leave credit for the period of absence, except an employee may provide a notice for a multiple day period.

(b) Sick leave credit may not be used to cover a period of absence less than one hour of the employee's regularly-scheduled daily work hours, except for Department of Public Works and Sewer and Water Employees who may not use sick leave credits to cover a period of absence less than 4 hours of the employee's regularly-scheduled daily work hours.

Comment [m67]: This would be new to some people.

(c) The use of sick leave credit in excess of three (3) consecutive days to cover periods for reason of illness, injury, or quarantine may be granted only after an employee presents to the supervisor, a written statement from the employee's physician stating the nature of the illness and certifying that the employee's condition prevents or prevented the employee from performing the duties of the position and, when applicable, that the employee may return to work and can perform the duties of the position. An employee with any illness or injury of more than seven (7) consecutive calendar days must present such a written statement weekly from a physician.

(d) Sick leave credit may be used in accordance with State, Federal, and Local Family Medical Leave Act (FMLA) provisions.

(e) A holiday occurring during an employee's absence due to approved sick leave shall not be considered a day of sick leave.

(f) All unused, accumulated sick leave credit is automatically cancelled if an employee resigns, is discharged, or is laid off except that employees who are laid off, for reasons not discreditable to them, will retain their unused accumulated sick leave credit provided they are reappointed within one (1) year from the date of the lay off.

(g) VACATION LEAVE DONATION: Donation of Vacation leave time is allowed to benefit a sick employee. It shall be administered in accordance with the policy as adopted by the Common Council and set forth within the Employee Handbook

10.6.6 ADMINISTRATION OF SICK LEAVE CREDITS: Supervisors shall ensure sick leave credit used by employees under their jurisdiction is properly and accurately submitted for accounting within the time-keeping system. The Director of Administration shall cause to be maintained a current record of each employee's sick leave credit accumulation and shall make appropriate monthly reports available to supervisors and employees.

10.6.7 SICK LEAVE ABUSE: Any employee fraudulently obtaining sick leave approval or any supervisor falsely certifying to sick leave approval for absence from work for unapprovable reasons, may be disciplined. Any employee exhibiting a pattern of excessive sick leave use, as determined by the City, which pattern can be established by consistent annual use of sick leave credits of more than 6 days without a valid medical reason, as reasonably determined by the City, may be disciplined. Any employee exhibiting a pattern of periodic or cyclical or event-based sick leave use, as reasonably determined by the City, may be disciplined.

Comment [m68]: This initial policy of Sick Leave Abuse restraint may be reviewed again in the near future.

Section 10.7 BEREAVEMENT LEAVE:

Comment [M69]: Significantly matches the Employee Handbook language.

10.7.1 All regular full-time and part-time employees with benefits shall receive up to three (3) working days off with pay as bereavement leave to arrange and/or attend funeral activities in the event of a death within the employee's immediate family. "Immediate family" shall be defined as the employee's spouse, child, father, mother, sister, brother, father-in-law and mother-in-law. The death of a brother-in-law, sister-in-law, daughter-in-law, son-in-law, grand-children, grandparents, or aunt or uncle of the employee or the employee's spouse shall result in one(1) working day off with pay.

Comment [M70]: Not previously in non-rep ordinance, but in some contracts.

10.7.2 When a bereavement leave of absence occurs during an employee's vacation, it shall be considered as part or all of the leave granted up to the amount of days authorized.

10.7.3 An Employee must obtain pre-approval (prior to the first day of usage if possible or during the first day of usage) for bereavement leave by contacting their immediate supervisor or department head. Employees who fail to return to work on the specified date without receiving an extension shall be subject to disciplinary action.

10.7.4 Bereavement leave is to be used to arrange and/or attend funeral activities. Confirming documentation may be required.

10.7.5 Bereavement leave is not deducted from sick leave.

Section 10.8. JURY DUTY LEAVE: Jury duty leave shall be administered in accordance with the policy as adopted by the Common Council and set forth within the Employee Handbook.

Comment [M71]: Where there is no anticipated distinction between those covered by the Civil Service System and those strictly regulated by the Employee Handbook, this strategy will be used to avoid duplication or potential conflict.

Section 10.9 LEAVES OF ABSENCE WITHOUT COMPENSATION: Leaves of absence without compensation may be granted and shall be administered in accordance with the policy as adopted by the Common Council and set forth within the Employee Handbook.

Section 10.10 FAMILY AND MEDICAL LEAVE: The Family and Medical Leave Policy shall be in accordance with state and federal requirements and with the policy as adopted by the Common Council and set forth within the Employee Handbook.

Section 10.11 CONTINUITY OF SERVICE REQUIREMENTS: Continuity of Service Requirements shall be administered in accordance with the policy as adopted by the Common Council and set forth within the Employee Handbook.

Section 10.12 UNEXCUSED ABSENCE: An employee who expects to be absent from duty shall report that reason to the supervisor prior to the date of absence whenever possible and in no case later than twenty-four (24) hours from the time the employee failed to report for duty. Failure to report such absence within the specified time limit may be grounds for disciplinary action. Failure to provide reasons acceptable to the supervisor or an unreported absence, as defined above, shall be deemed an unexcused absence. All unexcused absences in excess of three (3) continuous working days shall have the effect of termination of employment.

Comment [M72]: Consider reconciling this with three day requirement.

ARTICLE 11 REDUCTION OF PERSONNEL OR STATUS

Section 11.1 AUTHORITY: The authority to lay off personnel shall not be vested in the Committee, but a layoff may occur to a classified employee when determined necessary by the Mayor and/or Common Council due to lack of work or funds or for other causes outside the employee's control and which do not reflect discredit upon the service of the employee.

An Appointing Authority shall have the authority to dismiss employees and to accept resignations of employees.

Section 11.2 REDUCTION METHODS:

11.2.1 TRANSFER: Whenever practical, employees scheduled for lay off shall be temporarily transferred to positions in other departments to do work which they are qualified to perform. Such transfer shall not displace any employee with a greater period of continuous service. Any employee having been transferred to avoid lay off shall be given an opportunity to re-transfer back to the former position and department in line with the

employee's continuous service when work becomes available in the regular department.

11.2.2 LAY OFF: An Appointing Authority who has been given authority to reduce personnel may lay off such employees as necessary to accomplish the amount of reduction as required. The Appointing Authority, with approval of the Director of Administration after his/her review of performance evaluation records, may lay off employees based upon performance and prior performance evaluations in order to retain the employees that are in the best interest of the City with regard to service delivery, unless the Common Council or Mayor directs that the layoff occur based upon the employees in the authorized classes of positions who have the least amount of continuous service, in the inverse order of their continuous service. In the event the Director of Administration determines there is not a clear distinction in performance records for employees in the classes of positions affected or in the event there are multiple employees with similar performance records, the employees in the authorized classes of positions who have the least amount of continuous service shall be laid off first in the inverse order of their continuous service. Additionally, an employee with greater continuous service who lacks the necessary ability may be laid off and an employee with lesser continuous service who has the ability may be retained.

Comment [M73]: Added in the event that at the time of layoff the City has not yet established a process to ensure that non-discriminatory factors, such as age, are not illegally influencing the results.

Section 11.2.2.1 NOTIFICATION OF LAY OFF: An Appointing Authority shall give written notice to the employee of a planned lay off a minimum of two (2) weeks before the date of lay off, unless otherwise specified by action of the Common Council. Unless the notice of lay off was prepared by the Director of Administration, an Appointing Authority shall submit copies of all notices of lay off to the Director of Administration prior to or on the date of notification of lay off.

In the case of limited-term or emergency employment, the Appointing Authority, when appointing such employee, shall specify the approximate expected duration of such employment, if known.

Section 11.2.2.2 "BUMPING RIGHTS" DURING LAYOFF: Employees who are notified that they are to be laid off do not have "bumping rights" (the ability to take the position of another employee of a lower classification and cause that employee to be laid off) unless the Common Council has so directed upon ordering the lay off(s).

Section 11.2.2.3 An employee who has been laid off shall be placed on a Reinstatement List, as set forth in Section 6.5, for a period of three (3) years.

Section 11.3 RESIGNATION: Employees desiring to resign from the City service in good standing shall submit to their Department Heads or other Appointing Authority, a written resignation at least fourteen (14) calendar days prior to the date of resignation, unless the Department Head or Appointing Authority, because of

extenuating circumstances, agrees to permit a shorter period of notice. Failure to comply with this provision shall be entered on the service record of the employee and may be cause for denying future employment with the City. The Committee shall be notified immediately of all resignations and employees who fail to resign in good standing.

Section 11.4 DEMOTION – REDUCTION IN STATUS: The Common Council may authorize or direct the demotion of individual positions or classes of positions at their discretion, which demotion may take the form of a downward adjustment of the pay schedule. An affected employee will be provided a minimum of a two week advance notice of the effective date of a demotion. No demotion shall be made as a disciplinary action.

Comment [M74]: This section was in the last document but it has been significantly changed due to its unlikelihood of use, but it has been retained as a cost reduction option for the Common Council.

ARTICLE 12 EMPLOYEE GRIEVANCES: This policy is intended to comply with Section 66.0509 Wis. Stats. and applies to all employees in classified service.

Section 12.1 AUTHORITY TO GRIEVE AND STANDARD OF REVIEW: Employees in the City classified service may resort to the grievance procedures prescribed herein when they have a grievance pertaining to discipline or dismissal (termination). Grievances should be evaluated at each step in relation to reasonable standards of job performance and personal and professional conduct, as expressed more fully in Article 9 “Discipline”, and in relation to whether the disciplinary action as taken is reasonable or appropriate, and not arbitrary and capricious, given the circumstances associated with the grieved disciplinary action. No punitive action shall be carried out against any employee who files a grievance based simply on the fact that they filed a grievance. A “just cause” standard is not required to be met in the issuance or review of disciplinary action. Employees will be provided an opportunity to be heard at each step of the grievance process, except as otherwise indicated herein. The burden of proof shall be upon the employee, who shall present first at each step in the grievance process. The Employee may be represented by one individual, at the Employee’s sole cost, during the employee’s opportunity to be heard. If an Employee does not meet established deadlines, the grievance shall be considered resolved. The grievance process does not involve a hearing before a court of law; thus, the rules of evidence need not be followed. The Committee may review the circumstances of the grievance and determine, at their sole discretion and on a case-by-case basis, the process that shall apply during the Step 3 review, for example a more formal hearing may be applied, at the Committee’s discretion, for review of a grievance resulting in termination.

Section 12.2 FORM OF GRIEVANCE: Any written grievance filed under this policy must contain the following information, except as noted in 12.3.1:

- (a) The name and position of the employee filing it.
- (b) A statement of the issue involved,
- (c) A statement of the relief sought,
- (d) The date(s) the event(s) giving rise to the grievance took place,
- (e) The identity of the policy, procedure, or rule that is being challenged,
- (f) The steps the employee has taken to review the matter, either orally or in writing, with the employee’s supervisor, and
- (g) The employee’s signature and date.

Section 12.3 STEPS OF THE GRIEVANCE PROCESS: All grievances must be presented in the order of the provisions of this section, and no grievance shall be entitled to redress unless the grievance is made within ten (10) working days from issuance of the disciplinary action in question. Any grievance or complaint affecting the financial status of any employee on which a grievance has been filed, or which is settled by a City representative, shall not be retroactive to a date prior to the date of filing of the grievance unless the circumstances of the case made it impossible for the aggrieved employee to know that a grievance existed.

Comment [M75]: Language may be unnecessary or inapplicable.

- 12.3.1 **GRIEVANCE STEP 1:** An employee having a grievance shall first present it to their immediate supervisor in writing, requiring only 12.2 (a), (b), (c), and (g). The grievance must be filed with the immediate supervisor within five (5) business days of receiving the disciplinary action that is the subject of the grievance. The immediate supervisor shall discuss the grievance with the employee and make reasonable effort to effect an immediate mutually satisfactory settlement, not inconsistent with these personnel rules. The immediate supervisor should provide a written response to the grievance within five (5) business days. The immediate supervisor may confer with their Department Head or Human Resources in considering the grievance, which conferral shall not be considered to invalidate the Step 2 process.
- 12.3.2 **GRIEVANCE STEP 2:** If the grievance has not been settled to the satisfaction of the employee at Step 1, the aggrieved employee must prepare and file a written grievance with the Department Head within five (5) business days. The Department Head or his/her designee will investigate the facts giving rise to the grievance and inform the employee of his/her decision in writing, if possible within the (10) business days of receipt of the grievance. If the Department Head issued the grievance under question and provided the Step 1 review, then the Director of Administration shall provide the Step 2 review and response. If the immediate supervisor did not provide the written response within five (5) business days, the employee shall submit the Step 2 grievance within fifteen (15) days of receipt of the disciplinary action that is the subject of the grievance.
- 12.3.3 **GRIEVANCE STEP 3:** If the grievance has not been settled to the satisfaction of the employee at Step 2, the employee shall, if intending to pursue the grievance, within five (5) working days from the date of receipt of the notice of disposition of the grievance at Step 2 submit written request to the Human Resources Coordinator for a Committee hearing. The employee may provide supplemental written material to the written grievance submitted for Step 2. The Committee shall schedule a hearing and provide the employee with at least five (5) days advanced notice, which notice period the employee may waive. Human Resources shall notify all persons concerned of the scheduled date for the hearing, and such notification should be made at least five (5) working days prior to the scheduled date of the hearing, unless an employee waiver occurred. The

Committee may table the matter for a subsequent meeting if, in the discretion of the Committee, such action is necessary in order to more thoroughly consider the merits of the grievance. The Committee shall make a decision, which shall be final and binding provided it is within the scope of authority granted them by the Common Council, as addressed below. The Director of Administration, acting on behalf of the Committee, shall state such decision in writing to the employee, with a copy to the employee's Department Head and immediate supervisor, which should happen within ten (10) working days after the hearing. If, in the opinion of the Committee or the Director of Administration, the decision of the Committee has a fiscal impact exceeding budget levels or expectations, the aspect of the decision which is fiscal in nature shall be considered advisory and that portion shall be submitted to the Common Council for consideration. In such instance, the employee is not entitled to a hearing before the Common Council.

Section 12.4 MISCELLANEOUS:

12.4.1 "WITHOUT PAY": Any employee suspended without pay or terminated, remains in such "without pay" status during the grievance process. A grievance decision that returns an employee to at pay status may be eligible for reimbursement of lost base wages during the suspension or termination period, depending upon the nature of the Committee decision.

12.4.2 TIMELINES: If the employee fails to meet the deadlines set forth above, the grievance will be considered resolved. If it is impossible to comply with the deadlines due to meeting notice requirements or meeting preparation, the grievance will be reviewed at the next possible meeting date.

12.4.3 COMPENSATION FOR TIME SPENT: An employee will not be compensated for time spent in processing his/her grievance through the various steps of the grievance procedure, except the reviews at Step 1 and Step 2 may occur during regular business hours and the grievant's participation at those steps, as requested by the supervisor or Department Head, will be compensated provided the employee remains in a "paid" status.

ARTICLE 13 EMPLOYEE COMPLAINTS: An employee in the classified service may resort to the complaint procedure when they have a complaint or a dispute with respect to the interpretation, meaning, or application of the provisions of the City's policies or procedures as the complaint may relate to the topics and areas under the Scope of these rules as addressed in Section 1.2.2, except as related to employee safety which is addressed in Article 14 of these rules. The complaint procedure shall be as set forth in the Employee Handbook. The complaint procedure shall be considered a grievance procedure for those such topics and areas. The complaint process does not involve a "just cause" standard, does not require any level of due process, and does not involve a hearing before a court of law; thus, the rules of evidence need not be followed.

ARTICLE 14 WORKPLACE SAFETY:

Section 14.1: "WORKPLACE SAFETY" DEFINED: "Workplace Safety" is defined as conditions of employment affecting an employee's physical health or safety, the safe operation of workplace equipment and tools, safety of the physical work environment, personal protective equipment, workplace violence, and training related to the same. The authority to amend this document includes the authority to revise the definition of "Workplace Safety".

Section 14.2: EXPANDED SCOPE OF APPLICATION: Article 14 shall be applicable to all classified employees and to all Police and Fire Department employees falling under 62.13 of the Wisconsin Statutes.

Section 14.3: STEPS OF THE WORKPLACE SAFETY REVIEW PROCESS:

14.3.1 SAFETY COMMITTEES: Each Department, or multiple Departments working together, may establish a "Safety Committee," or such similar group, for the purpose of addressing safety in the workplace in order to create a forum for employee concerns, issues, and desires relative to workplace safety. Safety Committee procedures and actions shall be in accordance with the processes set up by the Department(s), with guidance from Human Resources.

14.3.2 STEP 1 WORKPLACE SAFETY CONCERN: If an employee has a workplace safety concern that is not being resolved at a "Safety Committee", the employee may submit their concern in writing to their immediate supervisor. The immediate supervisor shall discuss the workplace safety concern with the employee and make a reasonable effort to effect an immediate mutually satisfactory settlement. The immediate supervisor should provide a written response to the complainant within (5) business days. If the Department Head is the immediate supervisor, the employee may begin at Step 2.

14.3.3 STEP 2 WORKPLACE SAFETY CONCERN: If the complaint has not been settled to the satisfaction of the employee at Step 1, the employee must prepare, sign, and file a written statement detailing the workplace safety concern with the Department Head. The Department Head or his/her designee will investigate the workplace safety concern and inform the employee of his/her decision in writing.

14.3.4. STEP 3 WORKPLACE SAFETY CONCERN: If the complaint has not been settled to the satisfaction of the employee at Step 2, the employee may request in writing to the Director of Administration to present the workplace safety concern to the Director of Administration. The Director of Administration shall investigate the workplace safety concern. If the Director of Administration agrees with the Department Head, then the Director of Administration shall inform the employee of his/her decision in writing, which decision shall be final. If the Director of Administration does not agree with the Department Head relative to the appropriate disposition of the workplace safety concern, the Department Head and Director of Administration shall

present the two perspectives on the matter to the Mayor, whose decision shall be final.

Section 14.4: FISCAL CONSTRAINTS OF DECISIONS: Determinations issued in the steps of the Workplace Safety Review Process may only be carried out if adequate budget authority is available and if implementation is within the scope of authority of the individual rendering the determination.

Section 14.5: FUTURE CONSIDERATIONS ON WORKPLACE SAFETY: As working conditions and equipment and service demands continually are revised, determination issued during the Workplace Safety Review Process should be considered temporary in nature. Workplace Safety Review Process determinations should be considered non-binding and at the sole discretion of the City, because operational, budgetary, managerial, and program matters may affect the situation that initiated the concern or the service level as impacted. If a determination made hereunder is effectively voided or altered by subsequent action of the City, an employee may submit the same or a similar workplace safety concern for review.

ARTICLE 15 CONSTRUCTION OF THESE RULES

Section 15.1 LEGALITY OF RULES: The provisions of these rules are severable and if any section or sections, paragraph or paragraphs, sentence or sentences, clause or clauses, word or words, of these rules shall be held to be unconstitutional or invalid, by a valid judgment or decree of any court or competent jurisdiction, such particular section or sections, paragraph or paragraphs, sentence or sentences, clause or clauses, word or words, may be rejected or deleted without affecting, impairing, or invalidating the remaining sections, paragraphs, clauses, or words of these rules. It is hereby declared that it is the intent of the Common Council that these rules and each word, clause, sentence, paragraph, and section thereof would have been enacted, had such unconstitutional or invalid section or sections, paragraph or paragraphs, sentence or sentences, clause or clauses, word or words, not have been included herein.

Section 15.2 OVERLAPPING PROVISIONS BETWEEN THE CIVIL SERVICE SYSTEM PERSONNEL ADMINISTRATION PROGRAM AND CITY OF FRANKLIN LABOR CONTRACTS: The City's policy is to give interpretation priority to labor contract language over language found in these Civil Service System Personnel Administration Program when the purpose and intent of the provisions are the same. The Civil Service System Personnel Administration Program will be followed when no related language is found in the respective union's labor contract.

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APPROVAL <i>SUN</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE September 20, 2011
REPORTS AND RECOMMENDATIONS	A Resolution Awarding Contracts to the Lowest Responsible Bidders for the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project, to wit: Contract C02006-C01, Super Excavators, Inc., in the amount of \$5,435,671.00; Contract C02006-C02, Super Excavators, Inc., in the amount of \$3,338,775.00; Contract C02006-C03, D.F. Tomasini Contractors, Inc., in the amount of \$5,374,692.00; and Contract C02006-C04, Globe Contractors, Inc., in the amount of \$4,797,210.00	ITEM NUMBER <i>G.4.</i>

Pursuant to the Ryan Creek Interceptor Sewer project scheduling it is necessary to award the public construction project for contracts at this time. The project work has been allocated among four contracts let for bid; two contracts providing for the east half of the project (bids opened on August 26, 2011) and two contracts providing for the west half of the project (bids opened on August 30, 2011). The construction cost is a reimbursable cost under the Clean Water Fund Program loan, excepting for the estimated sum of \$147,605.00, which is a non-reimbursable local cost for the construction and installation of stubs for future sewers connecting to planned manholes for connection to the RCI (construction and installation of which at this time having been determined to be an engineering and cost efficiency). A draft resolution awarding the contracts is attached. Also attached are a Recommendation of Award from the City's project consultant Ruckert & Mielke, Inc. dated August 31, 2011 and a letter of agreement from the Milwaukee Metropolitan Sewerage District dated September 14, 2011. The Engineering Department also recommends approval of the contracts to the lowest responsible bidders, as follows:

<u>CONTRACT</u>	<u>CONTRACTOR</u>	<u>CONTRACT AMOUNT</u>
C02006-C01	Super Excavators, Inc.	\$ 5,435,671.00
C02006-C02	Super Excavators, Inc.	\$ 3,338,775.00
C02006-C03	D.F. Tomasini Contractors, Inc.	\$ 5,374,692.00
C02006-C04	Globe Contractors, Inc.	\$ 4,797,210.00

COUNCIL ACTION REQUESTED

A motion to adopt A Resolution Awarding Contracts to the Lowest Responsible Bidders for the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project, to wit: Contract C02006-C01, Super Excavators, Inc., in the amount of \$5,435,671.00; Contract C02006-C02, Super Excavators, Inc., in the amount of \$3,338,775.00; Contract C02006-C03, D.F. Tomasini Contractors, Inc., in the amount of \$5,374,692.00; and Contract C02006-C04, Globe Contractors, Inc., in the amount of \$4,797,210.00.

August 31, 2011

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

RE: Ryan Creek Sanitary Sewer Interceptor
Contracts C02006-C01, C02006-C02, C02006-C03 & C02006-C04

Dear Mr. Bennett:

Bids for the above project were opened on August 26, 2011 and August 30, 2011 at Franklin City Hall and were as listed on the attached bid tabulation. There were over 120 Plan Holders on these four Projects.

To obtain the most competitive pricing, Bidders for each of the four Contracts were required to provide Bids for both fiberglass pipe and reinforced concrete pipe. The Milwaukee Metropolitan Sewerage District (MMSD) requires that all four Projects utilize the same type of pipe. Therefore, the Projects were set up such that the award of each of the four Contracts would be to the lowest, responsible Bidder for each Contract whose Bid for each pipe material, in combination with the lowest, responsible Bids of the other three Projects results in the lowest overall Project cost. As it turned out, reinforced concrete is least expensive and will be utilized for all four Contracts.

The sum of the four recommended Contracts is \$18,946,348.00 which compares favorably with the 2009 MMSD Facilities Plan Addendum 2 estimated costs of \$19,313,736 to \$ 22,552,556 which did not include, among other items, any street restoration or erosion control.

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

1. The Bid Forms have been appropriately completed;
2. We have no objections to the low bidders, nor to the proposed major subcontractors and suppliers; and
3. The low bidders have successfully completed similar projects over the last thirty years according to references we have contacted and have successfully completed projects in the City of Franklin.

On these bases, we recommend that the following Contractors be awarded the respective contracts:



Mr. John M. Bennett, P. E.
City of Franklin
August 31, 2011
Page 2

<u>CONTRACT</u>	<u>CONTRACTOR</u>	<u>CONTRACT AMOUNT</u>
C02006-C01	Super Excavators, Inc.	\$ 5,435,671.00
C02006-C02	Super Excavators, Inc.	\$ 3,338,775.00
C02006-C03	D.F. Tomasini Contractors, Inc.	\$ 5,374,692.00
C02006-C04	Globe Contractors, Inc.	\$ 4,797,210.00

These awards should be made contingent on MMSD approval of the Project which we anticipate will occur soon.

These recommended award amounts are based on the bid unit prices and estimated quantities. Actual quantities, and therefore the final contract price, may vary. On all construction projects, and especially complex ones like this, unpredictable factors may increase the final contract amount. For this reason we recommend that the City of Franklin include a 3 percent contingency when preparing the financial plan for this work.

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

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

Please advise us of your award decision, or call if there are any questions.

Very truly yours,

RUEKERT/MIELKE

Joseph W. Eberle, P.E.
Principal/Senior Project Manager

JWE:sjs

Encl: Notice of Award (5 copies of each)
Bid Tabulation

cc: Larry E. Ellis, P. E., Senior Project Manager, Milwaukee Metropolitan Sewerage District
Jesse A. Wesolowski, City Attorney, City of Franklin
Jonathan P. Cameron, M.P.A., Ruekert/Mielke
File

NOTICE OF AWARD

Date of Issuance: _____

Contract: Ryan Creek Sanitary Sewer Interceptor
60th Street to 76th Street

Owner's Contract No.: C02006-C01

Owner: City of Franklin

Engineer: Ruekert & Mielke, Inc.

Bidder: Super Excavators, Inc.

Address: N59 W14601 Bobolink Avenue
Menomonee Falls, WI 53051

TO BIDDER:

You are notified that your Bid dated August 26, 2011, for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for:

C02006-C01 – Alternate Bid

The Contract Price of your Contract is: \$ 5,435,671.00

Six (6) copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

Ten (10) sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within 15 days of the date you receive this Notice of Award:

1. Deliver to the Engineer six (6) fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Bonds as specified in the Instructions to Bidders (Article 19), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Deliver with the executed Contract Documents certificates and other evidence of insurance as specified in the General Conditions (Article 5) and the Supplementary Conditions modifying Article 5 of the General Conditions.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 15 days after you comply with the above conditions, Engineer will return to you one fully executed counterpart of the Contract Documents.

Owner: CITY OF FRANKLIN

By: _____
Authorized Signature

Title: _____

Date: _____

Copy to Owner

NOTICE OF AWARD

Date of Issuance: _____

Contract: Ryan Creek Sanitary Sewer Interceptor
76TH Street to 92nd Street

Owner's Contract No.: C02006-C02

Owner: City of Franklin

Engineer: Ruekert & Mielke, Inc.

Bidder: Super Excavators, Inc.

Address: N59 W14601 Bobolink Avenue
Menomonee Falls, WI 53051

TO BIDDER:

You are notified that your Bid dated August 26, 2011, for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for:

C02006-C02 – Alternate Bid

The Contract Price of your Contract is: \$ 3,338,775.00

Six (6) copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

Ten (10) sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within 15 days of the date you receive this Notice of Award:

1. Deliver to the Engineer six (6) fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Bonds as specified in the Instructions to Bidders (Article 19), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Deliver with the executed Contract Documents certificates and other evidence of insurance as specified in the General Conditions (Article 5) and the Supplementary Conditions modifying Article 5 of the General Conditions.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 15 days after you comply with the above conditions, Engineer will return to you one fully executed counterpart of the Contract Documents.

Owner: CITY OF FRANKLIN

By: _____
Authorized Signature

Title: _____

Date: _____

Copy to Owner

NOTICE OF AWARD

Date of Issuance: _____

Contract: Ryan Creek Sanitary Sewer Interceptor
92nd Street to 112th Street

Owner's Contract No.: C02006-C03

Owner: City of Franklin

Engineer: Ruekert & Mielke, Inc.

Bidder: D.F. Tomasini Contractors, Inc.

Address: N70 W25176 Indian Grass Lane
Sussex, WI 53089

TO BIDDER:

You are notified that your Bid dated August 30, 2011, for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for:

C02006-C03 – Alternate Bid

The Contract Price of your Contract is: \$ 5,374,692.00

Six (6) copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

Ten (10) sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within 15 days of the date you receive this Notice of Award:

1. Deliver to the Engineer six (6) fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Bonds as specified in the Instructions to Bidders (Article 19), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Deliver with the executed Contract Documents certificates and other evidence of insurance as specified in the General Conditions (Article 5) and the Supplementary Conditions modifying Article 5 of the General Conditions.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 15 days after you comply with the above conditions, Engineer will return to you one fully executed counterpart of the Contract Documents.

Owner: CITY OF FRANKLIN

By: _____
Authorized Signature

Title: _____

Date: _____

Copy to Owner

NOTICE OF AWARD

Date of issuance: _____

Contract: Ryan Creek Sanitary Sewer Interceptor
112th Street to 124th Street

Owner's Contract No.: C02006-C04

Owner: City of Franklin

Engineer: Ruckert & Mielke, Inc.

Bidder: Globe Contractors, Inc.

Address: N50 W23076 Betker
Pewaukee, WI 53072

TO BIDDER:

You are notified that your Bid dated August 30, 2011, for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for:

C02006-C04 – Alternate Bid

The Contract Price of your Contract is: \$ 4,797,210.00

Six (6) copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

Ten (10) sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within 15 days of the date you receive this Notice of Award:

1. Deliver to the Engineer six (6) fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Bonds as specified in the Instructions to Bidders (Article 19), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Deliver with the executed Contract Documents certificates and other evidence of insurance as specified in the General Conditions (Article 5) and the Supplementary Conditions modifying Article 5 of the General Conditions.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 15 days after you comply with the above conditions, Engineer will return to you one fully executed counterpart of the Contract Documents.

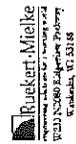
Owner: CITY OF FRANKLIN

By: _____
Authorized Signature

Title: _____

Date: _____

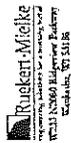
Copy to Owner



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 60TH STREET TO 76TH STREET
 BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.
 PROJECT NO: 5892073.206 C02006C01

BASE BID			SUPER EXCAVATORS, INC.		MICHELS CORPORATION		S.J. LOUIS CONSTRUCTION, INC.		GLOBE CONTRACTORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL
1	48-inch Sanitary Sewer Using Specification Section 02504 Pipe w/Spoil Backfill	L.F.	4,017	\$390.00	\$1,526,460.00	\$550.00	\$2,208,360.00	\$520.00	\$2,088,640.00	\$752.00	\$3,020,784.00
2	48-inch Sanitary Sewer Using Specification Section 02504 Pipe w/Spoil Backfill	L.F.	226	\$950.00	\$214,700.00	\$1,000.00	\$226,000.00	\$1,030.00	\$232,760.00	\$1,500.00	\$351,600.00
3	Augered 48-inch Sanitary Sewer Using Specification Section 02504 Pipe w/Steel Casing Pipe	L.F.	280	\$1,500.00	\$420,000.00	\$3,000.00	\$840,000.00	\$1,885.00	\$526,400.00	\$2,230.00	\$624,400.00
4	Sanitary Sewer - Microtunnelled using Specification Section 02504 Pipe	L.S.	1	\$1,715,000.00	\$1,715,000.00	\$2,025,000.00	\$2,025,000.00	\$2,545,000.00	\$2,545,000.00	\$2,650,000.00	\$2,650,000.00
5	8-Inch Sanitary Sewer Stub - Spoil Backfill	L.F.	105	\$250.00	\$26,250.00	\$210.00	\$22,050.00	\$34.00	\$3,570.00	\$460.00	\$48,300.00
6	Allowance for connection of 6611 Ryan Road Residence to City of Franklin Water System	L.S.	1	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
7	Manhole No. 1	L.S.	1	\$38,000.00	\$38,000.00	\$48,000.00	\$48,000.00	\$45,000.00	\$45,000.00	\$53,000.00	\$53,000.00
8	Manhole No. 2	L.S.	1	\$19,000.00	\$19,000.00	\$35,000.00	\$35,000.00	\$31,000.00	\$31,000.00	\$39,000.00	\$39,000.00
9	Manhole No. 3	L.S.	1	\$20,000.00	\$20,000.00	\$31,000.00	\$31,000.00	\$34,000.00	\$34,000.00	\$33,500.00	\$33,500.00
10	Manhole No. 4	L.S.	1	\$35,000.00	\$35,000.00	\$34,000.00	\$34,000.00	\$39,000.00	\$39,000.00	\$75,000.00	\$75,000.00
11	Manhole No. 5	L.S.	1	\$35,000.00	\$35,000.00	\$36,000.00	\$36,000.00	\$41,000.00	\$41,000.00	\$60,000.00	\$60,000.00
12	Manhole No. 6	L.S.	1	\$35,000.00	\$35,000.00	\$39,000.00	\$39,000.00	\$45,000.00	\$45,000.00	\$80,000.00	\$80,000.00
13	Manhole No. 7	L.S.	1	\$35,000.00	\$35,000.00	\$33,000.00	\$33,000.00	\$37,000.00	\$37,000.00	\$70,000.00	\$70,000.00
14	Manhole No. 8	L.S.	1	\$20,000.00	\$20,000.00	\$28,000.00	\$28,000.00	\$32,000.00	\$32,000.00	\$55,000.00	\$55,000.00
15	Manhole No. 9	L.S.	1	\$20,000.00	\$20,000.00	\$31,000.00	\$31,000.00	\$29,000.00	\$29,000.00	\$40,000.00	\$40,000.00
16	Microtunnel Shafts	L.S.	1	\$800,000.00	\$800,000.00	\$1,200,000.00	\$1,200,000.00	\$945,000.00	\$945,000.00	\$1,375,000.00	\$1,375,000.00
17	Microtunnel Rescue Shaft (if needed)	L.S.	1	\$1.00	\$1.00	\$90,000.00	\$90,000.00	\$260,000.00	\$260,000.00	\$176,000.00	\$176,000.00
18	Settlement Monitoring Points	EA	6	\$1,010.00	\$6,060.00	\$1,200.00	\$7,200.00	\$1,305.00	\$7,830.00	\$1,300.00	\$7,800.00
19	Utility Monitoring Points	EA	3	\$2,000.00	\$6,000.00	\$2,300.00	\$6,900.00	\$2,400.00	\$7,200.00	\$2,500.00	\$7,500.00
20	Inclinometer	EA	3	\$16,000.00	\$48,000.00	\$18,300.00	\$54,900.00	\$20,000.00	\$60,000.00	\$20,000.00	\$60,000.00
21	Traffic Control	L.S.	1	\$150,000.00	\$150,000.00	\$207,000.00	\$207,000.00	\$220,000.00	\$220,000.00	\$200,000.00	\$200,000.00
22	Water Main Relocation	L.S.	1	\$50,000.00	\$50,000.00	\$28,600.00	\$28,600.00	\$16,000.00	\$16,000.00	\$40,000.00	\$40,000.00
23	Excavation Below Subgrade and Backfill - Sewer Trench	C.Y.	2,000	\$1.00	\$2,000.00	\$23.00	\$46,000.00	\$45.00	\$90,000.00	\$25.00	\$50,000.00
24	Crushed Aggregate Base Course	TON	280	\$22.00	\$6,160.00	\$15.00	\$4,200.00	\$17.00	\$4,760.00	\$15.00	\$4,200.00
25	Crushed Aggregate Shoulder	TON	700	\$16.00	\$11,200.00	\$15.00	\$10,500.00	\$17.00	\$11,900.00	\$15.00	\$10,500.00

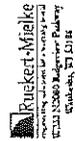


COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 60TH STREET TO 76TH STREET
 BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.
 PROJECT NO: 5892073.206 C02006C01

BASE BID			SUPER EXCAVATORS, INC.		MICHEL'S CORPORATION		S.J. LOUIS CONSTRUCTION, INC.		GLOBE CONTRACTORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL
26	3/4-inch Roadway Base Patching	TON	200	\$150.00	\$30,000.00	\$118.00	\$23,600.00	\$155.00	\$31,000.00	\$140.00	\$28,000.00
27	Full Depth Saw Cutting	L.F.	550	\$2.00	\$1,100.00	\$4.00	\$2,200.00	\$2.50	\$1,375.00	\$2.00	\$1,100.00
28	Concrete Driveway and Approach Replacement	S.F.	4,600	\$6.00	\$27,600.00	\$7.00	\$32,200.00	\$7.50	\$34,500.00	\$6.00	\$27,600.00
29	Asphaltic Driveway and Approach Replacement	S.F.	2,900	\$3.70	\$10,730.00	\$6.00	\$17,400.00	\$2.50	\$7,250.00	\$5.00	\$14,500.00
30	Crushed Aggregate Driveway Replacement	S.F.	7,400	\$1.00	\$7,400.00	\$5.00	\$37,000.00	\$2.25	\$16,650.00	\$1.00	\$7,400.00
31	18-inch CMCP Driveway Culvert	L.F.	64	\$70.00	\$4,480.00	\$63.00	\$4,032.00	\$50.00	\$3,200.00	\$80.00	\$5,120.00
32	Temporary 12-inch CMCP Culvert	L.F.	125	\$65.00	\$8,125.00	\$50.00	\$6,250.00	\$50.00	\$6,250.00	\$70.00	\$8,750.00
33	Farm Drainage Tile Reconnection	EA.	10	\$1,000.00	\$10,000.00	\$590.00	\$5,900.00	\$1,400.00	\$14,000.00	\$1,500.00	\$15,000.00
34	Silt Fence	L.F.	9,500	\$2.15	\$20,425.00	\$4.00	\$38,000.00	\$2.75	\$26,125.00	\$2.00	\$19,000.00
35	Tracking Pad	TON	650	\$15.00	\$9,750.00	\$23.00	\$14,950.00	\$160.00	\$104,000.00	\$15.00	\$9,750.00
36	Ditch Check	L.F.	50	\$7.30	\$365.00	\$60.00	\$3,000.00	\$12.00	\$600.00	\$25.00	\$1,250.00
37	Inlet Sediment Guard - Type D	EA.	8	\$125.00	\$1,000.00	\$130.00	\$1,040.00	\$125.00	\$1,000.00	\$50.00	\$400.00
38	Topsoil, Fertilizer, Seed and Mulch - Roadway Right-of-Way and Abutting Easements	S.Y.	26,000	\$3.75	\$97,500.00	\$1.50	\$39,000.00	\$1.25	\$32,500.00	\$2.00	\$52,000.00
39	Topsoil, Fertilizer, Seed and Mulch - Easements	S.Y.	35,000	\$0.42	\$14,700.00	\$1.00	\$35,000.00	\$1.25	\$43,750.00	\$2.00	\$70,000.00
40	Erosion Control Blanket, S150	S.Y.	1,000	\$1.40	\$1,400.00	\$2.00	\$2,000.00	\$2.50	\$2,500.00	\$2.00	\$2,000.00
41	Erosion Control Blanket, S150 BN	S.Y.	20,000	\$1.75	\$35,000.00	\$2.00	\$40,000.00	\$3.00	\$60,000.00	\$2.00	\$40,000.00
42	Land Application of Anionic Polyacrylamide	S.Y.	35,000	\$0.28	\$9,800.00	\$1.00	\$35,000.00	\$1.80	\$63,000.00	\$1.00	\$35,000.00
43	Wetland Restoration	L.S.	1	\$15,300.00	\$15,300.00	\$12,000.00	\$12,000.00	\$18,000.00	\$18,000.00	\$15,000.00	\$15,000.00
44	Dust Control Using Calcium Chloride	100 LBS	20	\$125.00	\$2,500.00	\$70.00	\$1,400.00	\$2,500.00	\$50,000.00	\$100.00	\$2,000.00
45	Dust Control Using Water	1,000 GAL	20	\$100.00	\$2,000.00	\$26.00	\$520.00	\$30.00	\$600.00	\$100.00	\$2,000.00
46	Allowance for Landscaping Plantings	L.S.	1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
TOTAL OF ALL ESTIMATED PRICES (ITEMS 1 - 46)					\$5,568,006.00		\$7,653,192.00		\$7,889,550.00		\$9,537,454.00

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 582073 Ryan Creek Interceptor - 268 60th Street to 76th Street C0206-C01 - Bidding
 RYAN CREEK SANITARY SEWER INTERCEPTOR 60TH TO 76TH STREET COST COMPARISON OF BIDDERS (COMPARISON OF BIDDERS)



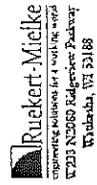
COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 60TH STREET TO 76TH STREET
 BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.
 PROJECT NO: 5892073.206 C02006C01

BASE BID		SUPER EXCAVATORS, INC.		MICHEL'S CORPORATION		S.J. LOUIS CONSTRUCTION, INC.		GLOBE CONTRACTORS, INC.	
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL
MANDATORY ALTERNATE BIDS									
MA1	48-inch Sanitary Sewer Using Specification Section 02611 Pipe w/Spill Backfill	L.F.	4,017	\$425.00	\$1,707,225.00	\$545.00	\$2,189,265.00	\$650.00	\$2,209,350.00
MA2	48-inch Sanitary Sewer Using Specification Section 02611 Pipe w/Slurry Backfill	L.F.	226	\$1,100.00	\$248,600.00	\$1,050.00	\$237,300.00	\$1,595.00	\$360,470.00
MA3	Augered 48-inch Sanitary Sewer Using Specification Section 02611 Pipe w/Steel Casting Pipe	L.F.	280	\$1,600.00	\$448,000.00	\$3,000.00	\$840,000.00	\$1,900.00	\$532,000.00
MA4	Sanitary Sewer - Microtunnelled Using Specification Section 02611 Pipe	L.S.	1	\$1,340,000.00	\$1,340,000.00	\$2,130,000.00	\$2,130,000.00	\$2,700,000.00	\$2,700,000.00
TOTAL OF ALL ESTIMATED PRICES USING MANDATORY ALTERNATE BIDS					\$5,435,671.00		\$7,738,107.00		\$8,175,180.00
									\$9,425,009.00

*Error Super Excavators, Inc.: Total Base bid: Contractor's bid shows \$5,568,000.00, actual bid \$5,568,006.00

*Error S.J. Louis Construction, Inc. Bid Item #32: Contractor's bid shows \$1,250.00 actual bid \$6,250.00. Error on Bid Item #45: Contractor's bid shows \$30,000.00, actual bid \$600.00



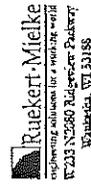
COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 76TH STREET TO 92ND STREET

BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.
 PROJECT NO: 5892073.207 C02006C02

BASE BID				SUPER EXCAVATORS, INC.			S. J. LOUIS CONSTRUCTION, INC.			GLOBE CONTRACTORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	
1	36-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Spill Backfill	L.F.	5,042	\$260.00	\$1,280,500.00	\$460.00	\$2,319,320.00	\$420.00	\$2,117,640.00			
2	42-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Spill Backfill	L.F.	1,283	\$261.00	\$334,863.00	\$360.00	\$461,880.00	\$360.00	\$461,880.00			
3	42-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Granular Backfill	L.F.	61	\$400.00	\$32,400.00	\$475.00	\$38,475.00	\$470.00	\$38,070.00			
4	48-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Granular Backfill	L.F.	1,319	\$500.00	\$659,500.00	\$605.00	\$797,995.00	\$690.00	\$910,110.00			
5	Augered 42-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Steel Casing Pipe	L.F.	90	\$1,425.00	\$128,250.00	\$2,100.00	\$189,000.00	\$1,790.00	\$161,100.00			
6	8-Inch Sanitary Sewer Stub w/Spill Backfill	L.F.	45	\$115.00	\$5,175.00	\$40.00	\$1,800.00	\$460.00	\$20,700.00			
7	8-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	15	\$200.00	\$3,000.00	\$150.00	\$2,250.00	\$550.00	\$8,250.00			
8	12-Inch Sanitary Sewer Stub w/Spill Backfill	L.F.	15	\$125.00	\$1,875.00	\$50.00	\$750.00	\$480.00	\$7,200.00			
9	12-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	15	\$200.00	\$3,000.00	\$155.00	\$2,325.00	\$550.00	\$8,250.00			
10	30-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	15	\$400.00	\$6,000.00	\$190.00	\$2,850.00	\$700.00	\$10,500.00			
11	Manhole No. 10	L.S.	1	\$21,500.00	\$21,500.00	\$36,000.00	\$36,000.00	\$42,000.00	\$42,000.00			
12	Manhole No. 11	L.S.	1	\$14,500.00	\$14,500.00	\$30,000.00	\$30,000.00	\$35,000.00	\$35,000.00			
13	Manhole No. 12	L.S.	1	\$18,000.00	\$18,000.00	\$33,000.00	\$33,000.00	\$25,000.00	\$26,000.00			
14	Manhole No. 13	L.S.	1	\$12,000.00	\$12,000.00	\$27,000.00	\$27,000.00	\$20,000.00	\$20,000.00			
15	Manhole No. 14	L.S.	1	\$12,000.00	\$12,000.00	\$25,000.00	\$25,000.00	\$20,000.00	\$20,000.00			
16	Manhole No. 15	L.S.	1	\$17,500.00	\$17,500.00	\$34,000.00	\$34,000.00	\$25,000.00	\$25,000.00			
17	Manhole No. 16	L.S.	1	\$12,000.00	\$12,000.00	\$24,000.00	\$24,000.00	\$26,000.00	\$26,000.00			
18	Manhole No. 17	L.S.	1	\$14,500.00	\$14,500.00	\$26,000.00	\$26,000.00	\$28,000.00	\$28,000.00			
19	Manhole No. 18	L.S.	1	\$16,500.00	\$16,500.00	\$34,000.00	\$34,000.00	\$30,000.00	\$30,000.00			
20	Manhole No. 19	L.S.	1	\$18,000.00	\$18,000.00	\$35,000.00	\$35,000.00	\$32,000.00	\$32,000.00			
21	Manhole No. 20	L.S.	1	\$22,000.00	\$22,000.00	\$36,000.00	\$36,000.00	\$41,000.00	\$41,000.00			

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 5892073 Ryan Creek Interceptor > 207 76th Street to 92nd Street C0206-C02 - Bidding
 -RYAN CREEK SANITARY SEWER INTERCEPTOR 76th to 92nd COST COMPARISON OF BIDDERS.xls (COMPARISON OF BIDDERS (1)



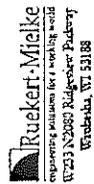
COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 76TH STREET TO 92ND STREET

BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.

PROJECT NO: 5892073.207 C02006C02

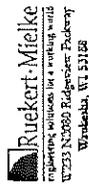
BASE BID			SUPER EXCAVATORS, INC.			S.J. LOUIS CONSTRUCTION, INC.			GLOBE CONTRACTORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL
22	Manhole No. 21	L.S.	1	\$18,500.00	\$18,500.00	\$39,000.00	\$39,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00
23	Manhole No. 22	L.S.	1	\$16,000.00	\$16,000.00	\$27,000.00	\$27,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
24	Traffic Control	L.S.	1	\$180,000.00	\$180,000.00	\$19,000.00	\$19,000.00	\$200,000.00	\$200,000.00	\$200,000.00	\$200,000.00
25	Engineer Field Office	L.S.	1	\$40,000.00	\$40,000.00	\$20,000.00	\$20,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00
26	Construct Roadway to Subgrade	L.S.	1	\$44,200.00	\$44,200.00	\$27,000.00	\$27,000.00	\$44,200.00	\$44,200.00	\$44,200.00	\$44,200.00
27	Excavation Below Subgrade and Backfill - Sewer Trench	C.Y.	3,000	\$0.01	\$30.00	\$47.00	\$141,000.00	\$25.00	\$75,000.00	\$25.00	\$75,000.00
28	Crushed Aggregate Base Course	TON	2,000	\$12.40	\$24,800.00	\$16.00	\$32,000.00	\$12.40	\$24,800.00	\$12.40	\$24,800.00
29	10-foot Wide Crushed Aggregate Shoulder	TON	700	\$14.20	\$9,940.00	\$16.00	\$11,200.00	\$14.20	\$9,940.00	\$14.20	\$9,940.00
30	2-foot Wide Asphaltic Shoulder	TON	70	\$146.00	\$10,220.00	\$3.00	\$210.00	\$146.00	\$10,220.00	\$146.00	\$10,220.00
31	Concrete Pavement	S.Y.	2,100	\$41.00	\$86,100.00	\$8.00	\$16,800.00	\$41.00	\$86,100.00	\$41.00	\$86,100.00
32	Concrete Driveway and Approach Replacement	S.F.	100	\$7.00	\$700.00	\$8.00	\$800.00	\$7.00	\$700.00	\$7.00	\$700.00
33	Asphaltic Driveway and Approach Replacement	S.F.	450	\$3.90	\$1,755.00	\$3.00	\$1,350.00	\$3.90	\$1,755.00	\$3.90	\$1,755.00
34	Crushed Aggregate Driveway Replacement	S.F.	7,000	\$1.00	\$7,000.00	\$3.00	\$21,000.00	\$1.00	\$7,000.00	\$1.00	\$7,000.00
35	3 1/2-inch Roadway Base Patching	TON	200	\$150.00	\$30,000.00	\$160.00	\$32,000.00	\$150.00	\$30,000.00	\$150.00	\$30,000.00
36	Full Depth Saw Cutting	L.F.	1,510	\$2.00	\$3,020.00	\$2.50	\$4,025.00	\$2.00	\$3,020.00	\$2.00	\$3,020.00
37	24-inch CMCP Driveway Culvert	L.F.	26	\$62.00	\$1,612.00	\$55.00	\$1,430.00	\$70.00	\$1,820.00	\$70.00	\$1,820.00
38	30-inch CMCP Driveway Culvert	L.F.	24	\$61.00	\$1,464.00	\$75.00	\$1,800.00	\$60.00	\$1,440.00	\$60.00	\$1,440.00
39	35"x24" CMCA Driveway Culvert	L.F.	23	\$88.00	\$2,024.00	\$90.00	\$2,070.00	\$90.00	\$2,070.00	\$90.00	\$2,070.00
40	42"x29" CMCA Driveway Culvert	L.F.	47	\$124.00	\$5,828.00	\$110.00	\$5,170.00	\$100.00	\$4,700.00	\$100.00	\$4,700.00
41	Temporary 12-inch CMP Culvert	L.F.	80	\$40.00	\$3,200.00	\$50.00	\$4,000.00	\$65.00	\$5,200.00	\$65.00	\$5,200.00
42	Farm Drainage Tile Reconnection	EA.	40	\$100.00	\$4,000.00	\$1,450.00	\$58,000.00	\$1,500.00	\$60,000.00	\$1,500.00	\$60,000.00



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 76TH STREET to 92ND STREET
 BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.
 PROJECT NO: 5892073.207 C02006C02

BASE BID				SUPER EXCAVATORS, INC.			S.-J. LOUIS CONSTRUCTION, INC.			GLOBE CONTRACTORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	
43	Pavement Marking, Dashed, 4-inch yellow, Epoxy	L.F.	375	\$0.80	\$300.00	\$1.00	\$375.00	\$0.80	\$300.00			
44	Pavement Marking, Solid, 4-inch white, Epoxy	L.F.	3,000	\$0.80	\$2,400.00	\$1.00	\$3,000.00	\$0.80	\$2,400.00			
45	Silt Fence	L.F.	16,500	\$2.15	\$35,475.00	\$2.00	\$33,000.00	\$1.50	\$24,750.00			
46	Tracking Pad	TON	325	\$20.00	\$6,500.00	\$17.00	\$5,525.00	\$15.00	\$4,875.00			
47	Ditch Check	L.F.	600	\$7.30	\$4,380.00	\$13.00	\$7,800.00	\$10.00	\$6,000.00			
48	Topsoil, Fertilizer, Seed and Mulch - Roadway Right-of-Way and Abutting Easements	S.Y.	10,000	\$3.75	\$37,500.00	\$1.25	\$12,500.00	\$1.50	\$15,000.00			
49	Topsoil, Fertilizer, Seed and Mulch - Easements	S.Y.	90,000	\$0.42	\$37,800.00	\$1.25	\$112,500.00	\$1.50	\$135,000.00			
50	Erosion Control Blanket, S150	S.Y.	1,750	\$1.40	\$2,450.00	\$3.00	\$5,250.00	\$3.00	\$5,250.00			
51	Erosion Control Blanket, S150 BN	S.Y.	8,500	\$1.75	\$14,875.00	\$4.00	\$34,000.00	\$3.00	\$25,500.00			
52	Land Application of Anticong Polyacrylamide	S.Y.	90,000	\$0.28	\$25,200.00	\$0.35	\$31,500.00	\$0.50	\$45,000.00			
53	Wetland Restoration	L.S.	1	\$24,875.00	\$24,875.00	\$45,000.00	\$45,000.00	\$25,000.00	\$25,000.00			
54	Dust Control Using Calcium Chloride	100 LBS.	20	\$100.00	\$2,000.00	\$2,500.00	\$50,000.00	\$100.00	\$2,000.00			
55	Dust Control Using Water	1,000 GAL	20	\$100.00	\$2,000.00	\$32.00	\$640.00	\$100.00	\$2,000.00			
56	Allowance for Landscape Plantings	L.S.	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00			
TOTAL OF ALL ESTIMATED PRICES (ITEMS 1 - 56)					\$3,309,891.00		\$4,987,990.00		\$5,035,420.00			



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 76TH STREET TO 92ND STREET
 BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.
 PROJECT NO: 5892073.207 C02006C02

BASE BID			SUPER EXCAVATORS, INC.			S.J. LOUIS CONSTRUCTION, INC.			GLOBE CONTRACTORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL
MANDATORY ALTERNATE BIDS											
MA1	36-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Spill Backfill	L.F.	5,042	\$255.00	\$1,285,710.00	\$475.00	\$2,394,860.00	\$420.00	\$2,117,640.00		
MA2	42-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Spill Backfill	L.F.	1,283	\$265.00	\$338,995.00	\$375.00	\$481,125.00	\$360.00	\$461,860.00		
MA3	42-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Granular Backfill	L.F.	81	\$382.00	\$30,942.00	\$490.00	\$39,690.00	\$470.00	\$38,070.00		
MA4	48-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Granular Backfill	L.F.	1,319	\$500.00	\$659,500.00	\$625.00	\$824,375.00	\$690.00	\$910,110.00		
MA5	Augered 42-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Steel Casing Pipe	L.F.	90	\$1,425.00	\$128,250.00	\$2,400.00	\$216,000.00	\$1,790.00	\$161,100.00		
TOTAL OF ALL ESTIMATED PRICES USING MANDATORY ALTERNATE BIDS					\$3,338,775.00		\$5,137,460.00		\$5,035,420.00		

*Error Globe Contractors: Error on Bid Item #52: Contractors Bid Price shows \$45,000.00, actual Bid Price \$25,500.00 - Total bid amount is correct.



Ruekert-Mielke
 2031 N. 3060 Highway
 Waukesha, WI 53186

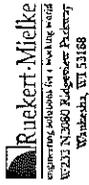
COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 76TH STRI

BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.

PROJECT NO: 5892073.207 C02006C02

BASE BID		BENCHMARK CONSTRUCTION CO., INC.				D.F. TOMASINI CONTRACTORS, INC.			
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL
1	36-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Spoil Backfill	L.F.	5,042	\$426.00	\$2,147,892.00	\$540.00	\$2,722,680.00		
2	42-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Spoil Backfill	L.F.	1,283	\$448.00	\$574,784.00	\$505.00	\$647,915.00		
3	42-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Granular Backfill	L.F.	81	\$582.00	\$47,142.00	\$600.00	\$48,600.00		
4	48-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Granular Backfill	L.F.	1,319	\$663.00	\$875,297.00	\$710.00	\$936,450.00		
5	Augered 42-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Steel Casing Pipe	L.F.	90	\$1,490.00	\$134,100.00	\$2,100.00	\$189,000.00		
6	8-Inch Sanitary Sewer Stub w/Spoil Backfill	L.F.	45	\$92.00	\$4,140.00	\$280.00	\$12,600.00		
7	8-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	15	\$184.00	\$2,760.00	\$400.00	\$6,000.00		
8	12-Inch Sanitary Sewer Stub w/Spoil Backfill	L.F.	15	\$101.00	\$1,515.00	\$260.00	\$3,900.00		
9	12-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	15	\$263.00	\$3,945.00	\$415.00	\$6,225.00		
10	30-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	15	\$308.00	\$4,620.00	\$365.00	\$5,475.00		
11	Manhole No. 10	L.S.	1	\$39,000.00	\$39,000.00	\$39,000.00	\$39,000.00		
12	Manhole No. 11	L.S.	1	\$24,000.00	\$24,000.00	\$23,000.00	\$23,000.00		
13	Manhole No. 12	L.S.	1	\$26,000.00	\$26,000.00	\$30,000.00	\$30,000.00		
14	Manhole No. 13	L.S.	1	\$18,000.00	\$18,000.00	\$20,000.00	\$20,000.00		
15	Manhole No. 14	L.S.	1	\$18,000.00	\$18,000.00	\$20,000.00	\$20,000.00		
16	Manhole No. 15	L.S.	1	\$24,000.00	\$24,000.00	\$30,000.00	\$30,000.00		
17	Manhole No. 16	L.S.	1	\$18,000.00	\$18,000.00	\$25,000.00	\$25,000.00		
18	Manhole No. 17	L.S.	1	\$29,000.00	\$29,000.00	\$23,000.00	\$23,000.00		
19	Manhole No. 18	L.S.	1	\$25,000.00	\$25,000.00	\$26,000.00	\$26,000.00		
20	Manhole No. 19	L.S.	1	\$27,000.00	\$27,000.00	\$35,000.00	\$35,000.00		
21	Manhole No. 20	L.S.	1	\$38,000.00	\$38,000.00	\$29,000.00	\$29,000.00		

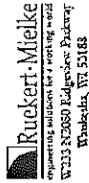


COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 76TH STRI
 BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.
 PROJECT NO: 5892073.207 C02006C02

BASE BID		BENCHMARK CONSTRUCTION CO., INC.			D.F. TOMASINI CONTRACTORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL
22	Manhole No. 21	L.S.	1	\$28,000.00	\$28,000.00	\$29,000.00	\$29,000.00
23	Manhole No. 22	L.S.	1	\$26,000.00	\$26,000.00	\$25,000.00	\$25,000.00
24	Traffic Control	L.S.	1	\$72,000.00	\$72,000.00	\$211,000.00	\$211,000.00
25	Engineer Field Office	L.S.	1	\$24,000.00	\$24,000.00	\$15,000.00	\$15,000.00
26	Construct Roadway to Subgrade	L.S.	1	\$21,000.00	\$21,000.00	\$60,000.00	\$60,000.00
27	Excavation Below Subgrade and Backfill - Sewer Trench	C.Y.	3,000	\$25.00	\$75,000.00	\$10.00	\$30,000.00
28	Crushed Aggregate Base Course	TON	2,000	\$31.00	\$62,000.00	\$13.00	\$26,000.00
29	10-foot Wide Crushed Aggregate Shoulder	TON	700	\$31.00	\$21,700.00	\$14.00	\$9,800.00
30	2-foot Wide Asphaltic Shoulder	TON	70	\$100.00	\$7,000.00	\$150.00	\$10,500.00
31	Concrete Pavement	S.Y.	2,100	\$44.00	\$92,400.00	\$42.00	\$88,200.00
32	Concrete Driveway and Approach Replacement	S.F.	100	\$6.00	\$600.00	\$7.00	\$700.00
33	Asphaltic Driveway and Approach Replacement	S.F.	450	\$9.00	\$4,050.00	\$5.00	\$2,250.00
34	Crushed Aggregate Driveway Replacement	S.F.	7,000	\$2.00	\$14,000.00	\$1.00	\$7,000.00
35	3 1/2-inch Roadway Base Patching	TON	200	\$100.00	\$20,000.00	\$150.00	\$30,000.00
36	Full Depth Saw Cutting	L.F.	1,610	\$1.25	\$2,012.50	\$3.00	\$4,830.00
37	24-inch CMCP Driveway Culvert	L.F.	26	\$27.00	\$702.00	\$65.00	\$1,690.00
38	30-inch CMCP Driveway Culvert	L.F.	24	\$36.00	\$864.00	\$90.00	\$2,160.00
39	35"x24" CMCA Driveway Culvert	L.F.	23	\$68.00	\$1,564.00	\$110.00	\$2,530.00
40	42"x29" CMCA Driveway Culvert	L.F.	47	\$68.00	\$3,196.00	\$120.00	\$5,640.00
41	Temporary 12-inch CMP Culvert	L.F.	80	\$24.00	\$1,920.00	\$65.00	\$5,200.00
42	Farm Drainage Tile Reconnection	EA.	40	\$202.00	\$8,080.00	\$750.00	\$30,000.00

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 5892073 Ryan Creek Interceptor 76th Stri to 82nd Cost Comparison of Bidders.xls (COMPARISON OF BIDDERS (2))
 RYAN CREEK SANITARY SEWER INTERCEPTOR 76th to 82nd COST COMPARISON OF BIDDERS (2)



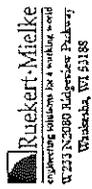
COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 76TH STR

BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.

PROJECT NO: 5892073.207 C02006C02

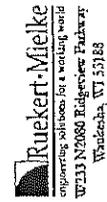
BASE BID		BENCHMARK CONSTRUCTION CO., INC.		D.F. TOMASINI CONTRACTORS, INC.			
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL
43	Pavement Marking, Dashed, 4-inch yellow, Epoxy	L.F.	375	\$1.00	\$375.00	\$1.00	\$375.00
44	Pavement Marking, Solid, 4-inch white, Epoxy	L.F.	3,000	\$1.00	\$3,000.00	\$1.00	\$3,000.00
45	Silt Fence	L.F.	16,500	\$4.00	\$66,000.00	\$3.50	\$57,750.00
46	Tracking Pad	TON	325	\$50.00	\$16,250.00	\$15.00	\$4,875.00
47	Ditch Check	L.F.	600	\$7.00	\$4,200.00	\$7.00	\$4,200.00
48	Topsoil, Fertilizer, Seed and Mulch - Roadway Right-of-Way and Abutting Easements	S.Y.	10,000	\$5.00	\$50,000.00	\$3.00	\$30,000.00
49	Topsoil, Fertilizer, Seed and Mulch - Easements	S.Y.	90,000	\$2.00	\$180,000.00	\$0.75	\$67,500.00
50	Erosion Control Blanket, S150	S.Y.	1,750	\$1.00	\$1,750.00	\$1.50	\$2,625.00
51	Erosion Control Blanket, S150 BN	S.Y.	8,500	\$1.50	\$12,750.00	\$1.75	\$14,875.00
52	Land Application of Anionic Polyacrylamide	S.Y.	90,000	\$0.20	\$18,000.00	\$0.25	\$22,500.00
53	Wetland Restoration	L.S.	1	\$36,000.00	\$36,000.00	\$40,000.00	\$40,000.00
54	Dust Control Using Calcium Chloride	100 LBS.	20	\$100.00	\$2,000.00	\$50.00	\$1,000.00
55	Dust Control Using Water	1,000 GAL	20	\$450.00	\$9,000.00	\$30.00	\$600.00
56	Allowance for Landscape Plantings	L.S.	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
TOTAL OF ALL ESTIMATED PRICES (ITEMS 1 - 56)					\$5,248,768.50		\$5,731,685.00



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 76TH STRI
 BID OPENING DATE: AUGUST 26, 2011 10:00 A.M.
 PROJECT NO: 5892073.207 C02006C02

BASE BID		BENCHMARK CONSTRUCTION CO., INC.		D.F. TOMASINI CONTRACTORS, INC.			
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL
MANDATORY ALTERNATE BIDS							
MA1	36-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Spill Backfill	L.F.	5,042	\$852.00	\$4,285,784.00	\$510.00	\$2,571,420.00
MA2	42-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Spill Backfill	L.F.	1,283	\$896.00	\$1,149,568.00	\$470.00	\$603,010.00
MA3	42-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Granular Backfill	L.F.	81	\$1,384.00	\$112,104.00	\$570.00	\$46,170.00
MA4	48-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Granular Backfill	L.F.	1,319	\$1,726.00	\$2,276,594.00	\$675.00	\$690,325.00
MA5	Augered 42-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Steel Casing Pipe	L.F.	90	\$2,980.00	\$268,200.00	\$1,900.00	\$171,000.00
TOTAL OF ALL ESTIMATED PRICES USING MANDATORY ALTERNATE BIDS					\$9,299,893.50		\$5,468,925.00

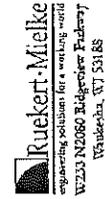


COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 92ND STREET TO 112TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.

PROJECT NO: 5892073.208 C02006C003

BASE BID				S.J. LOUIS CONSTRUCTION CO., INC.			BENCHMARK CONSTRUCTION CO., INC.			SUPER EXCAVATORS, INC.			D.F. TOMASINI CONTRACTORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL
1	36-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Spill Backfill	L.F.	7,328	\$356.00	\$2,632,414.00	\$356.00	\$2,631,795.00	\$403.00	\$2,953,587.00	\$467.00	\$3,349,353.00				
2	36-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Granular Backfill	L.F.	1,769	\$660.00	\$1,165,400.00	\$694.00	\$1,220,746.00	\$610.00	\$1,072,980.00	\$625.00	\$1,099,375.00				
3	Augered 36-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Steel	L.F.	360	\$1,540.00	\$554,400.00	\$1,540.00	\$554,400.00	\$1,800.00	\$648,000.00	\$1,800.00	\$648,000.00				
4	8-Inch Sanitary Sewer Stub w/Spill Backfill	L.F.	30	\$45.00	\$1,350.00	\$100.00	\$3,000.00	\$125.00	\$3,750.00	\$162.00	\$4,860.00				
5	8-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	15	\$145.00	\$2,175.00	\$225.00	\$3,375.00	\$150.00	\$2,250.00	\$322.00	\$4,830.00				
6	12-Inch Sanitary Sewer Stub w/Spill Backfill	L.F.	30	\$52.00	\$1,560.00	\$100.00	\$3,000.00	\$250.00	\$7,500.00	\$158.00	\$4,740.00				
7	12-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	30	\$151.00	\$4,530.00	\$250.00	\$7,500.00	\$300.00	\$9,000.00	\$188.00	\$5,640.00				
8	16-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	15	\$150.00	\$2,250.00	\$350.00	\$5,250.00	\$250.00	\$3,750.00	\$362.00	\$5,430.00				
9	24-Inch Sanitary Sewer Stub w/Spill Backfill	L.F.	15	\$188.00	\$2,820.00	\$300.00	\$4,500.00	\$200.00	\$3,000.00	\$163.00	\$2,445.00				
10	Manhole No. 25	L.S.	1	\$30,000.00	\$30,000.00	\$27,500.00	\$27,500.00	\$25,000.00	\$25,000.00	\$22,500.00	\$22,500.00				
11	Manhole No. 26	L.S.	1	\$35,000.00	\$35,000.00	\$35,000.00	\$35,000.00	\$35,000.00	\$35,000.00	\$29,125.00	\$29,125.00				
12	Manhole No. 27	L.S.	1	\$32,000.00	\$32,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$23,650.00	\$23,650.00				
13	Manhole No. 28	L.S.	1	\$35,000.00	\$35,000.00	\$23,500.00	\$23,500.00	\$25,000.00	\$25,000.00	\$25,500.00	\$25,500.00				
14	Manhole No. 29	L.S.	1	\$28,000.00	\$28,000.00	\$23,500.00	\$23,500.00	\$25,000.00	\$25,000.00	\$22,000.00	\$22,000.00				
15	Manhole No. 23	L.S.	1	\$32,000.00	\$32,000.00	\$31,500.00	\$31,500.00	\$35,000.00	\$35,000.00	\$27,325.00	\$27,325.00				
15	Manhole No. 24	L.S.	1	\$29,000.00	\$29,000.00	\$31,500.00	\$31,500.00	\$25,000.00	\$25,000.00	\$22,750.00	\$22,750.00				
17	Manhole No. 30	L.S.	1	\$35,000.00	\$35,000.00	\$23,500.00	\$23,500.00	\$35,000.00	\$35,000.00	\$42,800.00	\$42,800.00				
18	Manhole No. 31	L.S.	1	\$31,000.00	\$31,000.00	\$38,500.00	\$38,500.00	\$35,000.00	\$35,000.00	\$23,700.00	\$23,700.00				
19	Manhole No. 32	L.S.	1	\$28,000.00	\$28,000.00	\$38,500.00	\$38,500.00	\$30,000.00	\$30,000.00	\$25,100.00	\$25,100.00				
20	Manhole No. 33	L.S.	1	\$25,000.00	\$25,000.00	\$15,500.00	\$15,500.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00				
21	Manhole No. 34	L.S.	1	\$28,000.00	\$28,000.00	\$27,500.00	\$27,500.00	\$30,000.00	\$30,000.00	\$23,300.00	\$23,300.00				
22	Manhole No. 35	L.S.	1	\$24,000.00	\$24,000.00	\$16,500.00	\$16,500.00	\$20,000.00	\$20,000.00	\$21,300.00	\$21,300.00				
23	Manhole No. 36	L.S.	1	\$25,000.00	\$25,000.00	\$18,000.00	\$18,000.00	\$20,000.00	\$20,000.00	\$20,300.00	\$20,300.00				
24	Traffic Control	L.S.	1	\$70,000.00	\$70,000.00	\$20,000.00	\$20,000.00	\$10,000.00	\$10,000.00	\$13,000.00	\$13,000.00				
25	Construct Roadway to Subgrade	L.S.	1	\$100,000.00	\$100,000.00	\$80,000.00	\$80,000.00	\$100,000.00	\$100,000.00	\$20,500.00	\$20,500.00				

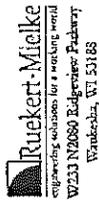


COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 92ND STREET TO 112TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.

PROJECT NO: 6692079_208 C-02006C003

BASE BID			S.J. LOUIS CONSTRUCTION CO., INC.			BENCHMARK CONSTRUCTION CO., INC.			SUPER EXCAVATORS, INC.			D.F. TOMASINI CONTRACTORS, INC.			
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL
26	Excavation Below Subgrade and Backfill - Sewer Trench	C.Y.	4,000	\$12.00	\$48,000.00	\$10.00	\$40,000.00	\$0.01	\$40.00	\$1.00	\$4,000.00	\$1.00	\$4,000.00	\$1.00	\$4,000.00
27	Crushed Aggregate Base Course	TON	2,700	\$14.00	\$37,800.00	\$11.00	\$29,700.00	\$13.00	\$35,100.00	\$9.95	\$26,865.00	\$9.95	\$26,865.00	\$9.95	\$26,865.00
28	Crushed Aggregate Shoulder	TON	260	\$23.00	\$5,980.00	\$20.00	\$5,200.00	\$20.00	\$5,200.00	\$15.00	\$3,900.00	\$15.00	\$3,900.00	\$15.00	\$3,900.00
29	Asphaltic Binder Course	TON	840	\$73.00	\$61,320.00	\$58.00	\$48,720.00	\$60.00	\$50,400.00	\$57.25	\$48,080.00	\$57.25	\$48,080.00	\$57.25	\$48,080.00
30	Asphaltic Surface Course - 92nd Street	TON	560	\$84.00	\$47,040.00	\$66.00	\$36,960.00	\$65.00	\$36,400.00	\$62.30	\$34,888.00	\$62.30	\$34,888.00	\$62.30	\$34,888.00
31	Asphaltic Surface Course - West Ryan Road	TON	1,200	\$75.00	\$90,000.00	\$60.00	\$72,000.00	\$60.00	\$72,000.00	\$57.70	\$69,240.00	\$57.70	\$69,240.00	\$57.70	\$69,240.00
32	Concrete Driveway and Approach Replacement	S.F.	260	\$10.00	\$2,600.00	\$8.00	\$2,080.00	\$6.00	\$1,560.00	\$6.00	\$1,560.00	\$6.00	\$1,560.00	\$6.00	\$1,560.00
33	Asphaltic Driveway and Approach Replacement	S.F.	4,300	\$5.00	\$21,500.00	\$4.00	\$17,200.00	\$6.00	\$25,800.00	\$5.10	\$21,930.00	\$5.10	\$21,930.00	\$5.10	\$21,930.00
34	Crushed Aggregate Driveway Replacement	S.F.	1,000	\$2.00	\$2,000.00	\$1.00	\$1,000.00	\$1.00	\$1,000.00	\$0.65	\$650.00	\$0.65	\$650.00	\$0.65	\$650.00
35	Mill and Remove Existing Asphalt	S.Y.	10,500	\$2.50	\$26,250.00	\$2.00	\$21,000.00	\$1.30	\$13,650.00	\$1.25	\$13,125.00	\$1.25	\$13,125.00	\$1.25	\$13,125.00
36	3-1/2 Inch Roadway Base Patching	TON	200	\$180.00	\$36,000.00	\$200.00	\$40,000.00	\$130.00	\$26,000.00	\$125.00	\$25,000.00	\$125.00	\$25,000.00	\$125.00	\$25,000.00
37	Temporary Access Road	L.S.	1	\$110,000.00	\$110,000.00	\$70,000.00	\$70,000.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
38	Full Depth Saw Cutting	L.F.	220	\$2.50	\$550.00	\$2.50	\$550.00	\$2.00	\$440.00	\$2.00	\$440.00	\$2.00	\$440.00	\$2.00	\$440.00
39	12-inch CMCP Driveway Culvert	L.F.	180	\$50.00	\$9,000.00	\$25.00	\$4,500.00	\$80.00	\$14,400.00	\$80.00	\$14,400.00	\$80.00	\$14,400.00	\$80.00	\$14,400.00
40	15-inch CMCP Driveway Culvert	L.F.	81	\$55.00	\$4,455.00	\$25.00	\$2,025.00	\$140.00	\$11,340.00	\$140.00	\$11,340.00	\$140.00	\$11,340.00	\$140.00	\$11,340.00
41	21-inch CMCP Driveway Culvert	L.F.	241	\$64.00	\$15,424.00	\$30.00	\$7,230.00	\$70.00	\$16,800.00	\$70.00	\$16,800.00	\$70.00	\$16,800.00	\$70.00	\$16,800.00
42	15-inch RCCP CL IV Culvert w/ Apron Endwalls	L.F.	100	\$110.00	\$11,000.00	\$40.00	\$4,000.00	\$125.00	\$12,500.00	\$125.00	\$12,500.00	\$125.00	\$12,500.00	\$125.00	\$12,500.00
43	Temporary 12-inch CMP Culvert	L.F.	80	\$50.00	\$4,000.00	\$25.00	\$2,000.00	\$45.00	\$3,600.00	\$60.00	\$4,800.00	\$60.00	\$4,800.00	\$60.00	\$4,800.00
44	Farm Drainage Tile Reconnection	EA.	40	\$1,450.00	\$58,000.00	\$200.00	\$8,000.00	\$500.00	\$20,000.00	\$100.00	\$4,000.00	\$100.00	\$4,000.00	\$100.00	\$4,000.00
45	Pavement Marking, Solid, 4-inch yellow, Epoxy	L.F.	8,520	\$0.50	\$4,260.00	\$1.00	\$8,520.00	\$0.30	\$2,556.00	\$0.50	\$4,260.00	\$0.50	\$4,260.00	\$0.50	\$4,260.00
46	Pavement Marking, Dashed, 4-inch yellow, Epoxy	L.F.	550	\$0.50	\$275.00	\$1.00	\$550.00	\$0.30	\$165.00	\$0.50	\$275.00	\$0.50	\$275.00	\$0.50	\$275.00
47	Pavement Marking, Solid, 4-inch white, Epoxy	L.F.	12,400	\$0.50	\$6,200.00	\$1.00	\$12,400.00	\$0.30	\$3,720.00	\$0.50	\$6,200.00	\$0.50	\$6,200.00	\$0.50	\$6,200.00
48	Silt Fence	L.F.	23,000	\$2.50	\$57,500.00	\$2.50	\$57,500.00	\$2.00	\$46,000.00	\$2.50	\$57,500.00	\$2.50	\$57,500.00	\$2.50	\$57,500.00
49	Tracking Pad	TON	500	\$17.00	\$8,500.00	\$50.00	\$25,000.00	\$22.00	\$11,000.00	\$15.00	\$7,500.00	\$15.00	\$7,500.00	\$15.00	\$7,500.00
50	Ditch Check	L.F.	600	\$10.00	\$6,000.00	\$8.00	\$4,800.00	\$8.00	\$4,800.00	\$7.00	\$4,200.00	\$7.00	\$4,200.00	\$7.00	\$4,200.00



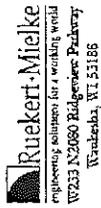
COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 92ND STREET TO 112TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.
 PROJECT NO: 5892073.208 C02006C003

BASE BID				S.J. LOUIS CONSTRUCTION CO., INC.		BENCHMARK CONSTRUCTION CO., INC.		SUPER EXCAVATORS, INC.		D.F. TOMASINI CONTRACTORS, INC.	
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL
51	Topsoil, Fertilizer, Seed and Mulch - Roadway Right-of-Way and Abutting Easements	S.Y.	12,000	\$1.50	\$18,000.00	\$4.00	\$48,000.00	\$4.00	\$48,000.00	\$0.75	\$9,000.00
52	Topsoil, Fertilizer, Seed and Mulch - Easements	S.Y.	115,000	\$0.75	\$86,250.00	\$2.00	\$230,000.00	\$0.50	\$57,500.00	\$0.65	\$74,750.00
53	Erosion Control Blanket, S150	S.Y.	3,000	\$2.00	\$6,000.00	\$1.63	\$4,890.00	\$1.50	\$4,500.00	\$1.65	\$4,950.00
54	Erosion Control Blanket, S160 BN	S.Y.	9,000	\$2.00	\$18,000.00	\$1.85	\$16,650.00	\$1.80	\$16,200.00	\$1.85	\$16,650.00
55	Land Application of Anionic Polyacrylamide	S.Y.	115,000	\$0.50	\$57,500.00	\$0.40	\$46,000.00	\$0.30	\$34,500.00	\$0.40	\$46,000.00
56	Wetland Restoration	L.S.	1	\$19,000.00	\$19,000.00	\$17,000.00	\$17,000.00	\$20,000.00	\$20,000.00	\$19,250.00	\$19,250.00
57	Dust Control Using Calcium Chloride	100 LBS	20	\$125.00	\$2,500.00	\$100.00	\$2,000.00	\$100.00	\$2,000.00	\$50.00	\$1,000.00
58	Dust Control Using Water	1,000 GAL	20	\$125.00	\$2,500.00	\$400.00	\$8,000.00	\$100.00	\$2,000.00	\$30.00	\$600.00
59	Allowance for Landscape Plantings	L.S.	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
TOTAL OF ALL ESTIMATED PRICES (ITEMS 1 - 59)					\$5,776,053.00		\$5,788,991.00		\$5,814,469.00		\$5,992,382.00
MANDATORY ALTERNATE BIDS											
MA1	36-inch Sanitary Sewer Using Specification Section 02611 Pipe w/Spill Backfill	L.F.	7,329	\$417.00	\$3,056,193.00	\$720.00	\$5,276,880.00	\$410.00	\$3,016,359.00	\$384.00	\$2,814,356.00
MA2	36-inch Sanitary Sewer Using Specification Section 02611 Pipe w/Granular Backfill	L.F.	1,759	\$650.00	\$1,143,350.00	\$1,404.00	\$2,469,636.00	\$632.00	\$1,111,688.00	\$578.00	\$1,016,702.00
MA3	Augered 36-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Steel	L.F.	360	\$1,600.00	\$576,000.00	\$3,350.00	\$1,206,000.00	\$1,800.00	\$648,000.00	\$1,800.00	\$576,000.00
TOTAL OF ALL ESTIMATED PRICES USING MANDATORY ALTERNATE BIDS					\$6,273,792.00		\$10,364,566.00		\$5,904,470.00		\$5,374,692.00

* Error on S.J. Louis Construction Co., Inc.: Bid item #55 - Contractor Bid Total \$7,950.00, Actual Bid Total \$7,500.00 Contractor TOTAL BID \$5,776,503, Actual TOTAL BID - \$5,776,053.00 Error on Mandatory Alternate MA3 - Contractor Bid Total \$600,800.00, Actual Bid Total \$576,000.00

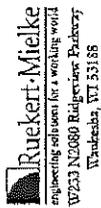
** Error on Super Excavators, Inc.: Bid item #46 - Contractor Bid Total \$3,720.00, Actual Bid Total \$165.00. Contractor TOTAL BID \$5,818,024.00, Actual TOTAL BID - \$5,814,469.00



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 92ND STREET TO 112TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.
 PROJECT NO: 5692073.208 C02006C003

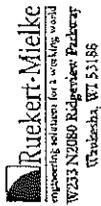
BASE BID				GLOBE CONTRACTORS, INC.			
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL		
1	36-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Spill Backfill	L.F.	7,329	\$476.00	\$3,503,282.00		
2	36-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Granular Backfill	L.F.	1,759	\$650.00	\$1,143,350.00		
3	Augered 36-Inch Sanitary Sewer Using Specification Section 02504 Pipe w/Steel	L.F.	360	\$1,650.00	\$594,000.00		
4	8-Inch Sanitary Sewer Stub w/Spill Backfill	L.F.	30	\$450.00	\$13,500.00		
5	8-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	15	\$500.00	\$7,500.00		
6	12-Inch Sanitary Sewer Stub w/Spill Backfill	L.F.	30	\$490.00	\$14,700.00		
7	12-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	30	\$550.00	\$16,500.00		
8	16-Inch Sanitary Sewer Stub w/Granular Backfill	L.F.	15	\$600.00	\$9,000.00		
9	21-Inch Sanitary Sewer Stub w/Spill Backfill	L.F.	15	\$500.00	\$7,500.00		
10	Manhole No. 25	L.S.	1	\$23,000.00	\$23,000.00		
11	Manhole No. 26	L.S.	1	\$45,000.00	\$45,000.00		
12	Manhole No. 27	L.S.	1	\$31,000.00	\$31,000.00		
13	Manhole No. 28	L.S.	1	\$31,000.00	\$31,000.00		
14	Manhole No. 29	L.S.	1	\$36,000.00	\$36,000.00		
15	Manhole No. 23	L.S.	1	\$42,000.00	\$42,000.00		
16	Manhole No. 24	L.S.	1	\$28,000.00	\$28,000.00		
17	Manhole No. 30	L.S.	1	\$49,000.00	\$49,000.00		
18	Manhole No. 31	L.S.	1	\$35,000.00	\$35,000.00		
19	Manhole No. 32	L.S.	1	\$34,000.00	\$34,000.00		
20	Manhole No. 33	L.S.	1	\$27,000.00	\$27,000.00		
21	Manhole No. 34	L.S.	1	\$34,000.00	\$34,000.00		
22	Manhole No. 35	L.S.	1	\$20,000.00	\$20,000.00		
23	Manhole No. 36	L.S.	1	\$28,000.00	\$28,000.00		
24	Traffic Control	L.S.	1	\$10,000.00	\$10,000.00		



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 92ND STREET TO 112TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.
 PROJECT NO: 5892073.208 C02006C003

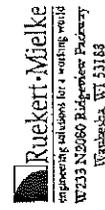
BASE BID				GLOBE CONTRACTORS, INC.			
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL		
25	Construct Roadway to Subgrade	L.S.	1	\$66,000.00	\$66,000.00		
26	Excavation Below Subgrade and Backfill - Sewer Trench	C.Y.	4,000	\$15.00	\$60,000.00		
27	Crushed Aggregate Base Course	TON	2,700	\$11.20	\$30,240.00		
28	Crushed Aggregate Shoulder	TON	260	\$18.20	\$4,732.00		
29	Asphaltic Binder Course	TON	840	\$57.80	\$48,552.00		
30	Asphaltic Surface Course - 92 nd Street	TON	560	\$67.20	\$37,632.00		
31	Asphaltic Surface Course - West Ryan Road	TON	1,200	\$60.10	\$72,120.00		
32	Concrete Driveway and Approach Replacement	S.F.	260	\$8.00	\$2,080.00		
33	Asphaltic Driveway and Approach Replacement	S.F.	4,300	\$3.90	\$16,770.00		
34	Crushed Aggregate Driveway Replacement	S.F.	1,000	\$1.00	\$1,000.00		
35	Mill and Remove Existing Asphalt	S.Y.	10,500	\$1.84	\$19,320.00		
36	3-1/2 inch Roadway Base Patching	TON	200	\$150.00	\$30,000.00		
37	Temporary Access Road	L.S.	1	\$25,000.00	\$25,000.00		
38	Full Depth Saw Cutting	L.F.	220	\$2.50	\$550.00		
39	12-inch CMCP Driveway Culvert	L.F.	180	\$64.00	\$11,520.00		
40	15-inch CMCP Driveway Culvert	L.F.	91	\$68.00	\$6,188.00		
41	21-inch CMCP Driveway Culvert	L.F.	241	\$72.00	\$17,352.00		
42	15-inch RCCP CL IV Culvert w/Apron Endwalls	L.F.	100	\$96.00	\$9,600.00		
43	Temporary 12-inch CMP Culvert	L.F.	80	\$64.00	\$5,120.00		
44	Farm Drainage Tile Reconnection	EA.	40	\$500.00	\$20,000.00		
45	Pavement Marking, Solid, 4-inch yellow, Epoxy	L.F.	8,520	\$0.30	\$2,556.00		
46	Pavement Marking, Dashed, 4-inch yellow, Epoxy	L.F.	550	\$0.30	\$165.00		
47	Pavement Marking, Solid, 4-inch white, Epoxy	L.F.	12,400	\$0.30	\$3,720.00		
48	Silt Fence	L.F.	23,000	\$1.50	\$34,500.00		



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 92ND STREET TO 112TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.
 PROJECT NO: 5892073.208 C02006C003

BASE BID				GLOBE CONTRACTORS, INC.			
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL		
49	Tracking Pad	TON	500	\$15.00	\$7,500.00		
50	Ditch Check	L.F.	600	\$10.00	\$6,000.00		
51	Topsoil, Fertilizer, Seed and Mulch -- Roadway Right-of-Way and Abutting Easements	S.Y.	12,000	\$2.00	\$24,000.00		
52	Topsoil, Fertilizer, Seed and Mulch -- Easements	S.Y.	1,15,000	\$1.00	\$115,000.00		
53	Erosion Control Blanket, S150	S.Y.	3,000	\$2.00	\$6,000.00		
54	Erosion Control Blanket, S150 BN	S.Y.	9,000	\$2.00	\$18,000.00		
55	Land Application of Anionic Polyacrylamide	S.Y.	115,000	\$0.40	\$46,000.00		
56	Wetland Restoration	L.S.	1	\$20,000.00	\$20,000.00		
57	Dust Control Using Calcium Chloride	100 LBS	20	\$100.00	\$2,000.00		
58	Dust Control Using Water	1,000 GAL	20	\$100.00	\$2,000.00		
59	Allowance for Landscapes Plantings	L.S.	1	\$10,000.00	\$10,000.00		
TOTAL OF ALL ESTIMATED PRICES (ITEMS 1 - 59)					\$6,563,529.00		
MANDATORY ALTERNATE BIDS							
MA1	36-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Spoil Backfill	L.F.	7,329	\$496.00	\$3,657,171.00		
MA2	36-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Granular Backfill	L.F.	1,759	\$681.00	\$1,162,699.00		
MA3	Augered 36-Inch Sanitary Sewer Using Specification Section 02611 Pipe w/Steel	L.F.	360	\$1,689.00	\$608,040.00		
TOTAL OF ALL ESTIMATED PRICES USING MANDATORY ALTERNATE BIDS					\$6,750,827.00		

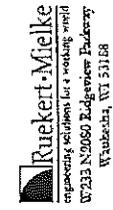


COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 112ST STREET TO 124TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.

PROJECT NO 5892073.209 C02006C04

BASE BID			GLOBE CONTRACTORS, INC.			S.J. LOUIS CONSTRUCTION, INC.			BENCHMARK CONSTRUCTION CO., INC.			SUPEREXCAVATORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	
1	24-inch Sanitary Sewer Using Specification Section 02504 Pipe	L.F.	594	\$446.00	\$264,924.00	\$550.00	\$326,700.00	\$506.00	\$300,564.00	\$420.00	\$249,480.00			
2	36-inch Sanitary Sewer Using Specification Section 02504 Pipe	L.F.	4,343	\$562.00	\$2,440,766.00	\$560.00	\$2,432,080.00	\$581.00	\$2,523,263.00	\$711.00	\$3,087,873.00			
3	Augered 36-inch Sanitary Sewer Using Specification Section 02504 Pipe w/Steel	L.F.	390	\$1,637.00	\$638,430.00	\$1,500.00	\$585,000.00	\$2,135.00	\$832,650.00	\$1,900.00	\$741,000.00			
4	8-inch Sanitary Sewer Stub w/Granular Backfill	L.F.	120	\$400.00	\$48,000.00	\$150.00	\$18,000.00	\$8.00	\$960.00	\$360.00	\$43,200.00			
5	12-inch Sanitary Sewer Stub w/Granular Backfill	L.F.	30	\$450.00	\$13,500.00	\$155.00	\$4,650.00	\$17.00	\$510.00	\$460.00	\$13,800.00			
6	16-inch Sanitary Sewer Stub w/Granular Backfill	L.F.	28	\$470.00	\$13,160.00	\$190.00	\$5,320.00	\$71.00	\$1,988.00	\$520.00	\$14,560.00			
7	Manhole No. 37	L.S.	1	\$60,000.00	\$60,000.00	\$40,000.00	\$40,000.00	\$44,000.00	\$44,000.00	\$40,000.00	\$40,000.00			
8	Manhole No. 38	L.S.	1	\$35,000.00	\$35,000.00	\$25,000.00	\$25,000.00	\$18,000.00	\$18,000.00	\$30,000.00	\$30,000.00			
9	Manhole No. 39	L.S.	1	\$40,000.00	\$40,000.00	\$33,000.00	\$33,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00			
10	Manhole No. 40	L.S.	1	\$70,000.00	\$70,000.00	\$28,000.00	\$28,000.00	\$30,000.00	\$30,000.00	\$50,000.00	\$50,000.00			
11	Manhole No. 41	L.S.	1	\$40,000.00	\$40,000.00	\$27,000.00	\$27,000.00	\$32,000.00	\$32,000.00	\$30,000.00	\$30,000.00			
12	Manhole No. 42	L.S.	1	\$40,000.00	\$40,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$30,000.00	\$30,000.00			
13	Manhole No. 43	L.S.	1	\$35,000.00	\$35,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$30,000.00	\$30,000.00			
14	Manhole No. 44	L.S.	1	\$40,000.00	\$40,000.00	\$27,000.00	\$27,000.00	\$28,000.00	\$28,000.00	\$30,000.00	\$30,000.00			
15	Manhole No. 45	L.S.	1	\$50,000.00	\$50,000.00	\$40,000.00	\$40,000.00	\$43,000.00	\$43,000.00	\$40,000.00	\$40,000.00			
16	Traffic Control	L.S.	1	\$40,000.00	\$40,000.00	\$90,000.00	\$90,000.00	\$30,000.00	\$30,000.00	\$50,000.00	\$50,000.00			
17	Construct Roadway to Subgrade	L.S.	1	\$150,000.00	\$150,000.00	\$250,000.00	\$250,000.00	\$205,000.00	\$205,000.00	\$200,000.00	\$200,000.00			
18	Excavation Below Subgrade and Backfill - Sewer Trench	C.Y.	2,000	\$15.00	\$30,000.00	\$12.00	\$24,000.00	\$10.00	\$20,000.00	\$0.10	\$200.00			
19	Crushed Aggregate Base Course	TON	8,600	\$12.10	\$104,060.00	\$15.00	\$129,000.00	\$12.10	\$104,060.00	\$12.10	\$104,060.00			
20	Crushed Aggregate Shoulder	TON	1,000	\$16.10	\$16,100.00	\$20.00	\$20,000.00	\$16.10	\$16,100.00	\$16.10	\$16,100.00			
21	Asphaltic Binder Course	TON	2,400	\$58.40	\$140,160.00	\$75.00	\$180,000.00	\$58.40	\$140,160.00	\$58.40	\$140,160.00			
22	Asphaltic Surface Course	TON	1,450	\$67.80	\$98,310.00	\$86.00	\$124,700.00	\$67.80	\$98,310.00	\$67.80	\$98,310.00			

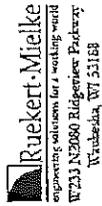


COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 112ST STREET TO 124TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.

PROJECT NO 5892073.209 C02006C04

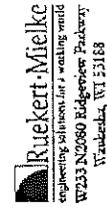
BASE BID			GLOBE CONTRACTORS, INC.			S.J. LOUIS CONSTRUCTION, INC.			BENCHMARK CONSTRUCTION CO., INC.			SUPEREXCAVATORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	
23	Concrete Driveway and Approach Replacement	S.F.	300	\$8.00	\$2,400.00	\$10.00	\$3,000.00	\$8.00	\$2,400.00	\$6.00	\$1,800.00	\$6.00	\$1,800.00	
24	Asphaltic Driveway and Approach Replacement	S.F.	1,900	\$3.30	\$6,270.00	\$4.00	\$7,600.00	\$3.30	\$6,270.00	\$3.30	\$6,270.00	\$3.30	\$6,270.00	
25	Crushed Aggregate Driveway Replacement	S.F.	4,200	\$1.00	\$4,200.00	\$2.00	\$8,400.00	\$1.00	\$4,200.00	\$1.00	\$4,200.00	\$1.00	\$4,200.00	
26	Temporary Asphalt Driveway	S.F.	750	\$3.80	\$2,850.00	\$5.00	\$3,750.00	\$3.80	\$2,850.00	\$3.80	\$2,850.00	\$3.80	\$2,850.00	
27	12-inch CMCP Driveway Culvert	L.F.	210	\$75.00	\$15,750.00	\$50.00	\$10,500.00	\$28.00	\$5,880.00	\$95.00	\$17,850.00	\$95.00	\$17,850.00	
28	15-inch CMCP Driveway Culvert	L.F.	130	\$80.00	\$10,400.00	\$55.00	\$7,150.00	\$30.00	\$3,900.00	\$90.00	\$11,700.00	\$90.00	\$11,700.00	
29	17"x13" CMCA Driveway Culvert	L.F.	20	\$95.00	\$1,700.00	\$60.00	\$1,200.00	\$67.00	\$1,340.00	\$160.00	\$3,200.00	\$160.00	\$3,200.00	
30	12-inch RCCP CL V Culvert w/Apron Endwalls	L.F.	120	\$100.00	\$12,000.00	\$120.00	\$14,400.00	\$58.00	\$6,960.00	\$175.00	\$21,000.00	\$175.00	\$21,000.00	
31	15-inch RCCP CL IV Culvert w/Apron Endwalls	L.F.	115	\$102.00	\$11,730.00	\$175.00	\$20,125.00	\$56.00	\$6,440.00	\$180.00	\$20,700.00	\$180.00	\$20,700.00	
32	18-inch RCCP CL IV Culvert w/Apron Endwalls	L.F.	45	\$124.00	\$5,580.00	\$180.00	\$8,100.00	\$77.00	\$3,465.00	\$190.00	\$8,550.00	\$190.00	\$8,550.00	
33	23"x14" RCCE CL IV Culvert w/Apron Endwalls	L.F.	44	\$134.00	\$5,896.00	\$260.00	\$11,440.00	\$99.00	\$3,916.00	\$235.00	\$10,340.00	\$235.00	\$10,340.00	
34	3 1/2-inch Roadway Base Patching	TON	200	\$150.00	\$30,000.00	\$190.00	\$38,000.00	\$150.00	\$30,000.00	\$150.00	\$30,000.00	\$150.00	\$30,000.00	
35	Full Depth Saw Cutting	L.F.	300	\$2.00	\$600.00	\$2.50	\$750.00	\$1.50	\$450.00	\$2.00	\$600.00	\$2.00	\$600.00	
36	Pavement Marking, Dashed, 4-inch yellow, Epoxy	L.F.	700	\$0.34	\$238.00	\$0.50	\$350.00	\$0.80	\$560.00	\$0.35	\$245.00	\$0.35	\$245.00	
37	Pavement Marking, Solid, 4-inch Yellow, Epoxy	L.F.	5,600	\$0.34	\$1,904.00	\$0.50	\$2,800.00	\$0.80	\$4,480.00	\$0.35	\$1,960.00	\$0.35	\$1,960.00	
38	Pavement Marking, Solid, 4-inch white, Epoxy	L.F.	10,400	\$0.34	\$3,536.00	\$0.50	\$5,200.00	\$0.80	\$8,320.00	\$0.35	\$3,640.00	\$0.35	\$3,640.00	
39	Still Fence	L.F.	10,500	\$2.00	\$21,000.00	\$3.00	\$31,500.00	\$2.25	\$23,625.00	\$2.15	\$22,575.00	\$2.15	\$22,575.00	
40	Ditch Check	L.F.	1,500	\$9.00	\$13,500.00	\$9.00	\$13,500.00	\$7.00	\$10,500.00	\$7.30	\$10,950.00	\$7.30	\$10,950.00	
41	Inlet Sediment Guard - Type D	EA.	2	\$150.00	\$300.00	\$150.00	\$300.00	\$105.00	\$210.00	\$150.00	\$300.00	\$150.00	\$300.00	
42	Topsoil, Fertilizer, Seed and Mulch - Roadway Right-of-Way and Abutting	S.Y.	35,000	\$2.00	\$70,000.00	\$1.25	\$43,750.00	\$2.07	\$72,450.00	\$4.00	\$140,000.00	\$4.00	\$140,000.00	
43	Erosion Control Blanket, S150	S.Y.	7,500	\$2.00	\$15,000.00	\$2.00	\$15,000.00	\$1.65	\$12,375.00	\$1.40	\$10,500.00	\$1.40	\$10,500.00	



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 112ST STREET TO 124TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.
 PROJECT NO 5892073.209 C02006C04

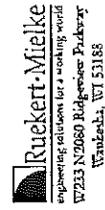
BASE BID				GLOBE CONTRACTORS, INC.			S.J. LOUIS CONSTRUCTION, INC.			BENCHMARK CONSTRUCTION CO., INC.			SUPEREXCAVATORS, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL	UNIT \$	TOTAL
44	Erosion Control Blanket, S160 BN	S.Y.	27,500	\$2.00	\$55,000.00	\$2.00	\$55,000.00	\$1.85	\$50,875.00	\$1.75	\$48,125.00				
45	Land Application of Antonic Polyacrylamide	S.Y.	2,000	\$0.35	\$700.00	\$0.50	\$1,000.00	\$0.65	\$1,300.00	\$0.30	\$600.00				
46	Wetland Restoration	L.S.	1	\$10,000.00	\$10,000.00	\$30,000.00	\$30,000.00	\$12,000.00	\$12,000.00	\$13,000.00	\$13,000.00				
47	Farm Drainage Tile Reconnection	EA.	20	\$100.00	\$2,000.00	\$1,400.00	\$28,000.00	\$215.00	\$4,300.00	\$1,000.00	\$20,000.00				
48	Dust Control Using Calcium Chloride	100 LBS	20	\$100.00	\$2,000.00	\$125.00	\$2,500.00	\$100.00	\$2,000.00	\$125.00	\$2,500.00				
49	Dust Control Using Water	1000 GAL	20	\$100.00	\$2,000.00	\$125.00	\$2,500.00	\$450.00	\$9,000.00	\$100.00	\$2,000.00				
50	Allowance for Landscape Plantings	L.S.	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00				
TOTAL OF ALL ESTIMATED PRICES (ITEMS 1 - 50)					\$4,723,964.00		\$4,835,265.00		\$4,848,651.00		\$5,494,193.00				
MANDATORY ALTERNATE BIDS															
MA1	24-inch Sanitary Sewer Using Specification Section 02611 Pipe	L.F.	594	\$442.00	\$262,548.00	\$600.00	\$356,400.00	\$1,012.00	\$601,128.00	\$455.00	\$270,270.00				
MA2	36-inch Sanitary Sewer Using Specification Section 02611 Pipe	L.F.	4,343	\$576.00	\$2,501,568.00	\$510.00	\$2,619,230.00	\$1,152.00	\$5,048,566.00	\$747.00	\$3,244,221.00				
MA3	Augered 36-inch Sanitary Sewer Using Specification Section 02611 Pipe w/Steel	L.F.	390	\$1,675.00	\$653,250.00	\$1,600.00	\$624,000.00	\$4,270.00	\$1,665,300.00	\$1,900.00	\$741,000.00				
TOTAL OF ALL ESTIMATED PRICES USING MANDATORY ALTERNATE BIDS					\$4,797,210.00		\$5,121,115.00		\$8,505,148.00		\$5,671,336.00				



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 112ST STREET TO 124TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.
 PROJECT NO 5892073.209 C02005C04

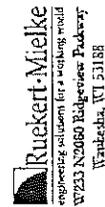
BASE BID				M.J. CONSTRUCTION, INC.			
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL		
1	24-inch Sanitary Sewer Using Specification Section 02504 Pipe	L.F.	564	\$725.00	\$430,850.00		
2	36-inch Sanitary Sewer Using Specification Section 02504 Pipe	L.F.	4,343	\$670.00	\$2,909,810.00		
3	Augered 36-inch Sanitary Sewer Using Specification Section 02504 Pipe w/Steel	L.F.	390	\$1,870.00	\$729,300.00		
4	8-inch Sanitary Sewer Stub w/Granular Backfill	L.F.	120	\$350.00	\$42,000.00		
5	12-inch Sanitary Sewer Stub w/Granular Backfill	L.F.	30	\$350.00	\$10,500.00		
6	15-inch Sanitary Sewer Stub w/Granular Backfill	L.F.	28	\$440.00	\$12,320.00		
7	Manhole No. 37	L.S.	1	\$33,600.00	\$33,600.00		
8	Manhole No. 38	L.S.	1	\$22,700.00	\$22,700.00		
9	Manhole No. 39	L.S.	1	\$27,200.00	\$27,200.00		
10	Manhole No. 40	L.S.	1	\$54,300.00	\$54,300.00		
11	Manhole No. 41	L.S.	1	\$24,200.00	\$24,200.00		
12	Manhole No. 42	L.S.	1	\$22,600.00	\$22,600.00		
13	Manhole No. 43	L.S.	1	\$22,400.00	\$22,400.00		
14	Manhole No. 44	L.S.	1	\$26,300.00	\$26,300.00		
15	Manhole No. 45	L.S.	1	\$42,000.00	\$42,000.00		
16	Traffic Control	L.S.	1	\$42,200.00	\$42,200.00		
17	Construct Roadway to Subgrade	L.S.	1	\$250,000.00	\$250,000.00		
18	Excavation Below Subgrade and Backfill - Sewer Trench	C.Y.	2,000	\$42.00	\$84,000.00		
19	Crushed Aggregate Base Course	TON	8,600	\$15.00	\$129,000.00		
20	Crushed Aggregate Shoulder	TON	1,000	\$20.00	\$20,000.00		
21	Asphaltic Binder Course	TON	2,400	\$72.00	\$172,800.00		
22	Asphaltic Surface Course	TON	1,450	\$84.02	\$121,829.00		



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 112ST STREET TO 124TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.
 PROJECT NO. 5892073.209 C02006C04

BASE BID				M.J. CONSTRUCTION, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	
23	Concrete Driveway and Approach Replacement	S.F.	300	\$10.00	\$3,000.00	
24	Asphaltic Driveway and Approach Replacement	S.F.	1,900	\$4.00	\$7,600.00	
25	Crushed Aggregate Driveway Replacement	S.F.	4,200	\$1.50	\$6,300.00	
26	Temporary Asphalt Driveway	S.F.	750	\$5.00	\$3,750.00	
27	12-inch CMCP Driveway Culvert	L.F.	210	\$39.00	\$8,190.00	
28	15-inch CMCP Driveway Culvert	L.F.	130	\$50.00	\$6,500.00	
29	17"x13" CMCA Driveway Culvert	L.F.	20	\$55.00	\$1,100.00	
30	12-inch RCCP CL V Culvert w/Apron Endwalls	L.F.	120	\$60.00	\$7,200.00	
31	15-inch RCCP CL IV Culvert w/Apron Endwalls	L.F.	115	\$70.00	\$8,050.00	
32	18-inch RCCP CL IV Culvert w/Apron Endwalls	L.F.	45	\$80.00	\$3,600.00	
33	23"x14" RCCE CL IV Culvert w/Apron Endwalls	L.F.	44	\$80.00	\$3,960.00	
34	3 1/2-inch Roadway Base Patching	TON	200	\$180.00	\$36,000.00	
35	Full Depth Saw Cutting	L.F.	300	\$2.50	\$750.00	
36	Pavement Marking, Dashed, 4-inch yellow, Epoxy	L.F.	700	\$0.50	\$350.00	
37	Pavement Marking, Solid, 4-inch Yellow, Epoxy	L.F.	5,600	\$0.50	\$2,800.00	
38	Pavement Marking, Solid, 4-inch white, Epoxy	L.F.	10,400	\$0.50	\$5,200.00	
39	Silt Fence	L.F.	10,500	\$2.80	\$29,400.00	
40	Ditch Check	L.F.	1,500	\$12.00	\$18,000.00	
41	Inlet Sediment Guard - Type D	EA.	2	\$150.00	\$300.00	
42	Topsoil, Fertilizer, Seed and Mulch - Roadway Right-of-Way and Abutting	S.Y.	35,000	\$10.00	\$350,000.00	
43	Erosion Control Blanket, S150	S.Y.	7,500	\$2.50	\$18,750.00	



COST COMPARISON OF BIDDERS

OWNER: CITY OF FRANKLIN
 PROJECT: RYAN CREEK SANITARY SEWER INTERCEPTOR 1125TH STREET TO 124TH STREET
 BID OPENING DATE: AUGUST 30, 2011 11:00 A.M.
 PROJECT NO 5892073.209 C02006C04

BASE BID				M.J. CONSTRUCTION, INC.		
ITEM #	ITEM DESCRIPTION	UNIT	QTY.	UNIT \$	TOTAL	
44	Erosion Control Blanket, S150 BN	S.Y.	27,500	\$3.80	\$104,500.00	
45	Land Application of Anionic Polyacrylamide	S.Y.	2,000	\$5.00	\$10,000.00	
46	Wetland Restoration	L.S.	1	\$30,975.00	\$30,975.00	
47	Farm Drainage Tile Reconnection	EA.	20	\$850.00	\$17,000.00	
48	Dust Control Using Calcium Chloride	100 LBS	20	\$150.00	\$3,000.00	
49	Dust Control Using Water	1000 GAL	20	\$150.00	\$3,000.00	
50	Allowance for Landscape Plantings	L.S.	1	\$10,000.00	\$10,000.00	
TOTAL OF ALL ESTIMATED PRICES (ITEMS 1 - 50)					\$5,941,284.00	
MANDATORY ALTERNATE BIDS						
MA1	24-inch Sanitary Sewer Using Specification Section 02611 Pipe	L.F.	594	\$707.00	\$419,958.00	
MA2	36-inch Sanitary Sewer Using Specification Section 02611 Pipe	L.F.	4,343	\$660.00	\$2,866,380.00	
MA3	Augered 36-inch Sanitary Sewer Using Specification Section 02611 Pipe w/Steel	L.F.	390	\$1,950.00	\$760,500.00	
TOTAL OF ALL ESTIMATED PRICES USING MANDATORY ALTERNATE BIDS					\$5,918,362.00	

CITY OF FRANKLIN
 RYAN CREEK SANITARY SEWER INTERCEPTOR
 AWARD OF CONTRACTS COMPUTATION SHEET

Bidders	Contract C02006 C01		Contract C02006 C02		Contract C02006 C03		Contract C02006 C04	
	Fiberglass (Base Bid)	PVC-Lined RCP						
Super Excavators, Inc.	\$ 5,568,006.00	\$ 8,175,180.00	\$ 3,309,891.00	\$ 3,338,775.00	\$ 5,814,469.00	\$ 5,904,470.00	\$ 5,494,198.00	\$ 5,671,336.00
S.J. Louis Construction Co., Inc.	7,889,550.00	NO BID	4,987,990.00	5,137,460.00	5,776,053.00	6,273,782.00	4,835,265.00	5,121,115.00
Benchmark Construction Co., Inc.	NO BID	NO BID	5,248,768.50	5,248,768.50	5,788,991.00	10,364,566.00	4,848,651.00	8,505,148.00
Globe Contractors, Inc.	9,537,454.00	9,425,009.00	5,035,420.00	5,035,420.00	6,563,529.00	6,750,827.00	4,723,964.00	4,797,210.00
D. F. Tomasini Contractors, Inc.	NO BID	NO BID	5,731,685.00	5,731,685.00	5,992,382.00	NO BID	NO BID	NO BID
M. J. Construction, Inc.	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	5,941,284.00	5,918,362.00
Michels Corporation	7,653,192.00	7,738,107.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID

<u>Lowest Sum of 4 Contracts</u>	
Fiberglass	PVC-Lined RCP
\$ 19,377,914.00	\$ 18,946,348.00
431,566.00	

<u>Lowest Combined Project Cost Based Upon Material</u>	
<u>Recommended Contract Awards</u>	
Contract C02006 C01	\$ 5,435,671.00
Contract C02006 C02	3,338,775.00
Contract C02006 C03	5,374,692.00
Contract C02006 C04	4,797,210.00
\$ 18,946,348.00	

18.07 - BASIS OF AWARD
 Award of Contract will be to the lowest responsible Bidder whose Bid for each pipe material, in combination with the lowest, responsible Bids of Contracts C01, C02, C03 and C04 for each pipe material, results in the lowest overall combined Project cost. Only one pipe material will be used for the entire Project.





Preserving The Environment -
Improving Water Quality

Kevin L. Shafer, P.E.
Executive Director

September 14, 2011

Mr. John M. Bennett, P.E.
City Engineer / Director of Public Works
City of Franklin
9229 West Loomis Road
Franklin, Wisconsin 53132-9630

Subject: City of Franklin – Ryan Creek Sanitary Sewer Interceptor

Dear Mr. Bennett:

Regarding your request of September 9, 2011, and pursuant to the Intergovernmental Cooperative Agreement between the City of Franklin and the Milwaukee Metropolitan Sewerage District (MMSD), specifically Paragraph 2.3.3., the MMSD staff has reviewed the packages of the apparent low bidders for the four contracts bid on both August 26, and August 30, 2011.

MMSD is in agreement with the Recommendation of Award, dated August 31, 2011, prepared by your consultant, Ruckert • Mielke, Inc. The award recommendations are for the following contracts:

- C02006C01 -- Super Excavators, Inc. \$5,435,671.00
- C02006C02 -- Super Excavators, Inc. \$3,338,775.00
- C02006C03 -- D.F. Tomasini Contractors, Inc. . . \$5,435,671.00
- C02006C04 -- Globe Contactors, Inc. \$4,797,210.00

Very truly yours,

Kevin L. Shafer, P.E.
Executive Director

KLS:LEE:mjs
c: Joseph Eberle, Ruckert • Mielke, Inc.
File Code: C02006C01.C3500

RESOLUTION NO. 2011-_____

A RESOLUTION AWARDING CONTRACTS TO THE LOWEST RESPONSIBLE BIDDERS FOR THE PUBLIC CONSTRUCTION OF THE RYAN CREEK INTERCEPTOR SEWER PUBLIC SANITARY SEWER FACILITY PROJECT, TO WIT: CONTRACT C02006-C01, SUPER EXCAVATORS, INC., IN THE AMOUNT OF \$5,435,671.00; CONTRACT C02006-C02, SUPER EXCAVATORS, INC., IN THE AMOUNT OF \$3,338,775.00; CONTRACT C02006-C03, D.F. TOMASINI CONTRACTORS, INC., IN THE AMOUNT OF \$5,374,692.00; AND CONTRACT C02006-C04, GLOBE CONTRACTORS, INC., IN THE AMOUNT OF \$4,797,210.00

WHEREAS, on July 19, 2011, the Common Council authorized the advertisement for bids for the public construction of the installation of the Ryan Creek Interceptor Sewer public sanitary sewer facility upon property in the area from the intersection of South 60th Street and West Ryan Road generally following the Ryan Creek to the intersection of West Ryan Road and South 112th Street, thence westerly along West Ryan Road to the west City limits; and

WHEREAS, the lowest responsible bidders upon the construction contracts let for bid are as follows: Contract C02006-C01, Super Excavators, Inc., in the amount of \$5,435,671.00; Contract C02006-C02, Super Excavators, Inc., in the amount of \$3,338,775.00; Contract C02006-C03, D.F. Tomasini Contractors, Inc., in the amount of \$5,374,692.00; and Contract C02006-C04, Globe Contractors, Inc., in the amount of \$4,797,210.00; the final actual amounts of such contracts being subject to the terms of such contracts and the project conditions encountered, accordingly, pursuant to such usual and customary public works contract terms; and

WHEREAS, the City of Franklin Engineering Department Staff, and the project consulting engineers, Ruckert & Mielke, Inc. by way of its Recommendation of Award dated August 31, 2011, having recommended that the contracts be awarded to the lowest responsible bidders as listed above, such bidders being qualified public works contractors; and

WHEREAS, the Milwaukee Metropolitan Sewerage District notified the City Engineer by letter dated September 14, 2011, that the District is in agreement with the Recommendation of Award, its review and approval being pursuant to the Intergovernmental Cooperative Agreement between the City of Franklin and the Milwaukee Metropolitan Sewerage District, dated November 8, 2010; and

WHEREAS, the Common Council having considered the aforesaid recommendations and approval and having determined that such recommended awards are in the public interest

and will serve to promote and protect the health, safety and welfare of the City of Franklin and all of those served and to be served by the Milwaukee Metropolitan Sewerage District and beyond.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the contracts for the public construction of the Ryan Creek Interceptor Sewer public sanitary sewer facility Project be and the same are hereby awarded to the respective lowest responsible bidders, as follows: Contract C02006-C01 to Super Excavators, Inc.; Contract C02006-C02 to Super Excavators, Inc.; Contract C02006-C03 to D.F. Tomasini Contractors, Inc.; and Contract C02006-C04 to Globe Contractors, Inc.

BE IT FURTHER RESOLVED, that the Mayor, City Treasurer and City Clerk be and the same are hereby authorized and directed to execute and deliver the aforesaid contracts.

BE IT FINALLY RESOLVED, that the awards granted hereunder are contingent upon and subject to the City of Franklin receiving the necessary U.S. Army Corps of Engineers permit pursuant to its prior application therefore.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2011.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2011.

APPROVED:

Thomas M. Taylor, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

<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;">September 20, 2011</p>
<p style="text-align: center;">REPORTS AND RECOMMENDATIONS</p>	<p style="text-align: center;">A Resolution Authorizing Certain Officials to Execute a Contract Between the City of Franklin and the Milwaukee Metropolitan Sewerage District Concerning Provision of Engineering Services During Construction of the Ryan Creek Interceptor Sewer</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G.5.</i></p>

The Intergovernmental Cooperative Agreement between the City of Franklin and the Milwaukee Metropolitan Sewerage District, Concerning Financing, Design, Construction, Operation, Maintenance, and Ownership of the Ryan Creek Interceptor Sewer dated November 8, 2010, provides at Article III that the City of Franklin shall provide for project management and engineering services during construction on a full time basis and in compliance with District inspection practices. Following reviews with the District staff by the City Engineering Department, it was determined that the most efficient and cost effective manner of providing for such services was to bifurcate such tasks between the District and the City project engineering consultant. Engineering staff recommends approval of the agreement pursuant to the terms of the draft resolution, both of which are annexed hereto. The proposed contract provides for total compensation for services in an amount not to exceed \$3,096,000.00. The contract costs are Clean Water Fund Program loan eligible and will be assumed by the District under the aforementioned Intergovernmental Cooperative Agreement. Also annexed hereto is a letter from Ruekert & Mielke, Inc. dated September 1, 2011, describing the provision of such services review and determinations with and by the District.

COUNCIL ACTION REQUESTED

A motion to adopt A Resolution Authorizing Certain Officials to Execute a Contract Between the City of Franklin and the Milwaukee Metropolitan Sewerage District Concerning Provision of Engineering Services During Construction of the Ryan Creek Interceptor Sewer.



September 1, 2011

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

RE: Ryan Creek Sanitary Sewer Interceptor

Dear Mr. Bennett:

This letter is intended to summarize the meeting between you, Mr. Kevin Lyons, P.E., Construction Support Manager – MMSD and myself on August 25, 2011.

Pursuant to the INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITY OF FRANKLIN AND THE MILWAUKEE METROPOLITAN SEWERAGE DISTRICT CONCERNING FINANCING, DESIGN, CONSTRUCTION OPERATION, MAINTENANCE, AND OWNERSHIP OF THE RYAN CREEK INTERCEPTOR SEWER, and specifically Paragraph 3.1 of this Agreement, Franklin is to provide Project Management for the Ryan Creek Interceptor (RCI) including, among other items, resident engineering and resident inspection services. Further on in Subparagraph 3.1.1 of Article III this Agreement states that "Nothing herein shall prevent Franklin from contracting with the District to provide resident engineer and resident inspection services for the RCI project." This Subparagraph was further defined in a Letter of Understanding which was signed by all parties to the Agreement contemporaneously with the signing of the main Agreement which states, in part,

"Discussions and negotiations between and among the parties and their representatives and other governmental agency representatives which occurred in reaching the terms of the Agreement, included the understanding that the District would perform the resident engineer/resident inspection duties required by the Project, but only if District staff were available at the time to perform those duties. The District's charges for such services are assumed to be CWFPP loan eligible. A separate agreement for such services would be required to specify the terms applicable to the above-entitled Agreement which may have to be amended or superseded, including, but not limited to those which may pertain to such matters as liability and environmental responsibilities between the parties, as they may be affected by an agreement for resident engineer/resident inspection services. The District also stated that such agreement for resident engineer/resident inspection services should also provide that the District would subcontract such services to Ruekert/Mielke, in the event District staff is not available to perform the services."



Mr. John M. Bennett, P. E.
City of Franklin
September 1, 2011
Page 2

Subsequent to the signing of the above documents, the Milwaukee Metropolitan Sewerage District (MMSD) has determined that they have available for the RCI Project the services of four experienced resident inspectors and that they intend to contract with Ruekert & Mielke, Inc. (R/M) to provide the services of a Resident Engineer, perform Erosion Control Inspection, provide any additional resident inspectors (if more are needed) and prepare Record Drawings of the completed work. That agreement is already in place between MMSD and R/M.

In addition to the Resident Engineering Services and the resident inspection services referred to above, R/M will be providing directly to the City of Franklin Construction Administration, and overall Project Management which includes Bidding Services, survey, materials testing, Shop Drawing review, Wage Rate/DBE compliance monitoring, wetland restoration monitoring, archaeological monitoring and Clean Water Fund Administration.

An Organizational Chart is attached which shows the division of duties and responsibilities. A listing of the various Bidding and Construction Phase Tasks is also enclosed.

In summary, the City is being requested to approve two engineering services agreements as follows:

1. Milwaukee Metropolitan Sewerage District	\$ 3,096,000.00
2. Ruekert & Mielke, Inc.	\$ 915,299.00

As stated in the above referenced Intergovernmental Cooperation Agreement, all of these costs are DNR Clean Water Fund Loan-eligible and will be paid for by MMSD as stated in that Agreement.

Please contact me if you have any questions.

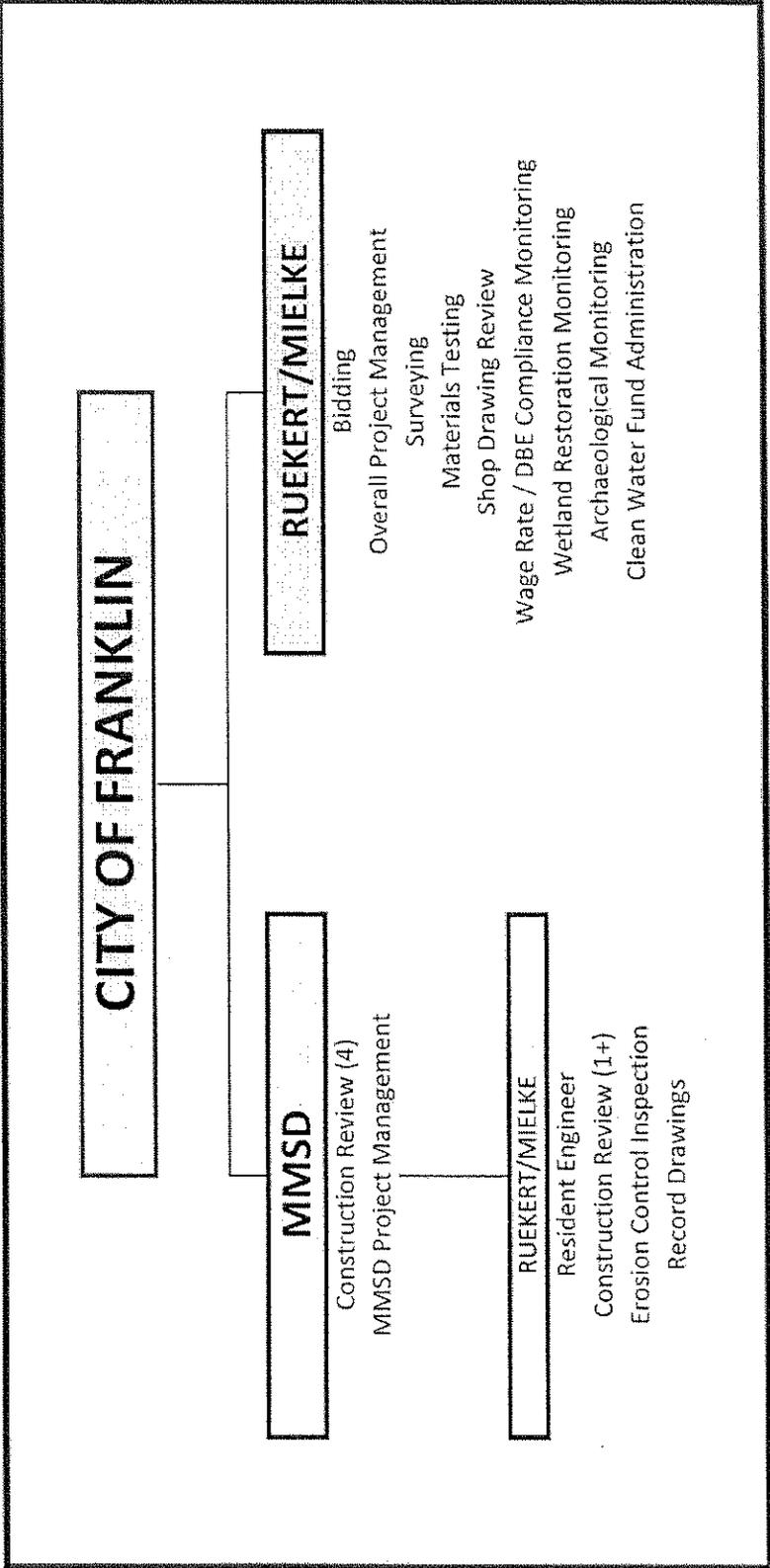
Very truly yours,

RUEKERT/MIELKE

Joseph W. Eberle, P.E.
Principal/Senior Project Manager

JWE:sjs

cc: Kevin Lyons, Milwaukee Metropolitan Sewerage District
File



CITY OF FRANKLIN

**RYAN CREEK SANITARY SEWER INTERCEPTOR
CONSTRUCTION PHASE ORGANIZATIONAL CHART**

**CITY OF FRANKLIN
RYAN CREEK SANITARY SEWER INTERCEPTOR**

BIDDING / CONSTRUCTION PHASE TASKS

	Franklin Duties by Contract	Duties That Franklin Contract to MMSD
Obtain Wage Rate Determination	X	
Prepare Advertisement for Bids	X	
Print Bidding Documents	X	
Distribute Bidding Documents	X	
Issue Addenda	X	
Pre-Bid Conference	X	
Set-up	X	
Conduct Meeting	X	
Prepare Minutes	X	
Respond to Bidders' Questions	X	
Bid Opening	X	
Bid Review	X	
DBE Compliance	X	
Local Workforce Utilization Compliance	X	
Bid Recommendations	X	
Coordination w/ MMSD	X	
Award Contracts	X	
Prepare Notices of Award	X	
Preparation of Contracts	X	
Transmit Contracts to Contractors	X	
Review Contractors' Contract Submittals	X	
Transmit Contracts to City for Execution	X	
Preconstruction Conference	X	
Set-up	X	
Conduct Meeting	X	X
Prepare Minutes	X	
Notices to Proceed	X	
Preconstruction Documentation (videotaping/photography)	X	
Shop Drawing Review	X	
Private Property Coordination	X	
Public Relations	X	
Project Stakeout	X	
Easement Stakeout	X	
Preparation of Cut Sheets	X	
Common Council Monthly Updates	X	
Project Coordination	X	
City of Franklin	X	
MMSD	X	
Milwaukee County Public Works	X	
Milwaukee County Parks	X	
WDOT	X	
Waukesha County Public Works	X	
WDNR	X	
USA COE	X	
Waste Management	X	
Project Inspection		
Prepare Daily Reports		X
Review Contractors' Pay Requests	X	X
Monitor Pipeline Testing & Prepare Reports		X
Respond to Contractor's RFI's	X	
Materials Review & Acceptance	X	

**CITY OF FRANKLIN
RYAN CREEK SANITARY SEWER INTERCEPTOR**

BIDDING / CONSTRUCTION PHASE TASKS

	Franklin Duties by Contract	Duties That Franklin Contract to MMSD
Materials Inspections & Testing	X	X
Review, Prepare & Process Change Orders	X	
Review of Contractors' Claims	X	X
Traffic Control Monitoring		X
DBE Compliance Monitoring	X	
Local Workforce Utilization Monitoring	X	
Monitor Project Costs & Schedules	X	
Monthly Job Progress Meetings	X	X
Davis-Bacon Wage Rate Compliance Monitoring	X	
Employee Interviews	X	
Payroll Certifications Reviews	X	
Project Coordination w/ Veolia	X	
Monthly Pay Applications	X	
Monthly CWF Disbursement Requests	X	
CWF Administration	X	
Coordination w/ Muskego Force Main Connection	X	
Erosion control inspections & reports	X	X
Erosion Control Inspection Follow-ups	X	X
Restoration Compliance Inspection		X
Private Property Easement Restoration Compliance Monitoring	X	X
Private Property Easement Restoration Approvals	X	
Milwaukee County Parks Department Restoration Approvals	X	
Milwaukee County Public Works Restoration Approvals	X	
WDOT Restoration Approvals	X	
Substantial Completion Inspections	X	X
WDNR / USA COE Permit Monitoring & Closeouts	X	
Warranty Period Establishment	X	
Update O & M Manual	X	
Record Drawings	X	
Survey	X	
Drafting	X	
Quantities	X	
GIS Conversions (MMSD/Franklin)	X	
MMSD Submittals	X	
System Start-up	X	X
Final Inspections	X	X
Final Payment Reviews	X	X
One Year Warranty Inspections	X	
Preparation of Final Project Records	X	
MMSD Submittals	X	
Franklin Submittals	X	
Project Closeout	X	
Final CWF Administration	X	

CONTRACT BETWEEN THE CITY OF FRANKLIN AND THE
MILWAUKEE METROPOLITAN SEWERAGE DISTRICT
CONCERNING PROVISION OF ENGINEERING SERVICES DURING
CONSTRUCTION OF THE RYAN CREEK INTERCEPTOR

This Contract, entered into pursuant to Wis. Stat. §
66.0301 on the last date upon which this Agreement is
signed, by and between the MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT, a municipal body corporate, organized
and existing under Wis. Stat. §§ 200.21 to 200.65, with its
principal offices located at 260 West Seeboth Street,
Milwaukee, Wisconsin, 53204, hereafter "District," and the
CITY OF FRANKLIN, a municipal corporation organized and
existing under Wis. Stat. § 62.02, with its principal offices
located at 9229 West Loomis Road, Franklin, Wisconsin
53132 (hereinafter "Franklin") concerning provision of
engineering services during construction of the Ryan Creek
Interceptor:

CONTRACT BETWEEN THE CITY OF FRANKLIN AND
THE MILWAUKEE METROPOLITAN SEWERAGE
DISTRICT CONCERNING PROVISION OF ENGINEERING
SERVICES FOR CONSTRUCTION OF THE RYAN
CREEK INTERCEPTOR SEWER (OCTOBER, 2011)

WHEREAS, the District and Franklin have entered into an Intergovernmental Cooperation Agreement, dated November 8, 2010, hereafter "ICA," for construction of the Ryan Creek Interceptor, hereafter "RCI;" and

WHEREAS, Franklin desires that the RCI construction proceed promptly, such that the sewer would be in service by the year 2014, and

WHEREAS, Franklin intends to fund construction through a Clean Water Fund Program loan, hereafter "CWFP loan;" and

WHEREAS, the District and Franklin enter into this Contract for the purpose of Franklin acquiring Engineering Services During Construction of the RCI from the District;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein and the mutual benefits to be derived from this Contract,

CONTRACT BETWEEN THE CITY OF FRANKLIN AND
THE MILWAUKEE METROPOLITAN SEWERAGE
DISTRICT CONCERNING PROVISION OF ENGINEERING
SERVICES FOR CONSTRUCTION OF THE RYAN
CREEK INTERCEPTOR SEWER (OCTOBER, 2011)

Franklin and the District agree as follows:

1.0. Project Description. Franklin and the District agree that this Contract addresses provision of Engineering Services During Construction of the RCI.

1.1. Relationship of Contract To ICA.

This Contract implements Sec. 3.1 of the ICA between the District and Franklin concerning construction of the RCI. Nothing in this Contract should be construed or considered as negating any term of the ICA.

2.0. Engineering Services During Construction. Franklin hereby retains the District to furnish project management for RCI construction, including resident engineer and resident inspection services; preparation and maintenance of daily logs of construction progress; documentation of contractor compliance with construction plans and specifications; certified erosion

control specialist inspection; documentation of Small, Women's and Minority Business Enterprise and Local Workforce Participation compliance requirements. Resident engineering services are to be provided by Ruekert & Mielke pursuant to a letter agreement amongst the District, Franklin, and Ruekert & Mielke, dated November 8, 2010, and signed by Kevin L. Shafer, Thomas M. Taylor, John M. Bennett, and William J. Mielke. Resident inspection services shall be provided on a full time basis and be consistent with District inspection practices. The parties recognize that Franklin intends to include the cost of ESDC (see ICA sec. 3.1) and District force account costs (see ICA sec. 3.1.1.) in Franklin's submissions to the DNR for funding through a CWFP loan.

2.1. Costs of Engineering Services During Construction. The District agrees to perform the ESDC for the not-to-exceed sum of THREE MILLION NINETY-SIX THOUSAND (\$3,096,000.00) DOLLARS as follows: (a) Resident Inspection Services – the District will supply four (4) resident inspectors for a not-to-exceed cost of One Million Nine Hundred Two Thousand One Hundred Seventy-three (\$1,902,173.00) Dollars; (b) Internal Management Costs – the District will incur internal management costs, such as project management, and the like of One Hundred Ninety-nine Thousand (\$199,000) Dollars; and (c) Resident Engineer/Erosion Control Services – the District will supply One (1) resident engineer, One (1) resident engineer assistant; and One (1) Certified Erosion Control Specialist, through a contract with Ruckert & Mielke, in the not-to-

exceed amount of Nine Hundred Ninety-four Thousand, Eight Hundred Twenty-seven (\$994,827.00) Dollars.

2.2. Permits. This Contract does not relieve Franklin of its obligations to obtain permits under Wis. Stat. ch. 30 and any necessary permit(s) issued by the United States or any of its agencies, related to the construction of the RCI. Franklin will arrange for preparation of erosion control plans and traffic control plans and obtaining permits, if needed, relating to both.

2.3. As-Built Drawings. Franklin agrees that ESDC includes the preparation of a complete set of detailed as-built plans, in electronic form, for all work upon completion of the project. The District agrees to use e-Fields software (a proprietary product of Ruckert & Mielke) to facilitate the preparation of such as-built plans.

Franklin shall also provide to the District copies of all

final engineering and design reports, records, construction inspection reports, surveys, and like documents reflecting the course and events of construction so that the District will have a complete.

3.0 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties pertaining to ESDC, and supplements the provisions of Sec. 3.1. of the ICA.

4.1. Signatures Are Certification of Authority to Execute this Agreement.

Franklin and the District mutually agree that the execution by the officials who sign this document constitutes a certification that the signatory has been appropriately authorized by the respective governing board to execute this document.

4.2. Execution of this Agreement Deemed to Reflect Compliance with Applicable Ordinances, Resolutions, and Statutes.

Franklin and the District mutually agree that the execution of this Agreement constitutes substantial compliance with any applicable ordinances, resolutions, and statutes.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed and delivered as of the last date upon which this Contract is signed, as set forth below.

MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT

By: _____
Kevin L. Shafer, P.E.
Executive Director
Date: _____

ATTEST:

Approved as to form this ____
day of _____, 2011:

By: _____
Sharon L. Chudy
Secretary

By: _____
James H. Petersen
Senior Staff Attorney

CONTRACT BETWEEN THE CITY OF FRANKLIN AND
THE MILWAUKEE METROPOLITAN SEWERAGE
DISTRICT CONCERNING PROVISION OF ENGINEERING
SERVICES FOR CONSTRUCTION OF THE RYAN
CREEK INTERCEPTOR SEWER (OCTOBER, 2011)

CITY OF FRANKLIN

By: _____
Thomas M. Taylor, Mayor
Date: _____

Countersigned:

By: _____

Director of Finance and Treasurer
Date: _____

By: _____
Sandra L. Wesolowski
City Clerk
Date: _____

Approved as to form
this ____ day of _____, 2011:

By: _____
Jesse A. Wesolowski
City Attorney
City of Franklin

CONTRACT BETWEEN THE CITY OF FRANKLIN AND
THE MILWAUKEE METROPOLITAN SEWERAGE
DISTRICT CONCERNING PROVISION OF ENGINEERING
SERVICES FOR CONSTRUCTION OF THE RYAN
CREEK INTERCEPTOR SEWER (OCTOBER, 2011)

RESOLUTION NO. 2011-____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A CONTRACT
BETWEEN THE CITY OF FRANKLIN AND THE MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT CONCERNING PROVISION OF ENGINEERING SERVICES
DURING CONSTRUCTION OF THE RYAN CREEK INTERCEPTOR SEWER

WHEREAS, the Intergovernmental Cooperative Agreement between the City of Franklin and the Milwaukee Metropolitan Sewerage District, Concerning Financing, Design, Construction, Operation, Maintenance, and Ownership of the Ryan Creek Interceptor Sewer dated November 8, 2010, provides at Article III that the City of Franklin shall provide for project management and engineering services during construction on a full time basis and in compliance with District inspection practices; and

WHEREAS, the City Engineering Department and the Milwaukee Metropolitan Sewerage District having considered the tasks and having determined that the most efficient and cost effective manner of providing for such services was to bifurcate such tasks between the District and the City project engineering consultant; and

WHEREAS, the Milwaukee Metropolitan Sewerage District having proposed to perform the services as designated by the District as force account engineering services, apart from such other such services designated by the District for performance by the City consulting engineer for the project upon a separate agreement with the City; and

WHEREAS, the Engineering Department having also reviewed and recommended approval of a Contract Between the City of Franklin and the Milwaukee Metropolitan Sewerage District Concerning Provision of Engineering Services During Construction of the Ryan Creek Interceptor, and the Common Council having determined that the proposed contract providing for total compensation for such services in an amount not to exceed \$3,096,000.00 is fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Contract Between the City of Franklin and the Milwaukee Metropolitan Sewerage District Concerning Provision of Engineering Services During Construction of the Ryan Creek Interceptor, be and the same is hereby approved, subject to such technical corrections as may be approved by the City Attorney.

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

Introduced at a regular meeting of the Common Council of the City of Franklin this
_____ day of _____, 2011.

RESOLUTION NO. 2011-____

Page 2

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2011.

APPROVED:

ATTEST:

Thomas M. Taylor, Mayor

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

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APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE September 20, 2011
REPORTS AND RECOMMENDATIONS	A Resolution Authorizing Certain Officials to Execute an Agreement Between Owner And Engineer for Professional Services for Bidding Phase, Construction Phase, Clean Water Fund Administration Assistance and Construction Review for the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project with Ruckert & Mielke, Inc.	ITEM NUMBER G.6.

The Intergovernmental Cooperative Agreement between the City of Franklin and the Milwaukee Metropolitan Sewerage District, Concerning Financing, Design, Construction, Operation, Maintenance, and Ownership of the Ryan Creek Interceptor Sewer dated November 8, 2010, provides at Article III that the City of Franklin shall provide for project management and engineering services during construction on a full time basis and in compliance with District inspection practices. Following reviews with the District staff by the City Engineering Department, it was determined that the most efficient and cost effective manner of providing for such services was to bifurcate such tasks between the District and the City project engineering consultant. Engineering staff recommends approval of the agreement pursuant to the terms of the draft resolution, both of which are annexed hereto. The proposed contract provides for total compensation for services estimated to be \$915,299.00. The contract costs are Clean Water Fund Program loan eligible and will be assumed by the District under the aforementioned Intergovernmental Cooperative Agreement.

COUNCIL ACTION REQUESTED

A motion to adopt A Resolution Authorizing Certain Officials to Execute an Agreement Between Owner And Engineer for Professional Services for Bidding Phase, Construction Phase, Clean Water Fund Administration Assistance and Construction Review for the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project with Ruckert & Mielke, Inc.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____, 2011 (“Effective Date”) between

CITY OF FRANKLIN (“OWNER”)
AND
RUEKERT & MIELKE, INC. (“ENGINEER”).

OWNER's Project, of which ENGINEER's services under this Agreement are a part, is generally identified as follows:

Ryan Creek Interceptor - 124th Street to 60th Street ("Project").

ENGINEER's services under this Agreement are generally identified as follows:

Bidding Phase Services, Construction Phase Services, Clean Water Fund Administration Assistance & Construction Review Services.

OWNER and ENGINEER further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. ENGINEER shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. OWNER shall have the responsibilities set forth herein and in Exhibit B.
- B. OWNER shall pay ENGINEER as set forth in Exhibit C.
- C. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. ENGINEER is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. ENGINEER shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of ENGINEER, such periods of time or dates are changed, or the orderly and continuous progress of ENGINEER's services is impaired, or ENGINEER's services are delayed or suspended, then the time for completion of ENGINEER's services, and the rates and amounts of ENGINEER's compensation, shall be adjusted equitably.
- C. If OWNER authorizes changes in the scope, extent, or character of the Project, then the time for completion of ENGINEER's services, and the rates and amounts of ENGINEER's compensation, shall be adjusted equitably.
- D. OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER's performance of its services.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* ENGINEER shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. ENGINEER shall submit its invoices to OWNER on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to ENGINEER and then to principal.
- B. *Failure to Pay:* If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice, then:
 - 1. amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until OWNER has paid in full all amounts due for services, expenses, and other related charges. OWNER waives any and all claims against ENGINEER for any such suspension.

- C. *Disputed Invoices*: If OWNER contests an invoice, OWNER shall promptly advise ENGINEER of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions*: If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on ENGINEER's services or compensation under this Agreement, then the ENGINEER may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. OWNER shall reimburse ENGINEER for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which ENGINEER is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. ENGINEER's opinions of probable Construction Cost are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER requires greater assurance as to probable Construction Cost, OWNER must employ an independent cost estimator as provided in Exhibit B.

5.02 *Opinions of Total Project Costs*

- A. The services, if any, of ENGINEER with respect to Total Project Costs shall be limited to assisting the OWNER in collating the various cost categories which comprise Total Project Costs. ENGINEER assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care*: The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.
- B. *Technical Accuracy*: OWNER shall not be responsible for discovering deficiencies in the technical accuracy of ENGINEER's services. ENGINEER shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in OWNER-furnished information.
- C. *Consultants*: ENGINEER may employ such Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by OWNER.

- D. *Reliance on Others*: Subject to the standard of care set forth in Paragraph 6.01.A, ENGINEER and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Compliance with Laws and Regulations, and Policies and Procedures:
1. ENGINEER and OWNER shall comply with applicable Laws and Regulations.
 2. Prior to the Effective Date, OWNER provided to ENGINEER in writing any and all policies and procedures of OWNER applicable to ENGINEER's performance of services under this Agreement, provided to ENGINEER in writing. ENGINEER shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. This Agreement is based on Laws and Regulations and OWNER-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to OWNER-provided written policies and procedures may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.
- F. ENGINEER shall not be required to sign any documents, no matter by who requested that would result in the ENGINEER having to certify, guarantee, or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER signing any such documents.
- G. ENGINEER shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall ENGINEER have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- H. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- I. ENGINEER shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- J. ENGINEER shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except ENGINEER's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by ENGINEER.

- K. While at the Site, ENGINEER's employees and representatives shall comply with the specific applicable requirements of Contractor's and OWNER's safety programs of which ENGINEER has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase as outlined in Exhibit A.
- B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed. OWNER shall not rely in any way on any Document unless it is in printed form, signed or sealed by the ENGINEER or one of its Consultants. ENGINEER agrees that all Documents are public records and that all Documents are available for inspection by and release to the public without any objection based upon copyright.
- B. Either party to this Agreement may rely upon the fact that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the document's creator.
- E. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. ENGINEER grants OWNER a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the OWNER, subject to the following limitations: (1) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific

purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to its officers, directors, members, partners, agents, employees, and Consultants; and (2) OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by ENGINEER.

6.04 *Insurance*

- A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance." ENGINEER shall cause OWNER to be listed as an additional insured on any applicable general liability insurance policy carried by ENGINEER.
- B. OWNER shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect OWNER's and ENGINEER's interests in the Project. OWNER shall require Contractor to cause ENGINEER and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- C. ENGINEER shall deliver to OWNER certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.
- D. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to OWNER and ENGINEER and to each other additional insured (if any) to which a certificate of insurance has been issued.
- E. At any time, OWNER may request that ENGINEER or its Consultants, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by OWNER, and if commercially available, ENGINEER shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

- A. Suspension:
 - 1. By OWNER: OWNER may suspend the Project for up to 90 days upon seven days written notice to ENGINEER.
 - 2. By ENGINEER: ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement if ENGINEER's performance has been substantially delayed through no fault of ENGINEER.

B. *Termination*: The obligation to provide further services under this Agreement may be terminated:

1. For cause,

- a. By either party upon 10 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. By ENGINEER:
 - 1) upon seven days written notice if OWNER demands that ENGINEER furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.
 - 3) ENGINEER shall have no liability to OWNER on account of such termination under this subparagraph.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, forthwith upon receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 10 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 10 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 20 days after the date of receipt of the notice.

2. For convenience,

- a. By OWNER effective upon ENGINEER's receipt of notice from OWNER.

C. *Effective Date of Termination*: The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination*:

1. In the event of any termination under Paragraph 6.05, ENGINEER will be entitled to invoice OWNER and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by ENGINEER for cause, ENGINEER shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice OWNER and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the State of Wisconsin.

6.07 *Successors, Assigns, and Beneficiaries*

- A. OWNER and ENGINEER are hereby bound and the successors, executors, administrators, and legal representatives of OWNER and ENGINEER (and to the extent permitted by Paragraph 6.07.B the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.
 3. OWNER agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H.

6.09 *Environmental Condition of Site*

- A. OWNER has disclosed to ENGINEER in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. OWNER represents to ENGINEER that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to ENGINEER, exist at the Site.
- C. If ENGINEER encounters or learns of an undisclosed Constituent of Concern at the Site, then ENGINEER shall notify (1) OWNER and (2) appropriate governmental officials if ENGINEER reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by ENGINEER:* To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent, or intentional and wrongful as may be permitted by law, act or omission of ENGINEER or ENGINEER's officers, directors, members, partners, agents, employees, or Consultants.

- B. *Indemnification by OWNER*: To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent, or intentional and wrongful as may be permitted by law, act or omission of OWNER or OWNER's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the OWNER with respect to this Agreement or to the Project.
- C. *Environmental Indemnification*: To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence*: To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

6.11 *Miscellaneous Provisions*

- A. *Notices*: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of faxing or mailing, respectively.
- B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. Addenda--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
 2. Additional Services – The services to be performed for or furnished to OWNER by ENGINEER in accordance with Part 2 of Exhibit A of this Agreement.
 3. Agreement – This written contract for professional services between OWNER and ENGINEER, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. Application for Payment--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 5. Asbestos – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 6. Basic Services – The services to be performed for or furnished to OWNER by ENGINEER in accordance with Part 1 of Exhibit A of this Agreement.
 7. Bid--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 8. Bidding Documents--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
 9. Change Order--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.
 10. Construction Agreement--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. Construction Contract – The entire and integrated written agreement between OWNER and Contractor concerning the Work.
12. Construction Cost – The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; OWNER's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
13. Contract Documents--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.
14. Contract Price--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
15. Contract Times--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.
16. Contractor--An individual or entity with whom OWNER enters into a Construction Agreement.
17. Correction Period--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
18. Defective--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. Documents--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.
20. Drawings--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
21. Effective Date of the Construction Agreement--The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
22. Effective Date of the Agreement--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
23. ENGINEER's Consultants--Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.
24. Field Order--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
25. General Conditions--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.
26. Hazardous Environmental Condition--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
27. Hazardous Waste--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
28. Laws and Regulations; Laws or Regulations--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
29. PCB's--Polychlorinated biphenyls.
30. Petroleum--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

31. Radioactive Materials--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
32. Record Drawings--The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.
33. Reimbursable Expenses--The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.
34. Resident Project Representative--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.
35. Samples--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
36. Shop Drawings--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.
37. Site--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.
38. Specifications--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
39. Substantial Completion--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
40. Supplementary Conditions--That part of the Contract Documents which amends or supplements the General Conditions.
41. Total Project Costs--The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for

legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.

42. Work--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.
43. Work Change Directive--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
44. Written Amendment--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.
45. Constituent of Concern – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
46. Consultants – Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER’s independent professional associates and consultants; subcontractors; or vendors.
47. Contractor – The entity or individual with which OWNER has entered into a Construction Contract.
48. Documents – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

49. Drawings – That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
50. Effective Date – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
51. ENGINEER – The individual or entity named as such in this Agreement.
52. Hazardous Waste – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
53. Laws and Regulations; Laws or Regulations – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
54. OWNER – The individual or entity with which ENGINEER has entered into this Agreement and for which the ENGINEER's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
55. PCBs – Polychlorinated biphenyls.
56. Petroleum – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
57. Project – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
58. Radioactive Material – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
59. Record Drawings – Drawings depicting the completed Project, prepared by ENGINEER as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to ENGINEER and annotated by Contractor to show changes made during construction.
60. Reimbursable Expenses – The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project.
61. Resident Project Representative – The authorized representative of ENGINEER assigned to assist ENGINEER at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by OWNER.

62. Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
63. Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
64. Site – Lands or areas to be indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of Contractor.
65. Specifications – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
66. Subcontractor – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
67. Substantial Completion – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
68. Supplier – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
69. Total Project Costs – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of ENGINEER or other design professionals and consultants, together with such other Project-related costs that OWNER furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, OWNER’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.
70. Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, ENGINEER's Services.
- B. Exhibit B, OWNER's Responsibilities.
- C. Exhibit C, Payments to ENGINEER for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities, and Limitations of Authority of Resident Project Representative.
- E. Exhibit E. Not included.
- F. Exhibit F. Not included.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I. Not included.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Form of Amendment to OWNER-ENGINEER Agreement.

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *ENGINEER's Certifications:*

- A. ENGINEER certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of OWNER, or (b) to deprive OWNER of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

ENGINEER:

CITY OF FRANKLIN

RUEKERT & MIELKE, INC.

By: _____
Thomas M. Taylor, Mayor

By: _____
William J. Mielke, President/CEO

Date: _____

Date: _____

Countersigned:

By: _____
Calvin A. Patterson
Director of Finance and Treasurer

Date: _____

By: _____
Sandra L. Wesolowski
City Clerk

Date: _____

Approved as to form, this ____ day of _____, 2011:

By: _____
Jesse A. Wesolowski
City Attorney

Address for giving notices:

Address for giving notices:

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

Ruekert & Mielke, Inc.
W233 N2080 Ridgeview Parkway
Waukesha, Wisconsin 53188

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

John M. Bennett, P.E.

Joseph W. Eberle, P.E.

Title: Director of Public Works/
City Engineer

Title: Senior Project Manager

Phone Number: (414) 425-7510

Phone Number: (262) 542-5733

Facsimile Number: (414) 425-3106

Facsimile Number: (262) 542-5631

E-Mail Address: jbenett@franklinwi.gov

E-Mail Address: jeberle@ruekert-mielke.com

ENGINEER's Services

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER shall provide Basic and Additional Services as set forth below.

PART 1 -- BASIC SERVICES

A1.01 Bidding Phase

- A. After acceptance by OWNER of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by OWNER to proceed, ENGINEER shall:
1. Assist OWNER in advertising for and obtaining bids for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 4. Perform or provide the following additional Bidding Phase tasks or deliverables:
 - a. Obtain State and Federal Wage Rate Determinations.
 - b. Print Bidding Documents (cost of printing is a Reimbursable Expense).
 - c. Set up Pre-Bid conference at ENGINEER's office, prepare and distribute minutes.
 - d. Determine, with MMSD Staff assistance, compliance of apparent low Bidder with MMSD's Disadvantaged Business Enterprise and Local Workforce Utilization Programs.
 - e. Coordinate Bidding process with MMSD Staff and prepare recommendation of awards to OWNER and MMSD.
 - f. Prepare Notices of Award for execution by OWNER.
 - g. Prepare Contract Documents for execution by OWNER and Contractors.
 5. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids and in assembling and awarding contracts for the Work.

- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase with prospective Contractors.

A1.02 Construction Phase

- A. Upon successful completion of the Bidding Phase, and upon written authorization from OWNER, ENGINEER shall:
1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
 2. *Resident Project Representative (RPR).* Provide the services of an RPR at the Site to assist the ENGINEER and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.
 3. *Selecting Independent Testing Laboratory.* Provide an independent testing laboratory Consultant to perform the services identified in paragraph B2.01.O.
 4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
 5. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in ENGINEER's judgment are necessary to enable Contractor to proceed.
 6. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's work in progress while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by ENGINEER, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, ENGINEER will determine in general if Contractor's work is proceeding in accordance with the Contract

Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.

- b. The purpose of ENGINEER's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
7. *Defective Work.* Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
8. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
9. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.
10. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

11. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
12. *Inspections and Test.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.
13. *Disagreements between OWNER and Contractor.* Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
14. *Applications for Payment.* Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph A1.02.A.6.a are expressly subject to the limitations set forth in paragraph A1.02.A.6.b and other express or general limitations in this Agreement and elsewhere.

- b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

15. Contractor's Completion Documents.

- a. Receive and review maintenance and operating instructions, schedules, and guarantees.
- b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.02.A.10, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER's review will be limited as provided in paragraph A1.02.A.10.
- c. ENGINEER shall transmit these documents to OWNER.

16. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of OWNER, ENGINEER considers the Work Substantially Complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

17. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables:

- a. Monitor Project traffic control.
- b. Monitor, with MMSD staff assistance, Contractors' Disadvantage Business Enterprise Utilization and Local Workforce Utilization Program compliance.

- c. Monitor Contractors' Wage Rate compliance.
 - d. Monitor Contractors' erosion control efforts.
 - e. Monitor Contractors' compliance with private property easement requirements.
 - f. Coordinate Project activities with Regulatory Agencies.
 - g. Convene monthly Project progress meetings with Contractors and OWNER.
 - h. Prepare monthly DNR Clean Water Fund Disbursement Requests.
 - i. Update OWNER's sewerage system Operation & Maintenance Manual per DNR requirements.
18. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A1.02.A.14.b) to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors. Since the Project involves more than one prime contract, Construction Phase services may be rendered at different times in respect to the separate contracts.
- C. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.03 Post-Construction Phase

- A. Upon written authorization from OWNER, ENGINEER, during the Post-Construction Phase, shall:
- 1. Provide assistance in connection with the testing and adjusting of Project.
 - 2. Together with OWNER, visit the Project to observe any apparent defects in the Work, assist OWNER in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.

3. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
 - a. Prepare Record Drawings of Project per MMSD Standards.
 - b. Final DNR Clean Water Fund Project Close-out documentation.
4. In company with OWNER or OWNER's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Correction Period.

PART 2 -- ADDITIONAL SERVICES

A2.01 Additional Services Requiring OWNER's Authorization in Advance

- A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.
 1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.
 4. Services required as a result of OWNER's providing incomplete or incorrect Project information with respect to Exhibit B.
 5. Providing renderings or models for OWNER's use.

6. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.
7. Furnishing services of ENGINEER's Consultants for other than Basic Services.
8. Services attributable to more than four prime construction contracts.
9. Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office.
10. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
11. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.
12. Determining the acceptability of substitute materials and equipment proposed during the Bidding Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.02.A.5, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
15. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.
16. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
17. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
18. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.

19. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01.G of the Agreement.
20. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

A2.02 Required Additional Services

- A. ENGINEER shall perform or furnish, without requesting or receiving specific advance authorization from OWNER, the Additional Services of the types listed below. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.
 6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

OWNER's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

- B2.01 In addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:
- A. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.
 - B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
 - C. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 5. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
 - D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.
 - E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
 - F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.

- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.
 - 3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- K. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.
- L. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.
- M. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- N. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:
 - 1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
 - 2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.
- O. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraph B2.01.N.

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, 2011.

Payments to ENGINEER for Services and Reimbursable Expenses
Basic Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services – Standard Hourly Rates Method of Payment

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of ENGINEER’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER’s Consultants’ charges, if any.
2. ENGINEER’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$915,299.
4. ENGINEER may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by OWNER.
5. The total estimated compensation for ENGINEER’s services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and ENGINEER’s Consultants’ charges.
6. The amounts billed for ENGINEER’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of ENGINEER’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and ENGINEER’s Consultants’ charges.

C2.02 Compensation For Reimbursable Expenses

- A. OWNER shall pay ENGINEER for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar

Project-related items in addition to those required under Exhibit A. In addition, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

- C. The amounts payable to ENGINEER for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by ENGINEER, plus all invoiced external Reimbursable Expenses allocable to the Project.

C2.03 Other Provisions Concerning Payment

- A. Whenever ENGINEER is entitled to compensation for the charges of ENGINEER's Consultants, those charges shall be the amounts billed by ENGINEER's Consultants to ENGINEER times a factor of 1.05.
- B. Factors. The ENGINEER's Consultants' factors include ENGINEER's overhead and profit associated with ENGINEER's responsibility for the administration of such services and costs.
- C. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, ENGINEER shall make copies of such records available to OWNER at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, 2011.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

REIMBURSABLES

Mileage

For Engineers and Technicians	.51/mile
For Construction Review Technicians	.55/mile
For Survey Crews	.63/mile
Print reproductions	.25/sq. foot
Color copies	.25/page
Black/White copies	.08/page
Color plots	2.00/sq. foot
Scanning	.25/sq. foot
GPS equipment	100.00/day
ATV fee	50.00/day
Robotics equipment	100.00/day

This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, 2011.

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule:

STANDARD HOURLY RATES	
ENGINEER 9	\$195.00
ENGINEER 8	175.00
ENGINEER 7	165.00
ENGINEER 6	135.00
ENGINEER 5	114.00
ENGINEER 4	104.00
ENGINEER 3	90.00
ENGINEER 2	84.00
ENGINEER 1	74.00
Senior Engineering Technician	100.00
Engineering Technician	75.00
Director -- Economics Group	145.00
Senior Economics Consultant	140.00
Senior Economic Analyst	95.00
Economic Consultant	95.00
Construction Review Manager	107.00
Registered Land Surveyor	105.00
Crew Chief /Surveyor	95.00
Surveying Technician	70.00
Administrative Assistant	57.00
Project Assistant	57.00

Additional Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. OWNER shall pay ENGINEER for Additional Services, if any, as follows:

1. *General:* For services of ENGINEER's personnel engaged directly on the Project pursuant to Paragraph A2.01 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.16, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, OWNER shall pay ENGINEER at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by OWNER, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to ENGINEER for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by ENGINEER, plus all invoiced external Reimbursable Expenses allocable to such Additional Services.

C. *Other Provisions Concerning Payment For Additional Services:*

1. Whenever ENGINEER is entitled to compensation for the charges of ENGINEER's Consultants, those charges shall be the amounts billed by ENGINEER's Consultants to ENGINEER times a factor of 1.05.
2. *Factors:* The Consultant's Factors include ENGINEER's overhead and profit associated with ENGINEER's responsibility for the administration of such services and costs.
3. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, ENGINEER shall make copies of such records available to OWNER at cost.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Paragraph 1.01C of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.02 Resident Project Representative

- A. ENGINEER shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist ENGINEER in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.
- B. Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility of construction for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in section A.1.02 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described as follows:
 1. *General:* RPR is ENGINEER’s agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

4. *Liaison:*
 - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents.
 - b. Assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-Site operations.
 - c. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.
 - c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENGINEER.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Startups:*

- a. Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.

10. Records:

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- c. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.

11. Reports:

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

- c. Furnish to ENGINEER and OWNER copies of all inspection, test, and system startup reports.
 - d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.
12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.
14. *Completion:*
- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
 - b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
 - c. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.
 - d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
- 2. Exceed limitations of ENGINEER’s authority as set forth in the Agreement or the Contract Documents.
- 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor’s superintendent.

4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of OWNER or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize OWNER to occupy the Project in whole or in part.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, 2011.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By ENGINEER:

- | | |
|--|--------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Each Accident: | \$ 1,000,000 |
| 2) Disease, Policy Limit: | \$ 1,000,000 |
| 3) Disease, Each Employee: | \$ 1,000,000 |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | \$ 1,000,000 |
| 2) General Aggregate: | \$ 2,000,000 |
| d. Excess or Umbrella Liability -- | |
| 1) Each Occurrence: | \$10,000,000 |
| 2) General Aggregate: | \$10,000,000 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | |
| Each Accident | \$ 1,000,000 |
| f. Professional Liability -- | |
| 1) Each Claim Made | \$ 2,000,000 |
| 2) Annual Aggregate | \$ 2,000,000 |

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Contractor's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:
 - a. Ruekert & Mielke, Inc.
W233 N2080 Ridgeview Parkway
Waukesha, WI 53188-1020

Engineer
 - b. Jacobs Associates
465 California Street, Suite 1000
San Francisco, CA 94104-1824

Engineer's Consultant
 - c. Cedarburg Science
P.O. Box 72020
Cedarburg, WI 53012

Engineer's Consultant
 - d. AECOM
11425 W Lake Park Drive
Milwaukee, WI 53224

Engineer's Consultant
 - e. EMCS, Inc.
1300 West Canal Street, Suite 200
Milwaukee, WI 53233

Engineer's Consultant
2. During the term of this Agreement the ENGINEER shall notify OWNER of any other Consultant to be listed as an additional insured on OWNER's general liability and property policies of insurance.
3. The OWNER shall be listed on ENGINEER's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT H**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, 2011.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H6.08 Dispute Resolution

- A. OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation.
- B. If either party alleges a dispute or controversy with the other party arising out of or relating to this Agreement, then either party shall have the right to demand non-binding mediation within twenty (20) days after the complaining party has provided the other party with written notice describing the dispute and the complaining party's position with reference to the resolution of the dispute.
- C. All mediation hearings shall take place exclusively in the Greater Metropolitan Milwaukee Area in the State of Wisconsin and shall be held within thirty (30) days after the mediator has been appointed. If the OWNER and ENGINEER have not agreed upon a mediator within ten (10) days of the request for mediation, the parties shall jointly request the Chief Judge for the Circuit Courts of Milwaukee County, Wisconsin, to appoint a mediator who shall, if reasonably available in the sole judgment of the appointing Judge, be a retired or former Circuit Court Judge for Waukesha County or Milwaukee County.
- D. The mediation hearing shall be informal and the mediator shall have the right to hear and review all testimony and evidence presented by either party. The mediator shall fix his or her own reasonable compensation and shall assess the cost and charges of the mediation to either or both of the parties as the mediator shall determine to be fair and reasonable. The mediator shall also be authorized, in his or her sole discretion, to award to the party whose contention is upheld, any sums as he or she may deem proper for the time, expense, and trouble incident to the mediation. The mediator shall issue a written finding which shall state how he or she proposes to resolve the dispute between the parties. The mediator's decision shall be rendered within thirty (30) days after the completion of the mediation hearings. The mediator's decision shall not be binding on either party; however, neither party shall have the right to commence any legal proceedings against the other party until the dispute has been mediated and the mediator has issued his or her written findings.
- E. No work related to this Agreement shall be interrupted or delayed during any mediation proceeding except upon written agreement of both parties.

- F. The mediator shall not be a witness in any legal proceedings related to this Agreement nor shall the decision of the mediator be used as evidence or referred to in any legal proceedings related to this Agreement.

- G. OWNER and ENGINEER agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT J**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____, 2011.

Special Provisions

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 ENGINEER 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.

Conflict of Interest.

ENGINEER 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. ENGINEER warrants that it will immediately notify the OWNER if any actual or potential conflict of interest arises or becomes known to the ENGINEER. Upon receipt of such notification, an OWNER review and written approval is required for the ENGINEER to continue to perform work under this Agreement.

Governing Law and Disputes.

In addition to the provisions of subparagraph 6.06 A. and Exhibit H: i) the venue for any disputes arising under this Agreement shall be the Circuit Court for Milwaukee County; and ii) the prevailing party shall be entitled to its costs, including its reasonable attorneys' fees, incurred in any litigation.

Records.

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

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2011.

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. _____

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: City of Franklin
- c. Engineer: Ruckert & Mielke, Inc.
- d. Project: Ryan Creek Interceptor - 124th Street to 60th Street

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

3. *Agreement Summary (Reference only):*

- a. Original Agreement amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Agreement amount: \$ _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____ 2010.

OWNER:

City of Franklin

By:

John M. Bennett, P.E.

Title:

Director of Public Works/City
Engineer

Date Signed: _____

ENGINEER:

Ruekert & Mielke, Inc.

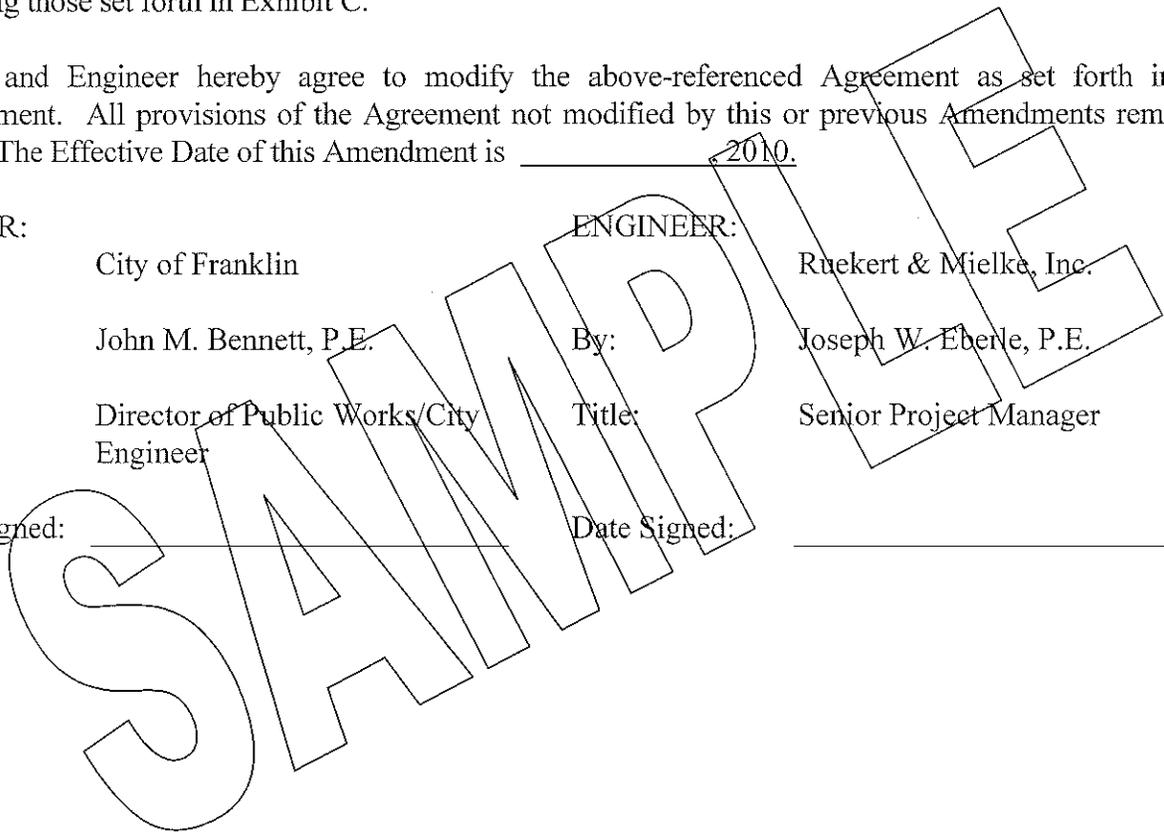
By:

Joseph W. Eberle, P.E.

Title:

Senior Project Manager

Date Signed: _____



STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2011-_____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE AN AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES FOR BIDDING PHASE, CONSTRUCTION PHASE, CLEAN WATER FUND ADMINISTRATION ASSISTANCE AND CONSTRUCTION REVIEW FOR THE PUBLIC CONSTRUCTION OF THE RYAN CREEK INTERCEPTOR SEWER PUBLIC SANITARY SEWER FACILITY PROJECT WITH RUEKERT & MIELKE, INC.

WHEREAS, the Intergovernmental Cooperative Agreement between the City of Franklin and the Milwaukee Metropolitan Sewerage District, Concerning Financing, Design, Construction, Operation, Maintenance, and Ownership of the Ryan Creek Interceptor Sewer dated November 8, 2010, provides at Article III that the City of Franklin shall provide for project management and engineering services during construction on a full time basis and in compliance with District inspection practices; and

WHEREAS, the City Engineering Department and the Milwaukee Metropolitan Sewerage District having considered the tasks and having determined that the most efficient and cost effective manner of providing for such services was to bifurcate such tasks between the District and the City project engineering consultant; and

WHEREAS, City project engineering consultant, Ruekert & Mielke, Inc., having proposed to perform the services as designated by the District apart from such services designated by the District for force account services, and the District staff having approved such proposal and contract terms; and

WHEREAS, the Engineering Department having also reviewed and recommended approval of an agreement for professional engineering services with Ruekert & Mielke, Inc., and the Common Council having determined that the proposed contract providing for total compensation for services estimated to be \$915,299.00 is fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Agreement Between Owner And Engineer for Professional Services between the City of Franklin and Ruekert & Mielke, Inc., be and the same is hereby approved, subject to such technical corrections as may be approved by the City Attorney.

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

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2011.

RESOLUTION NO. 2011-____

Page 2

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2011.

APPROVED:

ATTEST:

Thomas M. Taylor, Mayor

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

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APPROVAL <i>SLW</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE 9/20/11
Reports & Recommendations	SUBJECT: A resolution awarding contract to the lowest bidder, Black Diamond Group, in the amounts of \$40,505.00 and \$24,897.50, for the installation of final pavement surface on S. Avian Way and private roads Greyhawk Lane and Court	ITEM NO. <i>6.7.</i>

BACKGROUND

The City received bids on September 12, 2011 for the installation of the final pavement surface and utility adjustments for completion of Avian at Tuckaway Development.

ANALYSIS

The bids received were as follows:

	<u>Greyhawk</u>	<u>Avian Way</u>
Payne & Dolan	\$41,795.00	\$26,547.00
Black Diamond Group	\$40,505.00	\$24,897.50
Poblocki	\$46,053.00	\$26,943.00

Staff recommends the award to Black Diamond Group in the amount of \$40,505.00 and \$24,897.50.

OPTIONS

Approve

or

Deny the award

FISCAL NOTE

There is no fiscal impact on the City. Funds are available for the public street paving from the letter of credit.

RECOMMENDATION

Motion to adopt Resolution No. 2011-_____, a resolution awarding contract to the lowest bidder, Black Diamond Group, in the amounts of \$40,505.00 and \$24,897.50, for the installation of final pavement surface on S. Avian Way and private roads Greyhawk Lane and Court.

MB/sg

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2011 - _____

A RESOLUTION AWARDED CONTRACT TO THE LOWEST BIDDER,
BLACK DIAMOND GROUP, IN THE AMOUNTS OF \$40,505.00 AND \$24,897.50,
FOR THE INSTALLATION OF FINAL PAVEMENT SURFACE ON S. AVIAN WAY AND
PRIVATE ROADS GREYHAWK LANE AND COURT

WHEREAS, the City of Franklin advertised and solicited bids for the installation of the final pavement surface and utility adjustments in Avian at Tuckaway Development; and

WHEREAS, the low bidder was Black Diamond Group, with bids of \$40,505.00 and \$24,897.50; and

WHEREAS, Black Diamond Group are qualified public works contractors.

WHEREAS, it is in the best interest of the City as recommended by the City's staff to award the contract at the total base bids of \$40,505.00 and \$24,897.50 to Black Diamond Group.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin, that Black Diamond Group be awarded the contract for the installation of the pavement surface and utility adjustments in Avian at Tuckaway Development.

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

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2011 by Alderman _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2011.

APPROVED:

Thomas M. Taylor, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

APPROVAL	REQUEST FOR COUNCIL ACTION	MTG. DATE
<i>SW</i>		9/20/11
Reports & Recommendations	SUBJECT: A resolution authorizing officials to execute a Local/County Agreement for the funding of the adjustment of manholes as part of the improvement of W. College Avenue (CTH ZZ) from S. 27th Street to corporate limits (at approximately S. 43rd Street).	ITEM NO. <i>68</i>

BACKGROUND

Milwaukee County Public Works is proposing to mill out and pulverize existing pavement and resurface W. College Avenue (CTH ZZ) from S. 27th Street to S. 51st Street. This resurfacing project is on a “fast track” this fall with a November complete. Restoration to be complete in the spring of 2012. The two lane pavement width will remain the same. Shoulder along the south side of W. College Avenue from S. 43rd Street to S. 27th Street (primarily in Franklin) will be paved six (6) feet wide.

ANALYSIS

The County has budgeted funds for this improvement. The County is requiring communities of Greenfield, Greendale and Franklin with infrastructure to participate in the cost of adjusting these facilities. The County has forwarded a Local/County Agreement which identifies the estimate cost of \$3,795.00 to adjust 8 sanitary sewer manholes within Franklin. The estimated unit costs look reasonable and will be finalized after receiving bid and executing a contract.

OPTIONS

Approve or request additional information.

FISCAL NOTE

Funding for this work to be taken from the Sewer Fund.

RECOMMENDATION

Motion to adopt Resolution No. 2011-_____, a resolution authorizing officials to execute a Local/County Agreement for the funding of the adjustment of manholes as part of the improvement of W. College Avenue (CTH ZZ) from S. 27th Street to corporate limits . (at approximately S. 43rd Street).

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2011 - _____

A RESOLUTION AUTHORIZING OFFICIALS TO EXECUTE
A LOCAL/COUNTY AGREEMENT FOR THE FUNDING OF THE
ADJUSTMENT OF MANHOLES AS PART OF THE IMPROVEMENT OF
W. COLLEGE AVENUE (CTH ZZ) FROM S. 27TH STREET TO CORPORATE LIMITS
(AT APPROXIMATELY S. 43RD STREET)

WHEREAS, Milwaukee County has budgeted funds for the improvement of CTH ZZ between S/ 27th Street and S. 51st Street; and

WHEREAS, the City of Franklin owns and maintains a sanitary sewer system within W. College Avenue; and

WHEREAS, eight (8) manholes are part of this sanitary sewer system and will need to be adjusted as part of the improvement project; and

WHEREAS, Milwaukee County is including these needed manhole adjustments in it improvement project; and

WHEREAS, the cost of the adjustment has been estimated at \$3,795; and

WHEREAS, this cost will be finalized after bids are received and contract is executed; and

WHEREAS, the City is required to pay the County the cost of manhole adjustments; and

WHEREAS, City funds for these manhole adjustments are available from the Sewer Fund.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin, that the Mayor and City Clerk are authorized to execute a Local/County Agreement with Milwaukee County for the improvement of W. College Avenue (CTH ZZ) and the identified cost of necessary sanitary sewer manhole adjustments. This agreement being subject to review and approval of City Attorney.

INTRODUCED at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2011 by Alderman _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2011.

APPROVED:

Thomas M. Taylor, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

RJR/db

**LOCAL/COUNTY AGREEMENT
FOR A
HIGHWAY IMPROVEMENT PROJECT**

DATE: September 12, 2011
ID: WH010051
HIGHWAY: W. College Ave. (CTH ZZ)
LIMITS: S. 27th St. to S. 51st St.

THIS AGREEMENT is made and entered into and between Milwaukee County, a body corporate, and the City of Franklin, a municipal corporation.

The portion of W. College Ave. between S. 27th St. and S. 51st St. has been designated County Trunk Highway "ZZ" pursuant to Section 83.025 of the Wisconsin Statutes.

The County has budgeted funds for the improvement of CTH "ZZ" between S. 27th St. and S. 51st St., with completed plans to be submitted for advancement to the construction contract bidding process, scheduled for September 2011, and construction to begin by October 2011.

The Milwaukee County Department of Transportation and Public Works, hereinafter called the County, through its undersigned duly authorized officers or officials, hereby requests the City of Franklin, hereinafter called the Municipality, to participate in the street improvements hereinafter described in the estimated cost summary.

The authority for the Municipality to enter into this agreement with the County is provided by Section 86.25(1), (2) and (3) of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

Existing Facility – Describe and give reason for request:

W. College Ave. (CTH ZZ) is typically a two-lane rural type roadway with ditches. The pavement is in poor condition. The roadway will continue to deteriorate at an accelerated rate unless preventive action is taken.

Proposed Improvement – Nature of work:

The road is scheduled for reconditioning by the County. The rehabilitation consists of milling the existing asphaltic pavement, base patching and resurfacing it with 6-inches of hot mix asphalt (HMA) with limited spot improvements. As requested by the municipality, sanitary sewer manhole cover adjustments, internal sanitary manhole seals and water valve box adjustments will be included.

Project No. WH010051
W. College Ave. (CTH ZZ) – S. 27th St. to S. 51st St.
ESTIMATED COST SUMMARY*

<i>ITEM DESCRIPTION</i>	<i>UNIT</i>	<i>ESTIMATED QUANTITY</i>	<i>ESTIMATED UNIT COST</i>	<i>ESTIMATED AMOUNT</i>
ADJUST ING SANITARY MANHOLE CASTINGS- FRANKLIN	EACH	3.00	\$600.00	\$1,800.00
ADJUSTING SANITARY MANHOLE COVERS- FRANKLIN	EACH	5.00	\$300.00	\$1,500.00

Cost of Non-Participating items:	\$3,300.00
<u>+15% Engineering & Contingency:</u>	<u>\$495.00</u>
Total Cost:	<u>\$3,795.00</u>

* The above costs reflect the County's best estimates to-date. The actual number of units installed may vary from this estimate depending on field conditions. The Municipality will be billed for each item at the actual construction cost.

This agreement is subject to the terms and conditions that follow and is executed by the undersigned under proper authority to execute such an agreement for the designated Municipality and upon acceptance by the County shall constitute an agreement between the Municipality and the County.

Signed for and on behalf of Milwaukee County:

_____ Signature	Director, Department of Transportation & Public Works _____ Title	_____ Date
Jack Takerian _____ Name (Written Clearly)		

Signed for and on behalf of the City of Franklin:

_____ Signature	_____ Mayor Title	_____ Date
Thomas M. Taylor _____ Name (Written Clearly)		

-Terms and Conditions Begin on the Next Page-

TERMS AND CONDITIONS

1. The initiation and accomplishment of the improvement will be subject to the applicable Federal, State and County regulations.
2. The Municipality will pay to the County such related costs for items as outlined below and listed in the Estimated Cost Summary.
3. Funding of each project phase (preliminary engineering, real estate, construction, other) is subject to inclusion in an approved program. County financing will be limited to participation in the costs of the following items as specified in the estimate summary:
 - a. Preliminary Engineering and review services (100%).
 - b. The grading, base, pavement, and curb and gutter (100%).
 - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main, if required (100%).
 - d. Construction Engineering incidental to inspection and supervision of actual construction work (100%).
 - e. Signing and pavement marking, including detour routes (100%).
 - f. Surfacing of private driveways due to change in grade of the improvement (100%).
 - g. New installations or alterations of traffic signals (100%).
 - h. Real Estate for the improvement, if required (100%).
 - i. Replacement of any sidewalk removed as a result of a change in street grade (100%).
4. Work necessary to complete the improvement to be financed entirely by the Municipality or other utility or facility owner or other responsible party (not including the County) includes, but is not limited to, the following items:
 - a. New installations of or alterations of sidewalks, sanitary sewers or connections, water, gas, electric, telephone, telegraph, fiber optic, fire or police alarm facilities, parking meters, pipelines, and similar utilities.
 - b. Repair of damages to roads and streets caused by reason of their use in hauling materials incidental to the improvement.
5. As the work progresses, the Municipality will be billed for work completed as outlined above and as listed in the Estimated Cost Summary. Upon completion of the project, a final audit will be made to determine the final division of costs.
6. If the Municipality should withdraw from the project, it will reimburse the County its proportionate local share of all construction and construction engineering costs incurred by the County to complete the construction phase of the project (construction), up to the date the notification of withdrawal is received by Milwaukee County.
7. The work will be administered by the County or its designee and may include items not eligible for County participation. The County shall notify the Municipality of such items prior to inclusion of the work and get written authorization for their inclusion and cost participation by the Municipality.

8. The Municipality at its own cost and expense and using its own labor forces and equipment will:
 - a. Prohibit angle parking.
 - b. Regulate parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
 - c. Regulate parking at all times in the vicinity of the proposed improvements during their construction.
 - d. Remove and reinstall street lighting poles, bases, luminaries, and other appurtenances necessary to accommodate median modifications as per the plan. City of Franklin to coordinate work with the construction manager.
 - e. Bore and install conduit and cable necessary for street lighting modifications and relocations.
 - f. Construct temporary overhead street lighting facilities at various locations throughout the project's length. City of Franklin to coordinate work with the construction manager.

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APPROVAL <i>SLW</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE September 20, 2011
REPORTS AND RECOMMENDATIONS	Acquisition of easement rights and interests in property for the location, extension, installation and maintenance of public sanitary sewer facilities to provide sanitary sewer service to the southwest area of the City of Franklin by way of the Ryan Creek Interceptor sewer installation upon property in the area from the intersection of South 60th Street and West Ryan Road generally following the Ryan Creek to the intersection of West Ryan Road and South 112th Street, thence westerly along West Ryan Road to the west City limits, upon the following 2 properties identified by Acquisition Map Parcel No., Tax Key Number and address, respectively, as follows: 1) 21, 894-9999-001 and 9733 W. Ryan Road; 2) 40, 894-9999-004 and 9733 W. Ryan Road.	ITEM NUMBER <i>6.9.</i>

The Council may enter closed session pursuant to §19.85(1)(e), Stats. to discuss the acquisition of easement rights for the subject extension of the Ryan Creek Interceptor Sewer for the above mentioned properties; and to re-enter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

COUNCIL ACTION REQUESTED

Motion to enter closed session pursuant to Wis. Stat. §19.85 (1) (e), to consider the terms and negotiation of the public acquisition of easement(s) for public sanitary sewer service for the extension of the Ryan Creek Interceptor Sewer project, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

or

Motion to authorize acquisition of easement rights as recommended by the appraisal firm of Single Source and Ruckert-Mielke the design engineers for parcels 21 and 40 and to authorize taking the recommended action for the same parcels as recommended by Ruckert-Mielke the design engineers if necessary.

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<p>APPROVAL</p> <p><i>SLW</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>9/202011</p>
<p>Licenses and Permits</p>	<p>Miscellaneous Permits</p>	<p>ITEM NUMBER</p> <p><i>H. 1.</i></p>

See attached list from meeting of September 20, 2011

COUNCIL ACTION REQUESTED



City of Franklin

9229 W. Loomis Road
Franklin, WI 53132-9728

414-425-7500

License Committee

Agenda*

Alderman's Room

September 20, 2011 – 6:00 p.m.

1.	Call to Order & Roll Call	Time		
2.	Applicant Interviews & Decisions			
License Applications Reviewed		Recommendations		
Type/ Time	Applicant Information	Approve	Hold	Deny
Operator 2011-12 6:00 p.m.	Jackson, Ozzie L Jr 9305 W Mitchell St West Allis, WI 53214 On the Border			
Operator 2011-12 6:10 p.m.	Lillge, Natasha M 8273 S 51 st St Franklin, WI 53132 Open Pantry			
Operator 2011-12	Bandle, Brittany B 9517 S Ryan Green Ct #7 Franklin, WI 53132 Hanley's Grille & Bar			
Operator 2011-12	Ulrich, Laura J 2110 Deer Path Waukesha, WI 53189 Target			
Operator 2011-12	Wirtanen, Deborah A 11460 W Swiss St Franklin, WI 53132 Irish Cottage			
Temporary Class B Wine & Beer	St Martin of Tours – School Fall Fundraiser Person in Charge: Jeanne Johnson Location: 7933 S 116 th St Date of Event: October 8, 2011			
Temporary Entertainment & Amusement	St Martin of Tours – School Fall Fundraiser Person in Charge: Jeanne Johnson Location: 7933 S 116 th St Date of Event: October 8, 2011			
3.	Adjournment	Time		

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

APPROVAL <i>SLW CR</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 9/20/2011
Bills	Vouchers and Payroll Approval	ITEM NUMBER <i>I.1.</i>

Provided separately for Council approval is a list of vouchers Nos. 139940 through 140103 in the amount of \$1,615,758.71. The net City vouchers are \$1,615,758.71.

Approval is requested for the net payroll of September 9, 2011 in the amount of \$347,592.81.

COUNCIL ACTION REQUESTED

Motion approving net City vouchers in the range of Nos. 139940 through 140103 in the amount of \$1,615,758.71.

Approval is requested for the net payroll of September 9, 2011 in the amount of \$347,592.81.