

\*REVISED 4/20/2020

\*The Facebook page for the Economic Development Commission (<https://www.facebook.com/forwardfranklin/>) will be live streaming the Common Council meeting so that the public will be able to watch and listen to the meeting.

CITY OF FRANKLIN  
COMMON COUNCIL MEETING  
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS  
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN  
AGENDA\*\*  
TUESDAY, APRIL 21, 2020 AT 6:30 P.M.

Oath of Office - Steve Olson, Mayor

Oath of Office - Kristen Wilhelm, 3<sup>rd</sup> District Alderwoman

Oath of Office - Shari Hanneman, 4<sup>th</sup> District Alderwoman

Oath of Office - John R. Nelson, 6<sup>th</sup> District Alderman

Oath of Office - Frederick F. Klimetz, Judge

- A. Call to Order and Roll Call.
- B.
  - 1. Citizen Comment Period.
  - 2. Mayoral Announcements – Franklin Emergency Operation Command Staff.
- C. Approval of Minutes - Regular Common Council Meeting of April 6, 2020.
- D. Hearings.
- E. Organizational Business:
  - 1. Aldermanic Appointments:
    - (a) Alderman Dandrea-Finance Committee, 1 yr. term expires 4/13/21.
    - (b) Alderman Dandrea-Plan Commission, 1 yr. term expires 4/13/21.
    - (c) Alderman Mayer-Environmental Commission, 1 yr. term expires 4/13/21.
    - (d) Alderwoman Wilhelm-License Committee, 1 yr. term expires 4/13/21.
    - (e) Alderwoman Wilhelm-Library Board, 3 yr. term expires 4/18/23.
    - (f) Alderwoman Wilhelm-Quarry Monitoring Committee, 2 yr. term expires 4/12/22.
    - (g) Alderwoman Hanneman-Finance Committee, 1 yr. term expires 4/13/21.
    - (h) Alderwoman Hanneman-License Committee, 1 yr. term expires 4/13/21.
    - (i) Alderwoman Hanneman-Civic Celebrations Commission, 2 yr. term expires 6/30/22.
    - (j) Alderwoman Hanneman-Parks Commission, 1 yr. term expires 4/13/21.
    - (k) Alderman Nelson-Fair Commission, term of office, expires 4/18/23.
    - (l) Alderman Nelson-License Committee, 1 yr. term expires 4/13/21.
    - (m) Alderman Nelson-Board of Public Works, term of office, expires 4/18/23.
    - (n) Alderman Nelson-Finance Committee, 1 yr. term expires 4/13/21.
  - 2. Election of Common Council President

F. Letters and Petitions.

G. Reports and Recommendations:

1. A Resolution to Amend a Resolution in Ratification of a Proclamation Declaring a Public Health Emergency in Response to the Coronavirus Disease 2019 (COVID-19), as Amended, to Provide for City Common Council, Boards, Commissions and Committees Meetings Attendance by the Public by Way of Telephone and/or Electronic Audio and/or Video Communication and to Extend the Time Period of the Public Health Emergency for Forty (40) Days.
2. Project Updates for Ballpark Commons.
3. Request to Accept Grant to Update Nextgen 9-1-1 Capability.
4. Motion to allow the Director of Health and Human Services to Enter into a 90-Day Trial Contract for Access to the Wisconsin Statewide Health Information Network (“WISHIN”) Organization Data to Improve Communicable Disease Investigation and Follow-up.
5. Authorize the City of Franklin to Participate in an Intergovernmental Cooperation Agreement for Procuring Personal Protection Equipment and Other Necessary Sanitation and Medical Supplies in Response to the COVID-19 Public Health Emergency.
6. Report on Expenditures Related to the COVID-19 Public Health Emergency Thru April 15, 2020.
7. Authorization to Cover 1st Dollar Medical Costs for COVID-19 Treatment for Employees Covered on the City’s Health Insurance Plan.
8. A Resolution Authorizing Certain Officials to Execute a Development Agreement with the Developer of Knollwood Legacy Apartments.
9. Request to Pay for Storm Water Reviews Related to a Private Drainage Issue at 9611 S. 58th St. (Krones, Inc.) Tax Key 899-9990-062.
10. Purchase of Twenty-Nine (29) Replacement Chairs from Building Services, Inc. (BSI) for \$9,425.
11. A Resolution to Sign a Temporary Grading Easement for 8003 S. 68th Street (Tax Key 804-9991-002) for Work on the S. 68th Street Vertical Alignment Improvements Project.
12. Grant Gas and Electric Easement to Wisconsin Electric Power Company for City-Owned Parcel at 3548 W. County Line Road and W. Drexel Avenue (Parcel 979-9999-000).
13. Request to Bid Demolition of Abandoned Home at 3548 W. County Line Road (Tax Key 979-9999-000).
14. Notice to Waive Late Fees and Make Other Concessions for the Water and Franklin Sewer Utilities in Accordance with Wisconsin Governor Tony Evers’ Emergency Order #11-“Public Service Commission Administration Rules Suspensions”.
15. Direct Staff to Prepare a 2020 Budget Amendment to the General Fund, Capital Outlay Fund, Equipment Replacement Fund, Street Improvement Fund and Capital Improvement Fund to Reduce \$1,000,000 Landfill Siting Resources and Remove Selected Projects From the 2020 Capital Funds or Increase Note Proceeds.
16. Authorization for Purchase of BS&A’s Community Development & Complaints Software including execution of the Software Licenses and Services Agreement.

## Common Council Meeting Agenda

April 21, 2020

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H. Bills.  
Request for Approval of Vouchers and Payroll.

I. Adjournment.

\*\*Supporting documentation and details of these agenda items are available in the Common Council Meeting Packet on the City of Franklin website [www.franklinwi.gov](http://www.franklinwi.gov)

[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:

April 23	Plan Commission Meeting	7:00 p.m.
May 4	Committee of the Whole Meeting	6:30 p.m.
May 5	Common Council Meeting	6:30 p.m.
May 7	Plan Commission Meeting	7:00 p.m.
May 19	Common Council Meeting	6:30 p.m.
May 21	Plan Commission Meeting	7:00 p.m.

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**CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN**

**C E R T I F I C A T I O N**

*This is to certify that on the seventh day of April, 2020*

**STEVE OLSON**

*was duly elected to the office of Mayor of the City of Franklin for a three-year term expiring on the 18th day of April, 2023, as appears from the official canvass on file in the Office of the City Clerk.*

*In testimony whereof, I have set my hand and affixed the Seal of the City of Franklin, Wisconsin, this 14th day of April, 2020.*

  
\_\_\_\_\_  
**Sandra L. Wesolowski**  
**Director of Clerk Services/City Clerk**



***CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN***

**C E R T I F I C A T I O N**

***This is to certify that on the seventh day of April, 2020***

***KRISTEN WILHELM***

***was duly elected to the office of Third District Alderwoman of the  
City of Franklin for a three-year term expiring on the 18th day of  
April, 2023, as appears from the official canvass on file in the  
Office of the City Clerk.***

***In testimony whereof, I have set my hand and affixed the Seal of  
the City of Franklin, Wisconsin, this 14th day of April, 2020.***

  
\_\_\_\_\_  
***Sandra L. Wesolowski***  
***Director of Clerk Services/City Clerk***



***CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN***

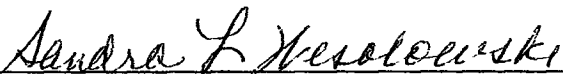
**C E R T I F I C A T I O N**

***This is to certify that on the seventh day of April, 2020***

***SHARI HANNEMAN***

***was duly elected to the office of Fourth District Alderwoman of the  
City of Franklin for a three-year term expiring on the 18th day of  
April, 2023, as appears from the official canvass on file in the  
Office of the City Clerk.***

***In testimony whereof, I have set my hand and affixed the Seal of  
the City of Franklin, Wisconsin, this 14th day of April, 2020.***

  
\_\_\_\_\_  
***Sandra L. Wesolowski***  
***Director of Clerk Services/City Clerk***



***CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN***

**C E R T I F I C A T I O N**

***This is to certify that on the seventh day of April, 2020***

***JOHN R. NELSON***

***was duly elected to the office of Sixth District Alderman of the City of Franklin for a three-year term expiring on the 18th day of April, 2023, as appears from the official canvass on file in the Office of the City Clerk.***

***In testimony whereof, I have set my hand and affixed the Seal of the City of Franklin, Wisconsin, this 14th day of April, 2020.***

  
***Sandra L. Wesolowski***  
***Director of Clerk Services/City Clerk***





***CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN***


**C E R T I F I C A T I O N**

***This is to certify that on the seventh day of April, 2020***

***FREDERICK F. KLIMETZ***

***was duly elected to the office of Municipal Judge of the City of Franklin for a four-year term expiring on the 30th day of April, 2024, as appears from the official canvass on file in the Office of the City Clerk.***

***In testimony whereof, I have set my hand and affixed the Seal of the City of Franklin, Wisconsin, this 14th day of April, 2020.***

  
***Sandra L. Wesolowski***  
***Director of Clerk Services/City Clerk***



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C.

CITY OF FRANKLIN  
COMMON COUNCIL MEETING  
APRIL 6, 2020  
MINUTES

- ROLL CALL                      A.        The regular meeting of the Common Council was held on April 6, 2020 and called to order at 6:30 p.m. by Mayor Steve Olson in the Franklin City Hall Council Chambers, 9229 W. Loomis Road, Franklin, Wisconsin. On roll call, the following were in attendance: Alderman Mark Dandrea, Alderman Dan Mayer, Alderwoman Kristen Wilhelm (by telephone), Alderman Steve F. Taylor, Alderman Mike Barber (by telephone), and Alderman John R. Nelson. Also present were City Engineer Glen Morrow and City Attorney Jesse A. Wesolowski.
- CITIZEN COMMENT            B.1.     Citizen comment period was opened at 6:31 p.m. and closed at 6:35 p.m.
- MAYORAL  
ANNOUNCEMENT            B.2.     Franklin Emergency Operations Command staff, Health & Human Services Dir. Day, Fire Chief Remington, Treasurer & Finance Officer Rotzenberg, and Director of Clerk Services/City Clerk Wesolowski, provided an updated and reported on the regional COVID-19 response plan.
- MINUTES  
MARCH 3, 2020              C.        Alderman Taylor moved to approve the minutes of the regular Common Council meeting of March 3, 2020 as presented at this meeting. Seconded by Alderman Nelson. All voted Aye; motion carried.
- HEARINGS  
IMPACT FEES UPON  
LAND DEVELOPMENT        D.        Alderman Mayer moved that the public hearing be opened, to be postponed at the conclusion of the public comments this evening, to continue to a date certain. Seconded by Alderwoman Wilhelm.
- Alderman Barber moved to call the question. Seconded by Alderman Mayer. On roll call, Alderman Dandrea, Alderman Mayer, Alderwoman Wilhelm, Alderman Barber, and Alderman Nelson voted Aye; Alderman Taylor voted No. Motion carried.
- On roll call for the main motion, Alderman Mayer, Alderwoman Wilhelm, Alderman Nelson voted Aye; Alderman Dandrea, Alderman Taylor, and Alderman Barber voted No. Mayor Olson broke the tie by voting No. Motion failed.
- A public hearing was called to order regarding proposed amendments to §92-9 of the Municipal Code pertaining to impact fees for the purpose of resetting impact fees May 1, 2020; to provide for the use of the change in US Census Bureau's Construction Price Index for single-family houses under construction from the prior twelve month period preceding September of the prior year; and to provide for a fee

reduction in support of low-cost housing affordable housing development; and to exempt public schools and other institutional developments from the application of and the requirement for the payment of each of the various impact fees. The public hearing was closed by Mayor Olson.

ORD. 2020-2426  
IMPACT FEE STUDY

- G.1. Alderman Taylor moved to adopt Ordinance No. 2020-2426, AN ORDINANCE TO AMEND §92-9 OF THE MUNICIPAL CODE IN PART AND PRIMARILY TO UPDATE SAME PURSUANT TO THE PUBLIC FACILITIES NEEDS ASSESSMENT AND IMPACT FEE STUDY, MARCH, 2020 (WITH SECTION 10 BEING APPROVED) (SECTION 8, APPROVE TO EXEMPT PUBLIC SCHOOLS FROM ALL IMPACT FEES OR DENY TO EXEMPT PUBLIC SCHOOLS FROM ALL IMPACT FEES) (IF APPROVED TO EXEMPT PUBLIC SCHOOLS, THE DATE THIS EXEMPTION WOULD BEGIN WOULD BE JANUARY 1, 2017), subject to technical corrections. Seconded by Alderman Dandrea.

Alderman Barber moved to call the question. Seconded by Alderman Taylor. On roll call, Alderman Dandrea, Alderman Mayer, Alderman Taylor, Alderman Barber, and Alderman Nelson voted Aye; Alderwoman Wilhelm voted No. Motion carried.

On roll call for the adoption of Ordinance No. 2020-2426, all voted Aye. Motion carried.

Alderwoman Wilhelm then moved to allow the consultant to take care of the item of transportation and Mahr Woods, and sewer and water. Seconded by Alderman Nelson. All voted Aye; motion carried.

ORD. 2020-2427  
PDD UW-CREDIT  
UNION DRIVE  
THROUGH

- G.2. Alderwoman Wilhelm moved to approve Ordinance No. 2020-2427, AND ORDINANCE TO AMEND §15-3.0418 OF THE UDO PLANNED DEVELOPMENT DISTRICT NO. 13 (WAL-MART/SAM'S WHOLESALE CLUB), SECTION 2., TO ADD DRIVE-THROUGH AS AN ALLOWED SPECIAL USE WITH THE ENTIRE DISTRICT [A SPECIAL USE BEING SUBJECT TO SUBMISSION OF A SPECIFIC SPECIAL USE APPLICATION FOR A SPECIFIC PROPERTY AND THE OBTAINING OF APPROVAL THEREOF] (UNIVERSITY OF WISCONSIN CREDIT UNION, D/B/A UW CREDIT UNION, APPLICANT). Seconded by Alderman Dandrea. All voted Aye; motion carried.

RES. 2020-7610  
FRANKLIN HISTORICAL  
SOCIETY BUILDINGS

- G.3. Alderman Taylor moved to adopt Resolution No. 2020-7610, A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FRANKLIN AND THE FRANKLIN

HISTORICAL SOCIETY, INC. FOR THE MAINTENANCE, OPERATIONS AND OWNERSHIP OF THE HISTORICAL BUILDINGS IN LIONS LEGEND PARK. Seconded by Alderman Dandrea. All voted Aye; motion carried.

TID 6  
LOOMIS BUSINESS  
PARK AND RYAN  
MEADOWS

G.4. Alderman Nelson moved to proceed with Phase II, Project Plan Development and Approval, and Phase III, State Submittal, for the boundary amendment for Tax Incremental District No. 6 Mixed-Use District Project Plan development. Seconded by Alderman Taylor. All voted Aye; motion carried.

TID 8  
FRANKLIN CORPORATE  
PARK

G.5. Alderman Taylor moved to proceed with Phase II, Project Plan Development and Approval, and Phase III, State Submittal, for the boundary amendment for Tax Incremental District No. 8 Mixed-Use District Project Plan development. Seconded by Alderman Nelson. All voted Aye; motion carried.

RES. 2020-7611  
LIMITED REVENUE  
BOND TO VELO  
VILLAGE APARTMENTS

G.6. Alderman Dandrea moved to adopt Resolution No. 2020-7611, A RESOLUTION AUTHORIZING THE ISSUANCE OF \$14,052,000 TAXABLE TAX INCREMENT PROJECT MUNICIPAL SPECIAL, LIMITED REVENUE OBLIGATION BOND TO VELO VILLAGE APARTMENTS, LLC DATED APRIL 7, 2020. Seconded by Alderman Barber. On roll call, Alderman Dandrea, Alderman Barber, and Alderman Nelson voted Aye; Alderman Mayer voted No; and Alderwoman Wilhelm and Alderman Taylor Abstained. Motion carried.

FIRE DEPARTMENT  
DONATION

G.7. Alderwoman Wilhelm moved to accept a donation of \$995.00 in remembrance of Allison Healy from Robert and Mary Healy to be used toward community outreach and education. Seconded by Alderman Mayer. All voted Aye; motion carried.

ADMINISTRATIVE  
FIRE CHIEF POSITION

G.8. Alderwoman Wilhelm moved to fill an approved and budgeted Administrative Chief position at the rank of Assistant Chief, rather than the lower tentatively approved rank of Battalion Chief. Seconded by Alderman Barber. Upon voice vote, five Ayes; one Abstention (Alderman Mayer). Motion carried.

RES. APPROVING CSM-  
STEVEN WIEDENFELD

G.9. Alderman Barber moved to reject the Certified Survey Map Application of Steven D. Wiedenfeld, Applicant as the map provides a lot of less than 40,000 square feet in area for which public water supply is required pursuant to the Unified Development Ordinance §15-2.0130B.3.b, and public water supply is not available to serve the property. Seconded by Alderman Taylor. All voted Aye; motion carried.

ORD. 2020-2728  
PUBLIC WORKS  
RETIREMENT PLAN

G.10. Alderman Barber moved to adopt Ordinance No. 2020-2428, AN ORDINANCE TO AMEND ORDINANCE 2019-2398, AN ORDINANCE ADOPTING THE 2020 ANNUAL BUDGETS FOR THE GENERAL FUND AND SANITARY SEWER FUND TO PROVIDE \$670,000 OF GENERAL FUND AND \$175,000 OF SANITARY SEWER FUND ADDITIONAL APPROPRIATIONS AS EXTRAORDINARY CONTRIBUTIONS TO THE PUBLIC WORKS DEFINED BENEFIT RETIREMENT INCOME PLAN, and further, to direct the Director of Finance & Treasurer to make a maximum \$750,000 extraordinary contribution to the Public Works Defined Benefit Retirement Income Plan as soon as practical in a satisfaction of an asset call from the Plan custodian. Seconded by Alderman Dandrea. On roll call, all voted Aye; motion carried.

FEMA DISASTER AID  
APPLICATION

G.11. Alderwoman Wilhelm moved to direct the Director of Finance & Treasurer to file a timely application for Federal Emergency Management Administration disaster aid with the appropriate Wisconsin agency in relation to the Public Health Emergency declared earlier in March, 2020. Seconded by Alderman Barber. All voted Aye; motion carried.

RES. 2020-7612  
FINAL PLAT FOR  
OAKES ESTATES (92ND  
ST. AND W. WOELFEL  
RD.

G.12. Alderman Mayer moved to adopt Resolution No. 2020-7612, A RESOLUTION CONDITIONALLY APPROVING A FINAL PLAT FOR OAKES ESTATES SUBDIVISION (AT APPROXIMATELY SOUTH 92ND STREET AND WEST WOELFEL ROAD) (MAXWELL J. OAKES AND DANIEL D. OAKES-OAKES ESTATES LLC, APPLICANT). Seconded by Alderman Nelson. All voted Aye; motion carried.

RES. 2020-7613  
2 LOT CSM  
5112 W. RYAN RD.

G.13. Alderman Taylor moved to adopt Resolution No. 2020-7613, A RESOLUTION CONDITIONALLY APPROVING A 2 LOT CERTIFIED SURVEY MAP, BEING A DIVISION OF A PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN (ANUP K. KHULLAR, 5100 LLC, APPLICANT) (AT 5112 WEST RYAN ROAD). Seconded by Alderman Dandrea. All voted Aye; motion carried.

ORD. 2020-2429  
COVID-19  
CONTINGENCY  
FUNDING

G.14. Alderman Wilhelm moved to adopt Ordinance No. 2020-2429, AN ORDINANCE TO AMEND ORDINANCE 2019-2398, AN ORDINANCE ADOPTING THE 2020 ANNUAL BUDGETS FOR THE GRANT FUNDS TO PROVIDE ADDITIONAL \$55,000 OF APPROPRIATIONS TO ADDRESS THE COVID-19 PUBLIC HEALTH EMERGENCY. Seconded by Barber. On roll call, all voted Aye; motion carried.

ORD. 2020-2430  
APPROPRIATIONS  
FOR STREET TREES

G.15. Alderman Barber moved to adopt Ordinance No. 2020-2430, AN ORDINANCE TO AMEND ORDINANCE 2019-2398, AN ORDINANCE ADOPTING THE 2020 ANNUAL BUDGETS FOR CAPITAL OUTLAY FUND TO PROVIDE ADDITIONAL RESOURCES AND EXPENDITURES FOR STREET TREES TOTALING \$31,125. Seconded by Alderman Nelson. On roll call, all voted Aye; motion carried.

HAWK SYSTEM  
PURCHASE

G.16. Alderman Barber moved to direct staff to purchase a High-intensity Activated cross Walk beacon (HAWK) system from Traffic and Parking Control, Inc. for \$4,0852.50 and install at South 51st Street and South Preserve Way. Seconded by Alderman Mayer. All voted Aye; motion carried.

SIDEWALKS ON  
W. LOOMIS RD. FROM  
W. ST. MARTINS RD.  
TO S. 68TH ST.

G.17. Alderman Mayer moved to have staff direct Wisconsin Department of Transportation to prepare a State/Municipal Agreement and a Memorandum of Understanding for sidewalk considerations on the east side of West Loomis Road from West St. Martins Road to West Rawson Avenue, City Limits (South 68th Street). Seconded by Alderman Barber. All voted Aye; motion carried.

RES. 2020-7614  
CHANGE ORDER  
NO. 1 FRANKLIN CORP.  
PARK WASTEWATER  
PUMPING STATION

G.18. Alderman Taylor moved to adopt Resolution No. 2020-7614, A RESOLUTION TO ISSUE CHANGE ORDER NO. 1 FOR THE FRANKLIN CORPORATE PARK WASTEWATER PUMPING STATION PROJECT, STAAB CONSTRUCTION CORPORATION, AND CHANGE ORDER NO. 1 FOR THE SOUTH HICKORY STREET CORRIDOR UTILITY IMPROVEMENTS PROJECT, SUPER EXCAVATORS, INC. FOR TIME EXTENSIONS ONLY. Seconded by Alderman Dandrea. On roll call, Alderman Dandrea, Alderman Taylor, Alderman Barber, and Alderman Nelson voted Aye; Alderman Mayer and Alderwoman Wilhelm voted No. Motion carried.

FEB. 2020  
FINANCIAL REPORT

G.19. Alderman Barber moved to receive and place on file the February, 2020 Monthly Financial Report. Seconded by Alderman Taylor. All voted Aye; motion carried.

DEC. 2019  
FINANCIAL REPORT

G.20. Alderman Barber moved to receive and place on file the December, 2019 Monthly Financial Report. Seconded by Alderman Taylor. All voted Aye; motion carried.

VOUCHERS AND  
PAYROLL

I. Alderman Taylor moved to approve the following: City vouchers with an ending date of April 2, 2020 in the amount of \$6,336,589.51; and Payroll dated March 27, 2020 in the amount of \$387,670.98 and payments of the various payroll deductions in the amount of

\$420,357.77 plus City matching payments; and estimated payroll dated April 10, 2020 in the amount of \$417,000.00 and payments of the various payroll deductions in the amount of \$230,000.00, plus City matching payments. Seconded by Alderman Dandrea. On roll call, all voted Aye. Motion carried.

ADJOURNMENT

- J. Alderman Taylor moved to adjourn the meeting at 8:36 p.m. Seconded by Alderwoman Wilhelm. All voted Aye; motion carried.



APPROVAL <i>slw</i>	REQUEST FOR COMMON COUNCIL ACTION	MEETING DATE 4-21-2020
ORGANIZATIONAL BUSINESS	Board and Commission Appointments - Aldermanic	ITEM NUMBER <i>E. 1.</i>

Aldermanic Appointments:

- (a) Alderman Dandrea-Finance Committee, 1 yr. term expires 4/13/21.
- (b) Alderman Dandrea-Plan Commission, 1 yr. term expires 4/13/21.
- (c) Alderman Mayer-Environmental Commission, 1 yr. term expires 4/13/21.
- (d) Alderwoman Wilhelm-License Committee, 1 yr. term expires 4/13/21.
- (e) Alderwoman Wilhelm-Library Board, 3 yr. term expires 4/18/23.
- (f) Alderwoman Wilhelm-Quarry Monitoring Committee, 2 yr. term expires 4/12/22.
- (g) Alderwoman Hanneman-Finance Committee, 1 yr. term expires 4/13/21.
- (h) Alderwoman Hanneman-License Committee, 1 yr. term expires 4/13/21.
- (i) Alderwoman Hanneman-Civic Celebrations Commission, 2 yr. term expires 6/30/22.
- (j) Alderwoman Hanneman-Parks Commission, 1 yr. term expires 4/13/21.
- (k) Alderman Nelson-Fair Commission, term of office, expires 4/18/23.
- (l) Alderman Nelson-License Committee, 1 yr. term expires 4/13/21.
- (m) Alderman Nelson-Board of Public Works, term of office, expires 4/18/23.
- (n) Alderman Nelson-Finance Committee, 1 yr. term expires 4/13/21.

NOTE: Pursuant to the Franklin Municipal Code, aldermanic appointments to various boards and commissions require the aldermen to serve during their tenure in office. Therefore, the existing aldermanic appointments remain in effect and require no action:

Alderman Dandrea-Personnel Committee, term of office, expires 4/19/22  
Alderman Dandrea-Community Development Authority, term of office, expires 4/19/22  
Alderman Mayer-Personnel Committee, term of office, expires 4/19/22  
Alderman Mayer-Technology Committee, term of office, expires 4/19/22  
Alderman Barber-Personnel Committee, term of office, expires 4/19/22  
Alderman Barber-Economic Development Commission, term of office, expires 4/19/22  
Alderman Barber-Board of Health, term of office, expires 4/19/22  
Alderman Barber-Quarry Monitoring Committee, expires 6/30/21

MOTION

- (a) Alderman Dandrea-Finance Committee, 1 yr. term expires 4/13/21.
- (b) Alderman Dandrea-Plan Commission, 1 yr. term expires 4/13/21.

- (c) Alderman Mayer-Environmental Commission, 1 yr. term expires 4/13/21.
- (d) Alderwoman Wilhelm-License Committee, 1 yr. term expires 4/13/21.
- (e) Alderwoman Wilhelm-Library Board, 3 yr. term expires 4/13/21.
- (f) Alderwoman Wilhelm-Quarry Monitoring Committee, 2 yr. term expires 4/12/22.
- (g) Alderwoman Hanneman-Finance Committee, 1 yr. term expires 4/13/21.
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- (m) Alderman Nelson-Board of Public Works, term of office, expires 4/18/23.
- (n) Alderman Nelson-Finance Committee, 1 yr. term expires 4/13/21.

<b>APPROVAL</b>  <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  April 21, 2020
<b>REPORTS AND RECOMMENDATIONS</b>	A Resolution to Amend A Resolution in Ratification of A Proclamation Declaring A Public Health Emergency In Response To The Coronavirus Disease 2019 (Covid-19), As Amended, to Provide for City Common Council, Boards, Commissions and Committees Meetings Attendance by the Public by Way of Telephone and/or Electronic Audio and/or Video Communication and to Extend the Time Period of the Public Health Emergency for Forty (40) Days	<b>ITEM NUMBER</b>  <i>G.1.</i>

A copy of the above-entitled Resolution is annexed hereto.

### **COUNCIL ACTION REQUESTED**

A motion to adopt A Resolution to Amend A Resolution in Ratification of A Proclamation Declaring A Public Health Emergency In Response To The Coronavirus Disease 2019 (Covid-19), As Amended, to Provide for City Common Council, Boards, Commissions and Committees Meetings Attendance by the Public by Way of Telephone and/or Electronic Audio and/or Video Communication and to Extend the Time Period of the Public Health Emergency for Forty (40) Days.

## RESOLUTION NO. 2020-\_\_\_\_

A RESOLUTION TO AMEND A RESOLUTION IN RATIFICATION OF A  
PROCLAMATION DECLARING A PUBLIC HEALTH EMERGENCY  
IN RESPONSE TO THE CORONAVIRUS DISEASE 2019 (COVID-19), AS AMENDED, TO  
PROVIDE FOR CITY COMMON COUNCIL, BOARDS, COMMISSIONS AND  
COMMITTEES MEETINGS ATTENDANCE BY THE PUBLIC BY WAY OF TELEPHONE  
AND/OR ELECTRONIC AUDIO AND/OR VIDEO COMMUNICATION AND TO EXTEND  
THE TIME PERIOD OF THE PUBLIC HEALTH EMERGENCY FOR FORTY (40) DAYS

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WHEREAS, the Mayor issued a Proclamation Declaring a Public Health Emergency on March 16, 2020, which was ratified and confirmed by the Common Council by Resolution No. 20-\_\_\_\_ on March 17, 2020; and

WHEREAS, the City Department of Information Services and the IT Director have been working towards providing the capability of providing the availability of public meetings attendance by the public by way of telephone and/or electronic audio and/or video communication methods, devices and equipment, the City not having been equipped for such purpose at the time of the start of the Emergency; and

WHEREAS, the Secretary-designee of the Wisconsin Department of Health Services issued Emergency Order #28 Safer at Home Order on April 16, 2020, providing in part at Subsection 2.b. Safe Business Practices:

- i. All businesses, including Essential Businesses and Operations, shall:
  - 1. To the greatest extent feasible, use technology to avoid meeting in person, including virtual meetings, teleconference, and remote work (i.e. work from home). \*\*\*\*; and

WHEREAS, Emergency Order #28 also extended the duration of the prior Order(s) to 8:00 a.m. on Tuesday, May 26, 2020; and

WHEREAS, the Common Council having considered City operations as an Essential Operations need and the current state of the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that in addition to provision 6. of the March 16, 2020 Proclamation Declaring a Public Health Emergency, and Resolution No. 20-\_\_\_\_ adopted by the Common Council on March 17, 2020 incorporating same, Resolution No. 20-\_\_\_\_ be and the same is hereby amended to additionally provide that during the period of Public Health Emergency, the public may individually attend a meeting of the Common Council, and meetings of all City Boards, Commissions and Committees by way of telephone and/or electronic audio and/or video communication, by way of such methods, devices and equipment available and determined to be

RESOLUTION NO. 20-\_\_\_\_\_

Page 2

reasonable for such purposes by the City Department of Information Services and the IT Director.

BE IT FURTHER RESOLVED, that the duration of the Public Health Emergency as set forth in Section 5. of the March 16, 2020 Proclamation is hereby extended for forty (40) days from the date hereof, to June 1, 2020.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

APPROVED:

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

ATTEST:

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

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





April 2, 2020

ROC Ventures

Headquarters  
7044 S Ballpark Dr Ste 300  
Franklin, WI 53132

[www.rocventures.org](http://www.rocventures.org)

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

**Re: Ballpark Commons Update, April 2020**

Per the request of the Common Council, the following memo outlines the latest updates from Ballpark Commons.

**Infrastructure**

- Sanitary Sewer
  - Piping completely installed, minor punch list items remaining
  - Sanitary sewer access road north of BPC site in question with MKE County
- Water Lines
  - Piping completely installed and live (water flowing and tied into city system)
  - Minor punch list items remaining
- Storm Sewer
  - Piping completely installed, minor punch list items remaining
  - Main retention ponds in process of being certified
  - Bio-retention pond (south of Rawson) on hold until B4 apartment building is completed (fall 2020)
- Roadway
  - BP Dr North of Rawson completed, minor punch list items remaining prior to city dedication
  - BP Dr South of Rawson, in binder, temp stripe and open roadway in 4-20, final pave in 2021
  - Offsite, Rawson Ave & 76th widening completed; new traffic signals complete except for WE Energies to energize
- Methane Containment System
  - System complete and operational

## **New Perspective Senior Living**

Throughout the New Perspective facility construction crews are placing the finishing touches on construction. The lobby water fountains are operational, the warm water therapy pool is inspected and approved for use and the pub is ready to be stocked. By April 10th all building inspections will be complete including the WI DHS (Department of Health Services).

Within a few weeks outdoor temperatures will allow landscaping to be installed before staff begins to make the building ready for residents.

## **Velo Village**

On track and on budget. Clubhouse framing is complete. Roof is going on next week, with MEP rough-ins on-going and done by early May. Interiors following shortly thereafter. It's coming together really fast.

- B4
  - Roof system in progress. Roof framing complete by end of next week. Watertight by 4/24.
  - MEP prelim rough-in on going
- B3
  - Second floor system getting framed. Second floor walls start next week
- B1
  - Spancrete deck complete by end of next week
- B2
  - Load bearing CMU work in progress
- B5
  - Footing nearing completion

## **Office Retail**

100% of office retail building is under contract. EXOS opened their retail store last month. Coffee shop to start build out mid/late April.

## **Stadium**

New naming rights partner appears to be imminent as contract is in legal. UWM season was canceled. Milkmen season remains on schedule (late May), although we continue to meet as a league weekly to assess readiness.



## **MOSH Performance Center**

Foundations for the MOSH Performance Center are nearing completion allowing structural steel for the Medical Office Building component to commence in early April. The steel structure for the fieldhouse is currently in production and scheduled to be onsite in late May. New renderings are being developed for North and South facing Field House, per Plan Commissions feedback.

## **LUXE Golf**

Our hope is to start footing and foundation in next 60-90 days, but financing terms and negotiations for the construction loan have been impacted by recent changes in market shake-up. We continue to work hard to finalize this loan.

## **Hotel**

We have a term sheet with NextGen Hotels to develop the Hotel pad and were approved for the Holiday Inn Express license last week. With everything going on due to COVID-19, the hospitality industry has really taken a big hit over the last month and it will take some time to recover. As a result, the start date for the Hotel is now being pushed to August/September.

## **Brew Pub**

No traction. Little to no effort being done until pad is fully developed.

## **M1 and R2**

We are in talks with a well-known Milwaukee Developer on these parcels. Retail pipeline was strong pre Covid-19 and we are unaware of any changes. Per TIF schedule, we planned to have little traction at this point.

## **COVID-19 Impact to Date**

We haven't run into any construction slowdowns related to COVID yet. Our construction teams are continuing work as we are considered essential service since we construct and manage housing and the medical office building.

As discussed above, from a financing standpoint, we are concerned about the impact of securing construction loans for Golf and Hotel over the next few months at terms that work.

From a public health perspective, many measures have been implemented at the sites to combat the spread of COVID such as:

- Daily temperature checks are taken of each worker before they enter the site
- Daily logs of all workers are kept
- Crews are kept small to facilitate social distancing

- Non-construction personnel are not allowed on site
- Teleconferencing is utilized for meetings
- ROC Ventures (including The Rock, Milkmen, Umbrella Bar, etc.) has substantially closed our facilities and offices including the co-working space
- Wheel & Sprocket and EXOS have reduced hours of operations

Please feel free to contact us if there are additional questions or concerns related to this update.

Best,

A handwritten signature in black ink, reading "Michael E. Zimmerman". The signature is fluid and cursive, with a long, sweeping underline.

Michael Zimmerman

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<p><b>APPROVAL</b></p> <p><i>slw</i></p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><i>4/21/2020</i></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>REQUEST TO ACCEPT GRANT TO UPDATE NEXTGEN 9-1-1 CAPBILITY</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G. 3.</i></p>
<p>The police department requests the acceptance of a federal grant that would pay 60% of upgrade costs to the department's call recording/logging system which was last upgraded in 2013.</p> <p>We are 2-versions behind our current system and the next upgrade/version would necessitate a complete replacement of hardware (server) and software. Our current system though, will no longer be supported without both the software upgrades and a server replacement. A new system will afford us the opportunity to perform many more time saving functions such as being able to email a recording (for court purposes); geo fence searches (for open record requests); viewing call locations on a map (assists with investigative details of the location a person was calling from); text message replay (a necessary entity with text-2-911).</p> <p>The upgrade project would necessitate the purchase of the Eventide NexLog 740 system, which provides NG9-1-1; P25; Digital Mobile Radio (DMR); IP Dispatch; T1/E1; Integrated Services Digital Network (ISDN) the standard of simultaneous digital transmission of voice, data and other network services over traditional circuits; and ED137 which is the interoperability standard for airport communication. These are just a handful of critical communication solutions it provides.</p> <p>The quote for the project is \$26,883.50. The grant requires the city to pay for the project in full and the city would then receive the 60% federal portion as a re-imbursement.</p> <p>While funding would not be necessary until 2021, the grant requires the city to certify it has committed funds for the total cost of the project prior to June 30, 2020.</p> <p>This upgrade is going to be necessary with or without the grant.</p> <p><b>FISCAL NOTE:</b> Sufficient contingency appropriations exist in the Capital Outlay fund for this \$27,000 project.</p> <p><b>RECOMMENDATION</b></p> <p>Motion to accept the grant with the commitment to fund 100% of the project costs of \$26,883.50 with the expectation the city would receive 60% of the costs, estimated to be \$16,130.00, as a reimbursement. The city costs would be \$10,754.00. Recommend that Council direct the Director of Finance &amp; Treasurer to prepare budget amendment to move contingency appropriation to Police Equipment and reflect the grant resources.</p>		

# BAYCOM

A Lifeline in the Moments that Matter

**Quotation For**

Franklin Police  
9455 W. Loomis Rd  
Franklin, WI 53132

**Vendor**

BAYCOM, Inc.  
Kate Premo  
W239N2890 Pewaukee Rd  
Pewaukee, WI 53072  
414-546-7628  
[kpremo@baycominc.com](mailto:kpremo@baycominc.com)

**Quote #** KP0414

Eventide Long Term Audio Recorder and Installation

**Date** 4/14/2020

**Quote valid until** 5/14/2020

ITEM ID	QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
		<b>NexLog 740 base system:</b> 3U rack-mountable, Core i3 CPU, Standard 2 x1TB fixed-Mount HDDs (RAID 1), 1 DVD-RAM Multi-Drive, 2 Network Ports (100/1000), Embedded Linux, NexLog software, web-based configuration manager, audio controls & amplified speaker on front panel, dual hot-swap 120-240VAC50/60Hz power supplies, and 1st year warranty.		
A	1		\$5,578.00	\$5,578.00
B	1	<b>7" Color LCD Touch Screen for NexLog 740</b>	\$903.50	\$903.50
C	1	<b>Upgrade NexLog 740 Storage to 1TB</b> With 2 HOT-SWAP 1TB HDDs, RAID-1	\$116.00	\$116.00
D	1	<b>Upgrade NexLog 740 Archive to 1 Blu-Ray Drive</b>	\$272.00	\$272.00
E	1	<b>740 Standard Dual Hot-Swap Power Supplies 120/240 VAC</b>	\$0.00	\$0.00
F	1	<b>Single-port 100/1000 PCI Network Card for NexLog 740 or NexLog 840</b>	\$132.00	\$132.00
G	1	<b>Rack Mt Slides - 4 Post, 3U (for NexLog 740)</b>	\$251.00	\$251.00
		<b>Analog Record Channels 16</b>		
H	1	<b>16-Channel Analog Card w/16 Ch. License</b>	\$2,791.00	\$2,791.00
I	1	<b>Quick Install Kit (23 ft Cable + "66" Block)</b>	\$210.00	\$210.00
		<b>Avaya Digital PBX 2W Phone Sets 16</b>		
J	1	<b>16-Channel Digital PBX Card w/16 Ch. License</b>	\$4,845.00	\$4,845.00
K	1	<b>Quick Install Kit (23 ft Cable + "66" Block)</b>	\$210.00	\$210.00



State of Wisconsin /

DEPARTMENT OF MILITARY AFFAIRS

PO BOX 14587  
MADISON 53708-0587

TELEPHONE 608 888-5501

OFFICE OF EMERGENCY COMMUNICATIONS

April 1, 2020

Franklin Police Department  
Cindy Manke, Communication Supervisor  
9455 W Loomis Road  
Franklin, WI 53132

RE: NG9-1-1 Reimbursement Grant Award

Dear Cindy Manke,

The Wisconsin Department of Military Affairs/Office of Emergency Communications (DMA/OEC) is pleased to award **Franklin Police Department** federal funding through the Wisconsin NG9-1-1 Reimbursement Grant Program to assist in the upgrade to NextGen9-1-1 equipment. Before work on the grant project can begin, we will need the following:

1. Thoroughly read each document within this award package.
1. The **Signatory Official** must physically sign and initial where indicated including the cover letter, the bottom of each page, after each general and/or special condition and the last page.
2. The **Signatory Official** is responsible for ensuring that the agency agrees with the terms and conditions of this grant award. If the agency or signatory official does not agree with the terms and conditions, they may notify the program contacts identified in the award package to decline the award.
3. Make a copy of the signed award documents. Return the original signed award documents within ninety (90) days to Laurie Borgers at the address listed at the end of the award package. Keep the copy for agency records.

Please feel free to reach out to the Program Manager, Jessica Jimenez, or the Grants Specialist, Laurie Borgers with any questions. We look forward to a collaborative working relationship with **Franklin Police Department**.

Sincerely,

Jessica Jimenez  
NextGen9-1-1 Program Manager  
Office of Emergency Communications  
WI Dept of Military Affairs



April 1, 2020

Franklin Police Department  
Richard Oliva, Police Chief  
9455 W Loomis Road  
Franklin, WI 53132

Re: **NextGen9-1-1 Reimbursement Grant Program**

Grant Number: **2020-115**

The Office of Emergency Communications, Department of Military Affairs hereby awards to Franklin Police Department (hereinafter referred to as the Subgrantee), the amount of \$26,865.50 for programs or projects pursuant to the NextGen9-1-1 Reimbursement Grant Program.

This grant may be used until **June 30, 2021** for the projects consistent with the budget and general conditions in Attachment A, subject to any grant assurances set forth in Attachment B, and the reporting requirements outlined in Attachment C.

The Subgrantee shall administer the program or projects for which this grant is awarded in accordance with the applicable rules, regulations, and conditions of the Department of Military Affairs. The submitted application is hereby incorporated as reference into this award as Attachment D.

This grant shall become effective, and funds may be obligated (unless otherwise specified in Attachments A, B and/or C) when the Subgrantee signs and returns the original this grant award including Attachments A, B, C and D to the Department of Military Affairs. Keep a copy for your records.

Erik Viel  
Director  
Office of Emergency Communications  
Wisconsin Department of Military Affairs

4.1.2020

Date

The Subgrantee, Franklin Police Department hereby signifies its acceptance of the above-described grant on the terms and conditions set forth above or incorporated by reference therein.

Subgrantee: **Franklin Police Department**

By:

Richard Oliva  
Police Chief

Date

## ATTACHMENT A – GRANT SUMMARY AND AWARD CONDITIONS

Subgrantee: **Franklin Police Department**  
Project Title: **NextGen9-1-1 Reimbursement Grant Program**

Grant Number: **2020-115**  
CFDA: **#20.615**

Grant Period from: **Date of Subgrantee Signature** to **June 30, 2021**

**Total Project Budget: \$26,865.50**  
**Amount of Federal Funds: \$16,119.30**  
**Approved Local Funds: \$10,746.20**

NOTE: Subgrantees should reference their application budget for approved breakdown of cost. The approved application budget is included at the end of this package as Attachment D.

### **Grant/Budget Modifications**

Budget changes in excess of 10% of the total project budget, or a change to include a line item not previously approved, requires a written modification request prior to any budget reallocations. An emailed request to Laurie Borgers or Jessica Jimenez is acceptable. Contact Laurie Borgers or Jessica Jimenez for a Modification Request Form.

Any changes in personnel involved with the grant including the main contact, the secondary contact and the signing official need to be reported to grant administrative staff via email.

Name of Program Manager: **Jessica Jimenez**  
Phone Number: **608-888-5520**  
Email: **Jessica.Jimenez@Wisconsin.gov**

Name of Grant Specialist: **Laurie Borgers**  
Phone Number: **608-888-5505**  
Email: **Laurie.Borgers1@Wisconsin.gov**

Authorized Official  
Initials \_\_\_\_\_  
Date \_\_\_\_\_



## ATTACHMENT A – GRANT SUMMARY AND AWARD CONDITIONS

**Award General Conditions** – authorized official initial each line after reading

1. Subgrantees shall submit detailed budget calculations in their first quarterly report. For example, if line items for the “Other Services” category in the budget spreadsheet contained more than one expense such as project management, installation, etc., Subgrantees must show calculations for how the total cost per line item was determined. **Initials** \_\_\_\_\_
2. Federal funds cannot be used to supplant local funds, they must increase the amount of funds that would otherwise be available from local resources. **Initials** \_\_\_\_\_
3. This federal award requires a 40% local match. Matching funds must be an allowable expense under the grant program. By signing these Grant Award documents, the Subgrantee is certifying that they have the funding available to cover the total cost of the project prior to receiving reimbursement by Department of Military Affairs (DMA). The 60% federal reimbursement will be a one-time payment at the close out of the grant project when all funds for the project have been expended.  
**Initials** \_\_\_\_\_
4. To be allowable under a grant program, costs must be paid or obligated (purchase order issued) for services provided during the grant period. If obligated by the end of the grant period, then payment must be made within 30 days of the grant period ending date. **Initials** \_\_\_\_\_
5. No costs or services shall be incurred outside of the approved grant performance period, including all recurring costs such as subscriptions and maintenance. **Initials** \_\_\_\_\_
6. Subgrantees shall use their own procurement procedures and regulations, provided that the procurement conforms to applicable Federal law and the standards identified in the Procurement Standards Sections of Sections of 2 C.F.R. § 200.318-326. **Initials** \_\_\_\_\_
7. A copy of contracts pertaining to this grant award must be submitted to DMA within thirty (30) days of contract signing, along with any procurement solicitation and scope of work.  
**Initials** \_\_\_\_\_
8. The Subgrantee must comply with the Grant Announcement used to announce the funding opportunity and these Grant Award documents. **Initials** \_\_\_\_\_
9. Agencies that accept funding are responsible for all sustainment costs after the end of the grant period. **Initials** \_\_\_\_\_
10. All Subgrantees shall make every effort to participate in any applicable grant program conference calls or administrative trainings supplied by DMA. **Initials** \_\_\_\_\_
11. All Subgrantees must have an active Dun and Bradstreet Data Universal Numbering System (DUNS) number in order to receive funding. **Initials** \_\_\_\_\_
12. All Subgrantees must have an active registration with the System for Award Management (SAM) Failure to maintain an active status will potentially result in de-obligation of funds. No Payments will be made without an active SAM registration. **Initials** \_\_\_\_\_

Agency DUNS #: \_\_\_\_\_

Agency SAM #: \_\_\_\_\_ Expiration Date. \_\_\_\_\_

Authorized Official  
Initials \_\_\_\_\_  
Date \_\_\_\_\_

## ATTACHMENT B – GRANT ASSURANCES

### Grant Assurances

Subgrantee agrees to comply with the most recent version of the Administrative Requirements, Cost Principles and Audit Requirements, as set forth in the current edition of the Office of Management and Budget (OMB) Compliance Supplement. A non-exclusive list of regulations commonly applicable to Federal grants are listed below:

#### 1. Administrative Requirements

- a. 2 CFR §200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

#### 2. Cost Principles

- a. 2 CFR §200 Subpart E, Cost Principles for State, Local and Indian tribal Governments.
  - i. Special Considerations (2 CFR §200.416-417)
- b. Federal Acquisition Regulations (FAR), Part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations.
- c. Financial and Administrative requirements set forth in the current edition of the Office of Management and Budget (OMB) Compliance Supplement. The most current edition available at this time can be found at [https://www.whitehouse.gov/wp-content/uploads/2019/07/2-CFR\\_Part-200\\_Appendix-XI\\_Compliance-Supplement\\_2019\\_FINAL\\_07.01.19.pdf](https://www.whitehouse.gov/wp-content/uploads/2019/07/2-CFR_Part-200_Appendix-XI_Compliance-Supplement_2019_FINAL_07.01.19.pdf)

#### 3. Audit Requirements

- a. Subgrantee agrees to comply with the organizational audit requirements of Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR §200). The Compliance Supplement to 2 CFR §200 can be found at:  
[https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/circulars/a133\\_compliance/2016/2016\\_compliance\\_supplement.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/circulars/a133_compliance/2016/2016_compliance_supplement.pdf).
- b. Subgrantee agrees to comply with all applicable Wisconsin State Purchases Law pursuant to Wis. Stat. Chapter 16; purchasing rules and regulations.
- c. Subgrantee agrees to use federal funds granted under this award to supplement but not supplant state or local funds for NextGen9-1-1 equipment.
- d. Subgrantee is prohibited from transferring funds between programs (i.e., NextGen9-1-1 Program, Homeland Security, Emergency Management Program Grant, etc.)
- e. Subgrantees expending a combined total of \$750,000 or more in federal funds during their fiscal year (FY), must have a single audit or a program-specific audit for that year in accordance with the Uniform Guidance 2 CFR §200 Subpart F. All auditees must submit to the federal clearinghouse the data collection form and one copy of the reporting package described above and the Data Collection Form (Form SF-SAC) to the Federal Audit Clearinghouse (FAC). The auditee must electronically submit to the FAC at <https://harvester.census.gov/facweb/>.

Subgrantees should review Chapter 11 DOA Single Audit Guide for additional information on single audit requirements. Chapter 11 can be found at [https://doa.wi.gov/DECHR/Part\\_11%20-%20Chptr\\_11%20Single%20Audit.pdf](https://doa.wi.gov/DECHR/Part_11%20-%20Chptr_11%20Single%20Audit.pdf). General questions related to the single audit process can be emailed to [DOASSAGGeneral@wisconsin.gov](mailto:DOASSAGGeneral@wisconsin.gov)

## **ATTACHMENT B – GRANT ASSURANCES**

### **4. Payment Methodology**

DMA shall only remit funds to Subgrantees upon receipt of a Grant Reimbursement Request Form at the close out of the grant period, signed by an Authorized Agent such as the Signatory Official, and supporting documentation.

- Equipment or services provided, including inventory reports, vendor invoices, purchase orders, signed packing slips to certify receipt of goods and proof of payment such as cancelled checks
- Taxes are not allowable
- Unless requested in advance, payment will be in the form of a check. If the Subgrantee prefers electronic payment via ACH, please contact Laurie Borgers or Jessica Jimenez for more information.
- The 60% federal reimbursement will be a one-time payment at the close out of the grant project when all funds for the project have been expended.

### **5. Project Monitoring/Evaluation**

Subgrantee agrees to fully cooperate with compliance audits including periodic programmatic, fiscal monitoring, records review and site visits conducted by DMA. Subgrantee agrees to submit timely and accurate Program Evaluation Reports to DMA and to participate in DMA sponsored surveys and all other required reports related to any DMA administered grant program. DMA reserves the right to deny payment to any approved programs for failure to comply with this provision.

### **6. Maintenance of Records**

All grant documents including but not limited to invoices, purchase orders, packing slips, equipment make, model and serial numbers, must be maintained by the Subgrantee for a minimum of three (3) years after DMA closeout date.

### **7. Property acquired with grant funds**

DMA requires that property acquired with grant funds be tagged and tracked detailing description of the property, serial or identification number, source of property, name of owner, acquisition date, cost, location, and condition. Title to property acquired in whole or part with grant funds shall vest in the Subgrantee, subject to divestment at the option of DMA, where its use for 9-1-1 purposes is discontinued. Subgrantees shall exercise due caution in the use, maintenance, protection and preservation of such property.

### **8. Civil Rights Requirements**

All Subgrantees, regardless of the type of entity or the amount awarded, are subject to the prohibitions against discrimination in any program or activity and may be required by the Department of Workforce Development, Office of Equal Rights, through selected compliance reviews, to submit data to ensure their services are delivered in an equitable manner to all segments of the service population and their employment practices comply with equal employment opportunity requirements. 28 CFR §42.202 (n).

### **9. Americans with Disabilities Act**

All federal grant Subgrantees must comply with the American with Disabilities Act (ADA).

### **10. Reporting of Adverse Finding of Discrimination**

It is the responsibility of all grantees, subgrantees and contractors under the grants, to report to the Department of Workforce Development, Office of Equal Rights, any finding of discrimination after a due process hearing, on the basis of race, color, religion, national origin or sex by a federal or state court or administrative agency pursuant to 28 CFP Part 42.204 (a-c).

Authorized Official \_\_\_\_\_  
Initials \_\_\_\_\_  
Date \_\_\_\_\_

## ATTACHMENT B – GRANT ASSURANCES

### 11. Equal Opportunity, Non-discrimination and Affirmative Action Program Requirements

It is the responsibility of all Subgrantees to ensure that their employment practices comply with Equal Opportunity Requirements, 28 CFR 42.207, 42.301 et seq., s. 51.01 (5), Wis. Stats., s. 111.32 (13)(m), Wis. Stats., and Gubernatorial Executive Orders governing the promotion of a diverse workforce, equal opportunity and the prevention of sexual harassment and including where applicable, the requirement of Subgrantees to formulate, implement and file an Equal Opportunity Plan with DMA.

In connection with the performance of work under this grant, the Subgrantee agrees not to discriminate against any employee or applicant of employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Subgrantee further agrees to take affirmative action to ensure equal employment opportunities.

Pursuant to 2019 Wisconsin Executive Order 1, Subgrantee agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract, subcontract or grant because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.

### 12. Ethical Standards/Prohibited Political Activity

It is the responsibility of all Subgrantees to comply with applicable provisions of Wis. Stats. Chapter 19, Subchapter III – Code of Ethics for Public Officials and Employees and the provisions of the Hatch Act, which limits the political activity of public employees.

### 13. Congressional Budget and Impoundment Control Act of 1974, as amended

Grant awards are conditional, and subject to congressional or executive action including budget deferral recession.

### 14. Lobbying, Debarment, Suspension, Drug-Free Workplace

The Subgrantee shall comply with the provisions of 31 U.S.C. §1352. The Subgrantee receiving in excess of \$100,000 in Federal funding shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," (<https://www.gsa.gov/Forms/TrackForm/33144>) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed.

The Subgrantee shall comply with the provisions of Subpart C of 2 CFR §1326, "Governmentwide Debarment and Suspension (Nonprocurement)" (published in the Federal Register on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions.

The Subgrantee shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, title V, Sec. 5153, as amended by Public Law 105-85, Div. A, Title

Authorized Official  
Initials \_\_\_\_\_  
Date \_\_\_\_\_

## ATTACHMENT B – GRANT ASSURANCES

VIII, Sec. 809, as codified at 41 U.S.C. §702), “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)” (published in the *Federal Register* on November 26, 2003, 68 FR 66534), which require that the Subgrantee take steps to provide a drug-free workplace.

### **15. Collection of Unallowable Costs**

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise.

### **16. 9-1-1 Fee Diversion**

Subgrantee agrees that as a taxing jurisdiction of the State of Wisconsin, the Subgrantee has not diverted any portion of designated 9-1-1 surcharges for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application and during the time period in which grant funds are available.

Subgrantee agrees that, as a condition of receipt of the grant, the Subgrantee will return all grant funds if the Subgrantee obligates or expends, at any time for the full duration of this grant, designated 9-1-1 surcharges for any purpose other than the purposes for which such charges are designated during the time period in which grant funds are available.

Authorized Official  
Initials \_\_\_\_\_  
Date \_\_\_\_\_

## ATTACHMENT C – REPORTING REQUIREMENTS AND CLOSEOUT

### Reporting Requirements

Subgrantee agrees to meet reasonable fiscal and administrative requirements to account for its federal grant funds in accordance with OMB Circular A-102 and as the Office of the Governor or DMA may require including but not limited to submitting: quarterly financial reports, quarterly progress reports, and final financial reports and closeout documentation. Templates for the quarterly reports will be made available at a later date, including training for how to fill out the quarterly reports.

Quarterly reports must be signed by an Authorized Official and submitted to DMA within thirty (30) days (with the exception of the closeout report) after the close of each calendar quarter as follows:

Report 1 – Grant Period Start to June 30, 2020	Due: July 30, 2020
Report 2 – July 1, 2020 to September 30, 2020	Due: October 30, 2020
Report 3 – October 1, 2020 to December 31, 2020	Due: January 30, 2021
Report 4 – January 1, 2021 to March 31, 2021	Due: April 30, 2021
Report 5/Closeout Report	Due: August 15, 2021

Failure to comply with this provision may result in the withholding of grant funds until the delinquent report is received. If a Subgrantee closes out their project prior to the grant period end date, a closeout report is required within forty-five (45) days of the final expense.

In addition to the reports specified above, Subgrantees agree to submit a copy of any final contracts pertaining to this grant award within thirty (30) days of contract signing, along with any procurement solicitation and scope of work

### Grant Closeout

After the project period of the grant has ended, the Subgrantee will need to submit all closeout documents and complete closeout requirements within 45 days after the end of the grant. Extension requests must be submitted a minimum of 30 days before the end date of the grant performance period and will be reviewed by program staff on a case-by-case basis. There is no guarantee of an extension request approval and extensions may be contingent on federal deadlines.

Unless requested in advance, payment will be in the form of a check. If the Subgrantee prefers electronic payment via ACH, please contact Laurie Borgers or Jessica Jimenez for more information.

In order to closeout a grant, DMA requires submission of:

- A final programmatic report
- A final financial report – proof of payment can be a cancelled check copy or a general ledger report with the check number.
- Grant Reimbursement Request Form – expenditures on the Grant Reimbursement Form must have been incurred within the approved period of performance listed on these award documents.
- Receipts of any equipment or items identified on the Grant Reimbursement Request Form and a copy of the procurement policy authorizing that type of purchase.
- A match validation memorandum signed by the Chief Financial Officer verifying and validating which match funds were used and that the use of those grant funds complies with all applicable CFR requirements.

Authorized Official  
Initials \_\_\_\_\_  
Date \_\_\_\_\_

## ATTACHMENT C – REPORTING REQUIREMENTS AND CLOSEOUT

- A final equipment inventory report – this report is required for any equipment purchased with a single per unit cost in excess of \$5,000 and should include serial numbers for equipment.
- Upon completion of the closeout process, DMA/OEC will send a Closeout Letter to Subgrantees, advising the grant is closed.

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As the duly authorized representative, I hereby certify that the Subgrantee will comply with the above certifications and conditions.


		Franklin Police Department
Signature of Authorized Agent	Date	Agency
Richard Oliva		2020-115
Name (printed)		Grant Award Number

This grant award is effective from the date of the above signature. Electronic signatures, substitute signing, or stamping is not accepted.

**PLEASE PHYSICALLY SIGN DOCUMENTS, MAKE ONE COPY FOR RECORDS AND  
RETURN THE ORIGINAL WITHIN NINETY (90) DAYS TO:**

**ATTN: Laurie Borgers  
Wisconsin Department of Military Affairs  
2400 Wright Street  
Madison, WI 53708**

## Attachment D - Application Documents

	<b>2019-22 Federal NextGen9-1-1 Reimbursement Grant Program</b> <b>COVER PAGE</b>
Attachment D - Application Documents	
<b>1. Applicant</b>	<u>Agency Name:</u> Franklin Police Department <hr/> <u>Physical Address:</u> 9455 W Loomis Rd, Franklin, WI 53132 <hr/> <u>Mailing Address:</u> Same as Above
<b>2. Main Point of Contact (Project Director)</b>	<u>Name:</u> Cindy Manke <hr/> <u>Title:</u> Communication Supervisor <hr/> <u>Email:</u> cmanke@franklinwi.gov <hr/> <u>Phone Number:</u> 414-858-2670
<b>3. Secondary Point of Contact</b>	<u>Name:</u> Eric Stowers <hr/> <u>Title:</u> Captain <hr/> <u>Email:</u> estowers@franklinwi.gov <hr/> <u>Phone Number:</u> 414-858-2669
<b>4. Signatory Official</b>	<u>Name:</u> Richard Oliva <hr/> <u>Title:</u> Police Chief <hr/> <u>Email:</u> roliva@franklinwi.gov <hr/> <u>Phone Number:</u> 414-858-2603
<b>5. Applicant Type</b>	<b>Single Agency Application</b>
<b>Date of Submission:</b>	02/03/2020





## Attachment D - Application Documents

### 2019-22 Federal NextGen9-1-1 Reimbursement Grant Program

#### APPLICATION NARRATIVE

AGENCY NAME:	Franklin Police Department
--------------	----------------------------

1. A brief description of your PSAP including whether you answer wireless and/or wireline 9-1-1 calls and the number of workstations in your PSAP, identifying the number of existing active, back up, and training positions. If submitting a joint application, you must include the above information for all agencies involved.

The Franklin Police Department Dispatches Police; Fire; and EMS for the City of Franklin (Wisconsin) which covers approximately 35 square miles with a population of approximately 35,620. The City of Franklin is diverse in which it has residential; retail; commercial; industrial and rural areas all encompassing. The Communications Center has four dispatch workstations all of which are set up exactly the same which allows the dispatchers to complete any and all work functions from each of the four positions. We are the primary PSAP for all wireline 9-1-1 calls and after a year-long endeavor, in 2013 we completed the Selective Routing process. Once that process was completed we became the primary PSAP for cellular 9-1-1 calls from within the City of Franklin, they are no longer routed to the County (Milwaukee) PSAP first. We have also initiated text-2-911 and we plan on having a "soft" opening/reveal within the next month after we complete the proper parsing format of data into CAD. At this time, we do not have a dedicated training position, however we are able to obtain a lap-top computer with all necessary programs for our Lead Dispatcher(s) to use while training others, which allows them to be close by for monitoring/supervision; securing training documents; and retrieving/playback of calls for QA/QI.

2. Provide a brief summary of the proposed project to be funded. Thoroughly explain why this equipment needs replacement (e.g. existing equipment is/was at end of life by a certain date; current equipment is not NextGen-capable).

The project we're proposing to fund consists of replacing our call recording/logging system. We are currently using the NICE Inform logging system, and while this system has served us well through the years, our last system upgrade was in 2013. We are currently 2-versions behind and the next upgrade/version which would be needed encompasses a complete replacement of hardware (server) and software. Our current system though functional to a point, will no longer be supported without both the software upgrades and a server replacement. With a new system, it will afford us the opportunity to perform many more time saving functions such as being able to email a recording (for court purposes); geo fence searches (for open record requests); viewing call locations on a map (assists with investigative details of the location a person was calling from); text message replay (a necessary entity with text-2-911). These examples just touch on a few of the available features when considering a new or upgraded call



## 2019-22 Federal NextGen9-1-1 Reimbursement Grant Program

recording/logging system. With the ever-expanding spectrum of technology; as 9-1-1 dispatchers the more tools we have available to us, the better we are to protect our first responders and serve our community.

3. A description of the proposed procurement method that will be used to purchase the equipment, including a list of NextGen9-1-1 standards as identified in the DHS SAFECOM Grant Guidance that the equipment will meet once implemented. This procurement method must follow your local procurement rules. You must submit separate justification for sole-sourced contracts. If your agency has already received bids for equipment and signed a contract, provide a description of the procurement method used and attach the final contract.

In defining the 40% responsibility of this agency should the grant be awarded; the funding would be procured through the local budgeting processes. The budgeting details would be inclusive of P(Project)25 standards compliance. The call recording/logging system under consideration is the Eventide NexLog 740. This system provides NG9-1-1; P25; Digital Mobile Radio (DMR); IP Dispatch; T1/E1; Integrated Services Digital Network (ISDN) the standard of simultaneous digital transmission of voice, data and other network services over traditional circuits; and ED137 which is the interoperability standard for airport communication. These are just a handful of critical communication solutions it provides.

4. A proposed timeline including a proposed start date and anticipated procurement and implementation schedule.

The proposed start date would be based on the secured funds available in the 2021 budget, which would allow us to move forward in January 2021. Upon submission of the signed contract, an agreed upon date would facilitate the project. A completion date inclusive of training would be set for first quarter 2021 in order to meet the requirements of the grant and submittal of all necessary paperwork to satisfy the grant reimbursement.

5. An explanation of local matching funds including the source(s) of the non-federal match.

The local matching funds would be obtained through the 2021 budgeting process for the City of Franklin.

6. An explanation of how the budget worksheet relates to the project and the vendor quote(s) provided. You should include as much information as possible regarding how the budget worksheet was developed, and if necessary, why the lowest vendor quote was not used.

The project vendor quotes were based off our current NICE recording system and integrating the enhancements to support technology advancements. The budget worksheet was calculated based on the vendor quote(s) received. While we received two quotes for the same



## 2019-22 Federal NextGen9-1-1 Reimbursement Grant Program

system, the one that came in lower is the quote that is being presented. Both quotes were very clear in the breakdown of hardware/software/ licensing and services, which in turn made the budget worksheet easy to follow.

7. List of Attachments:

Cover Page; Application Narrative; Existing equipment contract showing original purchase date; Vendor statement; Vendor quotes; Budget worksheet.

## Attachment D - Application Documents

Applicant Organization:		Franklin Police Department		Single Agency Application	
Project Contact Name:		Cindy Manke			
Project Contact Email:		cmanke@franklinwi.gov		Project Contact Phone: 414-858-2670	
Proposed Beginning and Ending Dates of Project				01/21 TO 04/21	
				Month, Year Month, Year	
<b>Attachment D - Application Documents</b>					
Total Estimated Project Cost	26,865.50				
Grant Award Amount	16,119.30				
Local Funds (Matching Contribution)		Minimum Match Required			
COSTS - Category	Federal Funds	Local Funds	Comments - Cost Description		
HW - Hardware			Source/Calculation of Funds Estimates		
	4,351.50	2,901.00	NexLog 740 base system, local funds from 2021 budget.		
OSR - Other Services			Vendor A quote, lines A-G		
	4,833.60	3,222.40	Analog record channels and licenses, digital PBX licenses, local funds from 2021 budget		
HW - Hardware			Vendor A quote, lines H-K		
	1,611.00	1,074.00	Internal IP Recorder; local funds from 2021 budget		
OSR - Other Services			Vendor A quote, line L		
			Licensing for 911 NENA ANI/ALI CAD Spill integration, Vesta Interface; Mediaworks Plus; NexLog Secure Incident Player; local funds from 2021 budget		
OSR - Other Services			Vendor A quote, lines M-Q		
	1,188.00	792.00	Onsite system installation and configuration; local funds from 2021 budget		
TR - Training			Vendor A quote, line R		
	165.00	110.00	System user training; local funds from 2021 budget		
			Vendor A quote, line S		
GRAND TOTAL	16,119.30	10,746.20			

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APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 4/21/2020
Reports and Recommendations	Motion to allow the Director of Health and Human Services to enter into a 90-day trial contract for access to the Wisconsin Statewide Health Information Network (WISHIN) organization data to improve communicable disease investigation and follow-up.	ITEM NUMBER <i>G.4.</i>

**Background:** The Wisconsin Statewide Health Information Network (WISHIN) is an independent organization that assists healthcare providers by increasing their ability to share and review healthcare information. The goal of the organization is to create a Statewide electronic health information exchange which will assist in better clinical decisions, less duplication of efforts, and improved information sharing that will lead to better patient outcomes. Multiple local health departments in Milwaukee County have entered into trial contracts with WISHIN to increase their capacity and efficiency to respond to reportable communicable diseases.

**Analysis:** Communicable disease follow-up currently involves contacting both physician and patient to ensure test results are accurate, appropriate treatment was rendered, and disease prevention steps are taken. Frequently we wait for a day or more for messages to be relayed to the appropriate individual in physician offices or hospitals; however, by having access to WISHIN, our staff will be able to quickly review physician notes and will be able to conduct follow-up with patients in a more timely and informative way. WISHIN has agreed to allow Franklin Health Department the ability to access their electronic information system for a free 90-day trial to determine if the additional information is beneficial for our follow-up investigations.

**Options:** 1. Allow the signing of the contract with WISHIN for a 90-day trial.  
2. Deny signing the contract for access to WISHIN organization information.

**Recommendation:** The Director of Health and Human Services recommends allowing the signing of a 90-day free trial contract with the WISHIN organization.

**Fiscal Note:** There is no fiscal impact for the 90-day trial of WISHIN. If the data is found to be beneficial to FHD to more efficiently conduct communicable disease investigations, the Director of Health and Human Services will return to Council with an updated contract to enter into at that time.

**COUNCIL ACTION REQUESTED**

The Director of Health and Human Services requests a motion to allow the Director of Health and Human Services to enter into a 90-day trial contract for access to the Wisconsin Statewide Health Information Network (WISHIN) organization data to improve communicable disease investigation and follow-up.

Health Department: CD

**City of Franklin**

**WISHIN DATA SHARING  
PARTICIPATION AGREEMENT**

CONFIDENTIAL



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# DATA SHARING PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into between the Wisconsin Statewide Health Information Network, Inc., a Wisconsin non-profit corporation ("**WISHIN**"), and the undersigned participant on behalf of itself and its Affiliates ("**Participant**") (collectively, the "**Parties**"), as of March 27, 2020 (the "**Effective Date**")

## RECITALS

WISHIN is organized to improve the quality, safety and timeliness of health services, reduce medical and prescription errors, and reduce health care costs by facilitating the sharing of health information in a manner that complies with all applicable laws and regulations, including without limitation those protecting the privacy and security of personal health information. WISHIN owns and operates an electronic communication network for use by (a) health care providers in delivering of health care or health plan services to patients, and (b) by other persons to whom WISHIN permits access in accordance with WISHIN policies and applicable law. The goal of the network is to support the public and charitable purposes of WISHIN by improving public health and using technology to promote efficiency in the delivery of health care services.

Participant desires to have access to WISHIN's System and Services, as such access and Services are identified in Attachment 1 to this Agreement.

Capitalized terms that are not defined when first used in this Agreement have the meanings set forth in Section 27.

## AGREEMENT

### 1. Grant of Right to Use Services.

1.1 Access. During the Term, WISHIN grants to Participant and Participant accepts:

- a) a non-exclusive, nontransferable (except as provided herein) sublicense to access and use the System, and
- b) a non-exclusive, nontransferable (except as provided herein) sublicense to use any other computer software furnished by WISHIN.

Such access and use is subject to Participant's compliance with the terms and conditions of this Agreement and the WISHIN Policies and Procedures.

Participant has no rights to the System except for the limited rights to access and use the System expressly granted by this Agreement.

1.2 Restrictions. Participant shall not (a) use the System for time-sharing, rental, or service bureau purposes, (b) make the System or Services, in whole or in part, available to any other person, entity or business, other than as set forth in this Agreement, (c) copy, reverse engineer, decompile or disassemble the System, in whole or in part, or otherwise attempt to discover the source code to the software used in the System, or (d) modify the System or combine the System with any other

software or services not provided or approved by WISHIN.

1.3 Change and Termination. WISHIN reserves the right to change the Services or the System. Changes to the System or the Services that materially reduce, limit, or modify adversely the functionality or levels of service provided, or any changes in the Permitted Purposes (collectively, "**Material Changes**"), shall not be made without the prior approval of WISHIN's Board of Directors and Participant Advisory Board Approval. Such approvals shall include a determination of whether it is technically feasible and financially reasonable for WISHIN to allow a System participant to opt out of participating in the change while still remaining a System participant.

Material Changes shall not be made without at least ninety (90) days prior written notice to Participant, which notice shall include whether it is technically feasible and financially reasonable for Participant to opt out of the change while still being a System participant. If there is a change to Permitted Purposes, Participant may then (a) to the extent that the WISHIN Board of Directors and the Participant Advisory Board have determined that it is technically feasible and financially reasonable for WISHIN to implement, prohibit Other Participants from using Participant's Shared Information for the newly-approved Permitted Purpose, by giving WISHIN written notice of such prohibition at least thirty (30) days prior to the

effective date of the newly-approved Permitted Purpose, or (b) if such implementation is not technically feasible and financially reasonable or Participant disagrees with any other Material Change, Participant may elect to terminate this Agreement as of the effective date of the Material Change by written notice to WISHIN that is given at least thirty (30) days prior to the effective date of such Material Change

1.4 Third-Party Software WISHIN represents that it has all licenses and rights necessary from third parties related to Third-Party Software and Services, provided under this Agreement and required for Participant to use System and any such Third-Party Software and Services that are used related to the System. This Agreement shall not be construed to limit any use of open-source software in accordance with the applicable free software license, provided, however, that all such open source software shall be subject to the security and performance standards applicable to WISHIN under this Agreement

1.5 Support WISHIN shall provide support and assistance to Participant in using the System and the Services, in accordance with Attachment 2, Software Maintenance and Support, and the Policies and Procedures

## 2. Access to the System.

2.1 Permitted Uses Subject to the terms of this Agreement, Participant may access and use the System and use the Services only for Permitted Purposes. *Health Care Payers' Permitted Purpose is solely to receive and use Health Data in accordance with Attachment 4, as the same may be amended from time to time by the approval of the WISHIN Board of Directors and Participant Advisory Board Approval. Health Care Payers shall not otherwise have the right to use the WISHIN Pulse feature of the System or otherwise access Health Data*

2.2 Prohibited Uses Participant and its Authorized Users shall comply with the following restrictions with respect to the System and the Services

- a) Participant shall not knowingly reproduce, publish or distribute content in connection with the System that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy or other personal or proprietary right
- b) Participant shall be responsible for its own compliance with all applicable laws, including laws relating to maintenance of privacy, security and confidentiality of

patient and other health information and the prohibition on the use of telecommunications facilities to transmit illegal, obscene, threatening, libelous, harassing or offensive messages, or otherwise unlawful material

- c) Participant shall not knowingly (i) abuse or misuse the System or the Services, including gaining or attempting to gain unauthorized access to the System or, except in accordance with accepted practices, altering or destroying information in the System, (ii) use the System or Services in such a manner that interferes with other users' use of the System, or (iii) permit the introduction into the System of any program, routine, or data (such as viruses or worms) that does or may disrupt or in any way impede the operation of the System, or alter or destroy any data within it
- d) Notwithstanding any provision to the contrary in this Agreement, Participant shall not use the System or Services for the purpose of exploiting the data of Other Participants to solicit, or make a targeted marketing to, any patients of any Other Participants, to compare patient volumes, prices, practice patterns, or make any other comparison or to aggregate data from Other Participants for any similar exploitation by itself or third parties
- e) Participant shall not use the System or the Services in violation of this Agreement, the Policies and Procedures or any applicable laws of the United States of America, the State of Wisconsin or any other applicable state's laws
- f) All of the foregoing restrictions and prohibition on uses of the System shall equally apply to WISHIN and its contractors

## 2.3 Participant's Own Systems

- a) Participant shall be solely responsible for Participant's own compliance with any applicable regulatory requirements related to the preservation, privacy and security of its own records that reside on Participant's own systems, including without limitation data backup, disaster recovery, and emergency mode operation. Participant acknowledges that WISHIN does not undertake to provide such services related to records that reside on Participant's own systems

Notwithstanding the foregoing, WISHIN shall provide data backup, disaster recovery services and emergency mode operation for the System, including all Health Data and Confidential Information, as set forth in the Policies and Procedures and as otherwise provided in this Agreement

- b) As permitted by this Agreement, HIPAA and other applicable law (i) Participant may transmit, access and use Health Data for a Permitted Purpose, (ii) any Participant that is a Health Care Provider may merge relevant parts of such Health Data into its own patient medical records, in which case the Participant shall have a perpetual, irrevocable right to use any such merged Health Data in the Participant's normal course of business, and (iii) any other Participant may, subject to the limitations on its Permitted Purposes, incorporate such Health Data into its own records and use such Health Data solely for its Permitted Purposes and as otherwise limited in this Agreement (for example, for a Health Care Payer, solely in accordance with use cases in Attachment 4 applicable to Health Care Payers, and for public health departments as limited in Section 2.4(a)). The foregoing shall not be construed as a release of any ownership rights Participant has to data that it contributes to the System. Subject to the foregoing, all data, including but not limited to clinical information and patient data provided by Participant in support of this Agreement, either in its original form or de-identified, including all content and other materials comprising the data ("Participant's Data") are owned by, and shall remain the sole property of Participant. This Agreement does not convey to WISHIN or any other party any title in or to, or ownership of, the Participant Data or of any part thereof, and subject to the Permitted Purposes, WISHIN is prohibited from selling or transferring the Participant Data to any party. Participant understands and agrees that WISHIN may disclose Participant Data to WISHIN's Subcontractors, as necessary for WISHIN to carry out its obligations under this Agreement as long as WISHIN ensures that, and will remain responsible for, any and all of its Subcontractors' compliance with the terms of this Agreement, as applicable. Upon termination or expiration of this Agreement, WISHIN shall destroy or return, and ensure that its Subcontractors destroy or return, any Participant Data to

Participant, or, if WISHIN determines that returning or destroying such data is not possible, as approved by Participant, WISHIN shall extend the protections of this Agreement, including the Business Associate Agreement attached hereto, to such Participant Data and not permit any further uses and disclosures of such data

c) **Aggregation and Subpoenas**

- (i) Participant shall not use the System to create, produce, or compile records or data of any Other Participants for the purpose of furnishing such records to third parties, except for a Permitted Purpose or to a business associate of Participant for a Permitted Purpose,
- (ii) If Participant is subpoenaed or otherwise ordered to use the System for the purpose of compiling the data of Other Participants that are not already contained in Participant's records, Participant shall immediately notify WISHIN prior to making any disclosure and shall not make any such disclosure, unless required to do so by court order, until WISHIN and such other interested parties or Other Participants that are impacted by such disclosure have an opportunity to appear or intervene and protect their respective interests

**2.4 Other Participants**

- a) Subject to and without limiting the Permitted Purposes, WISHIN initially may permit System participation to the following
- (i) Health care providers as defined by HIPAA in 45 CFR 160.103,
- (ii) Medical groups,
- (iii) Hospitals,
- (iv) Independent laboratories,
- (v) Independent radiology service providers,
- (vi) Chain pharmacies,
- (vii) Independent pharmacies,
- (viii) Long-term care facilities,
- (ix) Home health care programs,

(x) Public health departments for Treatment purposes,

(xi) Public health departments for public health reporting purposes,

(xii) State-contracted Wisconsin Family Care, Partnership, PACE, SSI-Medicaid and Dually Eligible Special Needs Plan (D-SNP) Managed Care Organizations for the purposes of delivering or coordinating care for the members covered under such contracts,

(xiii) Quality organizations not owned by a Health Care Payer, *but solely to receive and use Health Data in accordance with Attachment 4, as the same may be amended from time to time by the approval of the WISHIN Board of Directors and Participant Advisory Board Approval* Quality Organizations shall not otherwise have the right to use the WISHIN Pulse feature of the System or otherwise access Health Data, and

(xiv) Health Care Payers, *but solely to receive and use Health Data in accordance with Attachment 4, as the same may be amended from time to time by the approval of the WISHIN Board of Directors and Participant Advisory Board Approval* Health Care Payers shall not otherwise have the right to use the WISHIN Pulse feature of the System or otherwise access Health Data

Not all categories of participants will have the same rights to access and use the System. Access and use rights will be based on the nature of the participant and its appropriate need to use the System, consistent with the Privacy Rule

- b) This list of eligible participant types may be modified by the Board of Directors of WISHIN and Participant Advisory Board Approval upon at least ninety (90) days prior written notice to Participant, which notice shall include whether it is technically feasible and financially reasonable for a Participant to opt out of sharing Health Data with the new participant types while continuing to be a System participant. If there is a change to the eligible participant types, Participant may then (a) to the extent that the WISHIN Board of Directors and the Participant Advisory Board have determined that it is technically feasible and financially reasonable for WISHIN to implement, prohibit the new, eligible

participant types from using Participant's Shared Information, by giving WISHIN written notice of such prohibition at least thirty (30) days prior to the effective date of the newly-approved participant type(s), or (b) if such implementation is not technically feasible and financially reasonable, Participant may elect to terminate this Agreement as of the effective date of the change to eligible participant types, by written notice to WISHIN that is given at least thirty (30) days prior to the effective date of such change

- c) All Participants shall be required to sign a participation Agreement containing substantially similar obligations to those contained in this Agreement, including the obligation to comply with the Policies and Procedures and to be responsible for any business associate, contractor, or workforce member who accesses and uses the System or Services as Authorized Users on its behalf

## 2.5 Safeguards

- a) Participant and WISHIN shall each implement and maintain reasonable and appropriate administrative, physical and technical safeguards to comply with its obligations under HIPAA and other applicable law. Participant's safeguards also shall comply with WISHIN's Participant Safeguard Checklist and the other Policies and Procedures
- b) Participant shall promptly notify WISHIN of any Security Incident relating to the System of which Participant becomes aware, or any unauthorized use or disclosure of information within or obtained from the System and shall cooperate with WISHIN in investigating the incident and shall take such action, as is practicable, to mitigate any breach or suspected breach. WISHIN shall promptly notify Participant of any Security Incident relating to Participant's Shared Information of which WISHIN becomes aware, or any unauthorized use or disclosure of Participant's Shared Information and shall cooperate with Participant in investigating the incident and shall take such action, as is practicable, to mitigate any breach or suspected breach

The parties acknowledge and agree that this section constitutes notice by

Participant to WISHIN of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to WISHIN shall be required "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Participant's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI

## 2.6 Compliance

Participant and WISHIN each are responsible for their own and their respective employees', subcontractors', and agents' compliance with the terms of this Agreement, HIPAA, the Policies and Procedures, and other applicable laws and regulations. Participant shall be solely responsible for the authorized use of the system by Participant's Authorized Users. WISHIN is solely responsible for the System and Services provided by WISHIN, its subcontractors or agents hereunder.

As between Participant and Other Participants, each shall be responsible for its acts and omissions and not for the acts or omissions of any Other Participant. Notwithstanding anything to the contrary in this Agreement, Participant and Other Participants shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by applicable law.

## 2.7 Authorized Use

- a) WISHIN authorizes Participant to use the Participant ID assigned to it by WISHIN or WISHIN's designated agent. Participant acquires no ownership rights in the Participant ID or any Authorized User ID, and the Participant ID and Authorized User IDs may be revoked or changed upon as much notice as reasonably practicable only for security reasons in WISHIN's reasonable discretion. Participant shall adopt and maintain reasonable security precautions for its Participant ID and its Authorized User IDs intended to prevent their disclosure to and use by unauthorized persons. Participant shall use reasonable efforts to prevent any member of its workforce from using an Authorized User ID that Participant has assigned to another person.
- b) Participant may permit Participant's Authorized Users to use the System and

the Services on behalf of Participant, subject to the terms of this Agreement and the Policies and Procedures. Participant shall

- (i) Conduct a reasonable process to determine that granting an individual access to the System as an Authorized User is appropriate. Keep a current list of its current and past Authorized User IDs and to whom each has been assigned,
- (ii) Obtain a unique Authorized User ID from the System for Participant to assign each Authorized User and take efforts to ensure that each such person has access to the System only under his or her Authorized User ID.
- (iii) Train all Authorized Users regarding the confidentiality requirements of this Agreement and the Policies and Procedures relating to their access to and use of the System, and be responsible for their compliance with such requirements,
- (iv) Take such disciplinary action as it may deem appropriate against any Authorized User who violates the confidentiality provisions of this Agreement or the Policies and Procedures,
- (v) Report to WISHIN violations of the confidentiality requirements set forth in this Agreement by Participant's Authorized Users.
- (vi) Promptly disable and revoke the Authorized User ID upon the termination of employment or change of role of any Authorized User (or if the individual is not an employee, of the termination of the relationship or role with Participant which required that the individual access the System),
- (vii) Take prompt steps so that any Authorized User whose access has been revoked or restricted shall have no further access to the System consistent with the revocation or restriction.

2.8 Rights of Authorized Users An Authorized User shall have no rights to access the System, or to use the Services or any Health Data or other information made available therefrom, other than those permitted under this Agreement.

and as authorized by Participant. Any such rights of an Authorized User shall cease and terminate upon the removal of that Authorized User's access privileges for any reason.

## 2.9 Discipline and Termination of Authorized Users

- a) Participant shall require that all of its Authorized Users use and access the System only in strict compliance with this Agreement and the Policies and Procedures.
- b) Participant shall take appropriate disciplinary action, up to and including termination, against any of its Authorized Users who violate their use restrictions, confidentiality obligations or the Policies and Procedures.
- c) WISHIN may terminate System access of any Authorized User temporarily or on a permanent basis if WISHIN determines such termination is necessary for security reasons. When terminating access of a Participant's Authorized User, WISHIN shall notify Participant and explain the basis and support for its action.

2.10 Termination of a Participant Following discussion with a Participant and a reasonable opportunity to cure (if such cure is possible), WISHIN may terminate that Participant's access to the System on a temporary or permanent basis for privacy and security breaches or for failure to take reasonable remedial action when a breach is discovered, including, without limitation (i) failure to cooperate in mitigating damages, (ii) failure to appropriately discipline an Authorized User or other person under the Participant's control for security or privacy violations, or (iii) other actions that undermine the confidence of Other Participants in the effectiveness of System safeguards. When terminating access, WISHIN shall explain to Participant the basis and support for its action. Permanent termination of Participant's access shall terminate this Agreement.

2.11 Professional Responsibility WISHIN is responsible for maintaining the integrity of Participant's Shared Information (and Other Participants' Health Data) that is submitted into the System. Without limiting the foregoing, Participant shall be solely responsible for the medical, professional, and technical services it provides and WISHIN makes no representations concerning the completeness, accuracy or utility of any information provided by Other Participants, or concerning the qualifications or competence of individuals who placed it there. WISHIN has no liability for the

medical services or advice Participant provides to Participant's patients.

2.12 Cooperation Participant shall reasonably cooperate with WISHIN in the administration of the System, including providing reasonable assistance in evaluating the System and collecting and reporting data reasonably requested by WISHIN for purposes of administering the System. Participant further agrees to reasonably cooperate on any issues relating to WISHIN's participation in the eHealth Exchange (formerly the Nationwide Health Information Network) and any regional health information exchange or network.

## **3. Making Information Available through the System.**

3.1 Purpose of System The purpose of the System is to facilitate the sharing of patient health information among All Participants.

3.2 Sharing of Data Following approval from the Participant Advisory Board in accordance with Section 1.3 and upon at least 60 days' advance written notice to All Participants, WISHIN shall from time to time issue Policies and Procedures for the sharing of Health Data, including standards for

- a) The kinds of data to be shared and the required format for such data,
- b) The data made available through the System being complete or identified as being incomplete,
- c) Data being made available through the System in a timely manner, and
- d) When the availability of data shared through the System is controlled by the Participant, availability to other users.
- e) Notwithstanding the foregoing or any changes to the Policies and Procedures for sharing of data, the foregoing shall not be construed to permit WISHIN to change the Permitted Purposes without following the procedures in Section 1.3, or otherwise permit WISHIN to share Participant's data in a manner not expressly permitted in this Agreement.

## 3.3 Sensitive Data, Including Behavioral Health and AODA Records

- a) *Sensitive Data Will Be Disclosed Only in a Medical Emergency* "Sensitive Data" means Health Data that the disclosing participant has flagged or otherwise prominently identified as sensitive.

pursuant to the following subsection (b) Sensitive Data shall be released through the System only when the requesting System participant has certified that the subject individual has a medical emergency

Nothing in this Section 3.3 or otherwise in this Agreement requires Participant to release into the System or otherwise provide any Sensitive Data or other Health Data when Participant believes that releasing or otherwise providing the same may violate any law or regulation

- b) *Prominent Identification of Sensitive Data and Prohibition on Re-Disclosure, Reporting of Release of Sensitive Data* When releasing any Sensitive Data into the System, the discloser of the information shall prominently identify the Health Data as being Sensitive Data, in accordance with WISHIN's related Policies and Procedures. When transmitting the Sensitive Data, WISHIN then shall flag or note that re-disclosure of the Sensitive Data is prohibited without patient consent or statutory authorization
- c) *Notation of Disclosure in Patient's Records* WISHIN shall maintain a separate Sensitive Data disclosures audit log for Participant and each of the Other Participants that will include the name of the person to whom the Sensitive Data was released and their affiliation to any health care facility, and the date of the release
- d) *No Psychotherapy Notes, AODA Records Maintained in Connection with a Federally Assisted AODA Program, or Records of HIV Results from a Compelled Test* All Participants shall not release into the System any Psychotherapy Notes or HIV test results when the test results were obtained from a test that was compelled under Section 252.15(5g) of the Wisconsin Statutes as a result of a circumstance involving a "significant exposure." All Participants also shall not release into the System any records subject to 42 CFR Part 2 (i.e., AODA records maintained in connection with a federally-assisted AODA program), unless the Policies and Procedures are amended to expressly permit the release of such records

3.4 Accuracy and Format of Data Participant shall use reasonable efforts intended to ensure that Participant's Shared Information

- a) Is current, accurate and (subject to any restrictions imposed by law or this Agreement, including Section 3.9) complete, or if it is incomplete that the record contains an appropriate indication to that effect, and

- b) Complies with any requirements of the Policies and Procedures

3.5 Sharing of Participant's Shared Information Participant authorizes WISHIN to use and disclose Participant's Shared Information only for the Permitted Purposes and as follows

- a) WISHIN may disclose Participant's Shared Information to Other Participants that are Public Health Authorities for public health activities, as permitted by applicable law and to the extent consistent with use cases in Attachment 4 or as otherwise authorized by Participant in writing
- b) WISHIN may use and disclose Participant's Shared Information for the proper management and administration of WISHIN and the System, and to carry out WISHIN's legal responsibilities. WISHIN may also disclose Participant's Shared Information for such purposes if the disclosure is required by law and WISHIN gives Participant notice of (and to the extent legally permissible, the right to object to) any such disclosure prior to making the disclosure. Without limiting the foregoing, WISHIN may permit access to the System by WISHIN's authorized personnel solely for the purpose of providing the Services hereunder

In order for WISHIN to facilitate the sharing of patient health information among Participant and Other Participants, WISHIN is authorized to manage authorized requests for, and disclosures of, PHI among Participant and Other Participants, create and maintain a master patient index, provide a record locator or patient matching service, provide a longitudinal or community view of patients' information, standardize data formats, implement business rules to assist in the automation of data exchange, and facilitate the identification and correction of errors in health information records

3.6 Disclosures and Additional Use Participant agrees that any disclosure through the System pursuant to Section 3.5 is a disclosure made by WISHIN as a business associate, as defined in HIPAA, of a Participant



3 7 Reliance on Representations Participant acknowledges that in granting access to the System for the purposes as set forth in this Agreement, WISHIN will rely on the assurances of Participant and the Other Participants (and, with respect to any other health information exchange or network for which WISHIN has an InterExchange Data Sharing Agreement, each such exchange/network and its participants and their authorized users) as to (i) their identity and credentials, (ii) the purposes for which they are accessing the System, and (iii) the nature and extent of the information they request and to which they will have access, including that all requests comply with HIPAA's minimum necessary standard. Participant acknowledges that, although the System will contain certain technical safeguards against misuse of the System, WISHIN will rely to a substantial extent on the representations and undertakings of Participant, Other Participants, Authorized Users and, to the extent applicable, the exchanges/networks and their participants and their authorized users for the above-referenced health information exchanges and networks (collectively, "System Users"). Participant agrees that WISHIN shall not be responsible for any unlawful access to or use of Participant's Shared Information by any System Users resulting from misrepresentation to WISHIN or breach of Agreement or violation of the Policies and Procedures by any of the System Users.

3 8 Compliance with Privacy Rule Participant and WISHIN shall comply with the standards of the Privacy Rule in permitting any of its Authorized Users access to the System. Participant and WISHIN acknowledge that other federal and state laws impose additional restrictions on the use and disclosure of certain types of health information or health information pertaining to certain classes of individuals. Participant and WISHIN shall comply with the minimum necessary standard under HIPAA when requesting information through the System. Participant is responsible for ensuring that Participant's Shared Information may properly be disclosed for the purposes set forth in this Agreement. In particular, Participant shall

- a) Not make available through the System any information subject to any restriction on use or disclosure that would be prohibited under applicable law,
- b) Obtain any necessary consents, authorizations or releases from individuals legally required for making their health information available through the System, and
- c) Include such statements (if any) in Participant's notice of privacy practices as

may be legally required in connection with Participant's use of the System.

3 9 Individuals' Rights Except as provided in the next paragraph, Participant shall be solely responsible for affording individuals their rights with respect to Participant's Shared Information, such as the rights of access and amendment, or requests for special restrictions on the use or disclosure of health information, and WISHIN shall not accept or process any requests from individuals for the exercise of such rights. Participant shall not undertake to afford an individual any rights with respect to any information in the System other than Participant's Shared Information.

Notwithstanding the foregoing paragraph, WISHIN shall administer an individual's ability to opt out (the "Opt Out") of the full sharing his/her PHI that is in the System. WISHIN will administer an individual's request to Opt Out with respect to PHI in the System. In such case, Other Participants will have access to the PHI only in certain emergency and other situations as established by the Policies and Procedures. WISHIN shall also comply with the requirements in the Business Associate Agreement related to any disclosures of an individual's PHI.

3 10 Rights in Data As between WISHIN and Participant, all Participant's Shared Information that is sent through, or entered into, the System by Participant shall be deemed to be the exclusive property of Participant. WISHIN shall not claim any rights with respect to such Participant's Shared Information, use or authorize any third-party to use such data, or take any action with respect to such data that is inconsistent with this Agreement. WISHIN waives any and all statutory or common law liens it may now or subsequently have with respect to such Participant's Shared Information. Participant may retrieve, transport and deliver to third parties Participant's Shared Information, and all manipulations of such data associated with the System and Services and Participant's Shared Information contained in WISHIN's archived data files.

#### **4. Business Associate Provisions.**

4 1 Compliance with Privacy and Security Rules In using, disclosing and affording access to Participant's Shared Information in accordance with this Agreement, WISHIN shall comply with the Privacy Rule and the Security Rule and other applicable Wisconsin and federal laws and regulations.

4 2 Business Associate Provisions WISHIN and Participant agree to the terms and conditions

of the HIPAA Business Associate Provisions set forth in Attachment 6 to this Agreement or as otherwise agreed in writing by the parties

## **5. Computer Systems.**

### **5 1 Participant's Equipment, Auditing**

- a) In order to use the System, Participant acknowledges that it may be necessary for it to acquire, install, configure and maintain the hardware, software and communications systems (the "**Equipment**") listed or described in any Technical Requirements or the Policies and Procedures, as the same may be amended from time to time. If Participant elects to implement its use of the System, Participant shall comply with the specifications set forth in any Technical Requirements or the Policies and Procedures. If WISHIN notifies Participant that its Equipment for the implementation and use of the System is incompatible with the System and not in accordance with any Technical Requirements or the Policies and Procedures, Participant shall either eliminate the incompatibility or terminate this Agreement and WISHIN may suspend Services to Participant until Participant does so.
- b) WISHIN and Participants shall perform their respective auditing activities as required by the Policies and Procedures.

**5 2 Participant's Actions** Participant is responsible for any damage to WISHIN's computer system, loss of data, and any damage to the System caused solely by the negligence of an Authorized User of Participant or a member of Participant's workforce where Participant would otherwise be responsible for the negligent acts or omissions of such Authorized User under the principles of employment or agency law.

**5 3 WISHIN Assistance** From time-to-time, WISHIN may separately contract with Participant for the provision of goods or services in connection with Participant's implementation or use of the System, provided, however, such goods or services contracts shall not (and shall not be deemed or construed to) alter or amend any provisions of this Agreement.

## **6. Policies and Procedures.**

**6 1** WISHIN is solely responsible for the development of the Policies and Procedures, which shall be subject to approval of the Board and Participant Advisory Board in accordance with

Section 1 3. WISHIN shall notify Participant of any changes in the Policies and Procedures at least ninety (90) days prior to the implementation of the change. However, if the change is required in order for WISHIN or Participant to comply with applicable laws or regulations or if the Board of Directors directs, WISHIN may implement the change and provide notice to Participant within a shorter period of time that WISHIN determines is appropriate under the circumstances. If Participant is unable or unwilling to comply with or implement such Policies and Procedures, Participant may elect to suspend its use of the System or terminate this Agreement immediately without cause upon written notice to WISHIN and receive a pro-rata refund of Subscription and Service Fees that Participant has paid in advance for the balance of the then-current term as such refund is further described in Section 13 2.

**6 2** The Policies and Procedures, as amended from time to time, are incorporated by reference into, and made a part of, this Agreement.

## **7. Training Costs.**

Except for such standard training as WISHIN provides as part of WISHIN's implementation services, Participant shall be solely responsible for the participation and costs of training Participant's personnel related to the System and its use. If Participant contracts with WISHIN for such training, WISHIN shall be responsible for providing the appropriate training sessions, instructors, study materials needed to participate and scheduling training sessions at times and places reasonably acceptable to Participant. When offered, Participant may contract with WISHIN for customized training materials. Customized training materials are subject to additional fees.

## **8. Fees and Charges.**

**8 1 Subscription and Service Fees** Participant shall pay to WISHIN the undisputed Subscription and Service Fees and Miscellaneous Charges set forth in Attachment 5 during the Term and continuation of this Agreement. WISHIN may change its Subscription and Service Fees and Miscellaneous Charges for any renewal term upon thirty (30) days' prior notice to Participant of such change.

**8 2 Payment** The Subscription and Service Fees and any Miscellaneous Charges shall be due and payable to WISHIN within thirty (30) days following Participant's receipt of WISHIN's invoice.

**8 3 Taxes** All charges and fees shall be exclusive of all federal, state, municipal, or other

government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and Participant agrees to pay any tax (excluding taxes on WISHIN's net income) that WISHIN may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services purchased under this Agreement. Notwithstanding the foregoing, if Participant is exempt from most sales and use taxes and it will not be responsible for the payment of any such taxes to WISHIN if it timely provides WISHIN with a valid exemption certificate. WISHIN shall cooperate with Participant as reasonably necessary to establish with a relevant taxing authority Participant's exemption from tax on the goods and services purchased under this Agreement. In the event such exemption is rejected, Participant shall pay for taxes imposed in conjunction with this Agreement, including sales, use, excise and similar taxes based on or measured by charges payable under this Agreement and imposed under authority of federal, state or local taxing jurisdictions. This Participant obligation specifically excludes foreign, federal, state and local taxes based upon WISHIN's revenues, net income, number of employees, or corporate existence.

8.4 Other Charges Participant is responsible for any charges Participant incurs to connect to the System, such as telephone and equipment charges, fees charged by third-party vendors of products and services. WISHIN shall be solely responsible for all costs and expenses related to its hardware, software, telecommunications connections, data storage, data security and any third-party licenses required to provide the System and Services and fulfill WISHIN's obligations under this Agreement. Participant is not responsible for any portion of WISHIN's obligations and it is not a guarantor or surety of WISHIN's debts or financial dealings.

8.5 No Payment for Protected Health Information All fees charged by, paid to or collected by or on behalf of WISHIN under this Agreement shall be for the rights of Participant and Other Participants to access and use the System and Services as described in this Agreement. WISHIN shall not offer or pay or solicit or receive any remuneration, directly or indirectly, in return for Participant's Shared Information.

## **9. Confidential Information.**

9.1 Neither party shall disclose the Confidential Information of the other party or any Other Participant to any other person and shall not use any Confidential Information of the other party or any Other Participant except for the purpose of this Agreement, or as required by applicable statute,

regulation, court order or subpoena (judicial and administrative). Except as otherwise permitted by this Agreement, neither party shall at any time, during or after the Term of this Agreement, directly or indirectly, divulge or disclose Confidential Information of the other party or any Other Participant for any purpose or use Confidential Information for its own benefit or for the purposes or benefit of any other person without the prior written consent of such party or Other Participant. Participant or WISHIN shall promptly advise the other party in writing of any improper disclosure, misappropriation, or misuse of the other party's or any Other Participant's Confidential Information by any person, which may come to Participant's or WISHIN's attention. WISHIN shall immediately notify in writing any Other Participant whose Health Data is disclosed, misappropriated, or misused.

9.2 Participant and WISHIN each agree that (a) if it fails to comply with its obligations set forth in this Section 9, the other party will suffer irreparable harm, and (b) monetary damages will be inadequate to compensate the other party for any such breach. Accordingly, Participant and WISHIN agree that Participant and WISHIN will, in addition to any other remedies available to it at law or in equity, be entitled to the issuance of injunctive relief to enforce the provisions of this Section 9, immediately and without the necessity of posting a bond.

9.3 This Section 9 will survive the termination or expiration of this Agreement for any reason.

## **10. Disclaimers.**

10.1 Accuracy of Patient Record Matching Participant acknowledges that there could be errors or mismatches when matching patient identities between disparate data sources. Participant is responsible for using reasonable efforts under the circumstances to attempt to verify that any Health Data Participant accesses or receives relates to a particular individual as intended by Participant and for the immediate destruction of any Health Data obtained inadvertently.

Patients inappropriately matched must be reported by Participant, within a reasonable time after discovery by Participant, to WISHIN Support. All inappropriate matches will be corrected by WISHIN or its subcontractor within 24 hours of being reported.

Patient records that should be matched but aren't may be identified by Participant or by WISHIN. WISHIN will monitor probable patient matches using a Probable Match Queue. The Probable

Match Queue shows matches that have between 85% and 95% probability of being a match based on the patient matching algorithms provided in the system (called "Probable Matches") WISHIN will work with Participants to submit corrected patient information through the Participant's interfaces in order to correct patient match issues. If Participant is not able to submit corrected information, WISHIN will obtain written permission from Participant(s) for WISHIN to force the match (note that this may require the permission from multiple Participants). Within 7 business days of Participant or WISHIN identifying a Probable Match, WISHIN will begin work with Participant(s) to correctly match the patient.

**10.2 Incomplete Medical Record, Accuracy of Health Data** All Participants acknowledge that Health Data may not include the individual's full and complete medical record or history.

Without limiting WISHIN's obligations to maintain the accuracy, integrity and completeness of information as submitted into the System by All Participants and Participant's obligations under Section 3.4, nothing in this Agreement shall be deemed to impose responsibility or liability on Participant or WISHIN related to the clinical accuracy, content or completeness of any Health Data. Notwithstanding the foregoing, WISHIN acknowledges that Participant's Shared Information is to be used and the related Health Data is disclosed as a clinical information management and diagnostic tool only and that its use by WISHIN, and Other Participants requires the involvement of trained individuals. WISHIN further acknowledges and agrees that Participant does not represent that Participant's Shared Information is sufficient in and of itself to diagnose disease, prescribe treatment, or perform any other tasks that constitute the practice of medicine. Therefore, WISHIN acknowledges that Participant a) has no control of or responsibility for WISHIN's or any Other Participant's use of the Participant's Shared Information and related Health Data and b) has no knowledge of the specific or unique circumstances under which Participant's Shared Information will be used after disclosure by WISHIN. The parties and Other Participants agree that, by furnishing Participant's Shared Information, Participant is not providing medical services to patients and is not engaged in the practice of medicine. The receipt of Health Data does not absolve Participant and Other Participants of their obligations to exercise independent medical judgment in rendering health care services to its patients and that the professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing the services. Participant makes no warranty as to the nature or quality of the Participant's Shared Information made available to

Other Participants and permitted third parties by WISHIN.

**10.3 Carrier Lines** Participant acknowledges that access to the System will be provided over various facilities and communications lines, and information will be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices owned, maintained, and serviced by third-party carriers, utilities, internet service providers (collectively, "Carrier Lines") are beyond WISHIN's control. Except to the extent encompassed by a service level standard and service level credit, WISHIN assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the Carrier Lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the Carrier Lines.

**10.4 Other Participants** Participant acknowledges that Other Participants have access to the System and Services. Such Other Participants have committed to comply with the Policies and Procedures concerning use of the System, however, the actions of such Other Participants and their Authorized Users are beyond WISHIN's control. Participant agrees that WISHIN is not liable for any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the System resulting from any actions or failures to act of Other Participants.

**10.5 Patient Care** Without limiting any of WISHIN's obligations under this Agreement, Participant is solely responsible for all of its patient care decisions resulting from or involving the use of the System or the Services, and neither Participant nor any other person shall have any claim or cause of action against WISHIN as a result of patient care rendered or withheld in connection with the use of the System or the Services. Participant acknowledges that Health Data is disclosed through the System as a clinical information management and diagnostic tool only and that its use by Participant requires the involvement of trained individuals. Participant further acknowledges and agrees that WISHIN and the Other Participants do not represent that the Health Data provided through the System is sufficient in and of itself to diagnose disease, prescribe treatment, or perform any other tasks that constitute the practice of medicine. Participant agrees that, in furnishing Health Data, Other Participants and WISHIN are not providing medical services to patients and are not engaged in the practice of medicine.

**11. Warranties, Limitations of Liability and Indemnification.**

11.1 Warranties WISHIN represents and warrants the following

- a) WISHIN has the authority to enter into this Agreement
- b) WISHIN has all appropriate and adequate rights to grant the rights and sublicenses set forth in Section 1
- c) WISHIN will perform the Services required under this Agreement in a professional and workmanlike manner
- d) Neither the Services nor the maintenance, support and operation of the System shall be performed outside of the geographic limits of the United States of America
- e) The System will perform in material compliance with the manuals, technical specifications and user instructions describing the functionality, features, operation, and use of the System. The System will be maintained as a secure system and will maintain the accuracy, integrity and completeness of the information as submitted into the system by All Participants. WISHIN will perform the Services required under this Agreement in a professional and workmanlike manner in accordance with industry standards. Except as otherwise provided in this Agreement, WISHIN's exclusive obligation, and Participant's exclusive remedy, in the event of a breach of this warranty will be for WISHIN to promptly and accurately re-perform the applicable Services not in compliance with the warranty, provided WISHIN receives written notice from Participant of such breach within thirty (30) calendar days after such Services were originally performed.

OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WISHIN MAKES NO EXPRESS OR IMPLIED WARRANTIES TO PARTICIPANT REGARDING THE SYSTEM, THE SERVICES, THE HEALTH INFORMATION MADE AVAILABLE THROUGH THE SYSTEM AND SERVICES OR ANY OTHER DELIVERABLES PROVIDED BY WISHIN OR OTHERWISE REGARDING THIS AGREEMENT. ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED

OR STATUTORY. WISHIN WILL ALSO TAKE COMMERCIALLY REASONABLE STEPS TO PERMIT PARTICIPANT TO RECEIVE THE BENEFITS OF ANY WARRANTIES THAT MAY BE OFFERED BY THIRD PARTIES.

THE HEALTH INFORMATION MADE AVAILABLE THROUGH THE SYSTEM IS PROVIDED "AS AVAILABLE" FROM ALL PARTICIPANTS AS SUBMITTED INTO THE SYSTEM.

11.2 Unauthorized Access, Lost or Corrupt Data EXCEPT TO THE EXTENT CAUSED BY OR RESULTING FROM WISHIN'S NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BREACH OF THIS AGREEMENT, WISHIN IS NOT RESPONSIBLE FOR UNAUTHORIZED ACCESS TO PARTICIPANT'S TRANSMISSION FACILITIES OR EQUIPMENT BY INDIVIDUALS OR ENTITIES USING THE SYSTEM OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT, OR DESTRUCTION OF PARTICIPANT'S DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH THE SYSTEM.

11.3 Limitations of Liability Subject to Sections 3.7 and 10, the limitations of liability set forth in this Agreement shall not apply to WISHIN'S intellectual property indemnification or a party's confidentiality obligations (including under HIPAA), a party's gross negligence or willful misconduct, claims for property damage or personal injury (other than claims for personal injury or death arising from medical care or advice) or to the extent of a liable party's insurance proceeds (or, if there are no such proceeds, the amount of any insurance coverage required) under this Agreement EXCEPT AS SET FORTH IN THE FOREGOING SENTENCE. (a) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR GOODWILL) DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SYSTEM, SERVICES OR ANY OTHER DELIVERABLE UNDER THIS AGREEMENT, WHETHER ALLEGED AS ARISING UNDER A BREACH OF CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (b) A PARTY'S TOTAL LIABILITY FOR ANY DIRECT DAMAGES SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID OR PAYABLE BY PARTICIPANT TO WISHIN UNDER THIS AGREEMENT FOR THE

TWELVE MONTH PERIOD PRECEDING THE  
EVENT GIVING RISE TO THE CLAIM

11.4 WISHIN's Intellectual Property  
Indemnification

- a) Intellectual Property Indemnity WISHIN (either directly or through the licensor of the System Software) shall defend, indemnify, and hold harmless Participant against any third-party claims and damages, judgments, awards and costs (including reasonable attorneys' fees) awarded against Participant and arising out of or related to any claim that Participant's use of the System Software or the Services infringes any copyright, trademark or U.S. patent or misappropriates any trade secret of any third party, including but not limited to any reasonable expense incurred by Participant in assisting WISHIN (or the licensor of the System Software) in defending against such claim. Participant shall give WISHIN (i) written notice within a reasonable time after the earlier of Participant receiving notice of a threatened claim and Participant being served with legal process in an action asserting any such claim, (ii) reasonable assistance in defending the claim, and (iii) authority to settle such claim, provided, however, that Participant may, at its sole discretion and expense, participate in the defense of any claim or action and any negotiations for settlement. WISHIN (or the licensor of the System software) shall not settle any such claim without Participant's consent (which shall not be unreasonably withheld) unless the settlement is solely in exchange for a monetary payment by WISHIN (or the licensor of the System software) and fully releases Participant.
- b) Additional Remedies In the event that the System or Services, or any portion of the System or Services, are held by a court of competent jurisdiction to infringe or constitute the wrongful use of any third party's proprietary rights or if WISHIN determines that the System or Services (or any part of the System or Services) may infringe or constitute the wrongful use of a third party's proprietary rights, WISHIN may instruct Participant and its Authorized Users to cease using the System or Services (or portion of the System or Services) and Participant and its Authorized Users shall cease using such System or Services. WISHIN also shall (i) replace the System or Services, with equally suitable and functionally equivalent

non-infringing System or Services, (ii) modify the System or Services so that they are equally suitable and functionally equivalent to the alleged infringing System or Services so that the use of such modified System or Services by Authorized Users is not infringing or wrongful, or (iii) procure for Participant and its Authorized Users the right to continue using the System or Services. In the event WISHIN determines that the foregoing remedies are not commercially feasible or reasonable, WISHIN may terminate this Agreement and refund to Participant all fees pre-paid by Participant.

- c) Limitation Notwithstanding the terms of Section a), WISHIN will have no liability for an infringement or misappropriation claim to the extent caused by Participant's or an Authorized User's use of the Services or System other than materially in accordance with this Agreement.
- d) Other Third-Party Software and Services WISHIN does not warrant any Other Third-Party Software, but WISHIN will take commercially reasonable steps to permit Participant to receive the benefits of any warranties that may be offered by third parties.
- e) Exclusive Remedy THIS SECTION 11.4 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF WISHIN, AND PARTICIPANT'S EXCLUSIVE REMEDY AGAINST WISHIN, WITH RESPECT TO ANY INTELLECTUAL PROPERTY INFRINGEMENT.

12. **Insurance.**

12.1 Participant Insurance Participant shall obtain and maintain such policies of general liability, errors and omissions, and professional liability insurance with reputable insurance companies and with limits of not less than \$1,000,000 per claim and \$3,000,000 in the annual aggregate. The terms of this section shall not be deemed to limit the liability of Participant hereunder.

12.2 WISHIN Insurance WISHIN shall maintain in effect, insurance with a carrier with an AM Best's financial performance rating ("fpr") of A- or higher and a minimum financial size category ("fsc") of VII or higher. In the event coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for insurance described above, upon written request, WISHIN shall provide Participant with a certified copy of the

involved insurance policy or policies within ten (10) business days of receipt of such request. The terms of this section shall not be deemed to limit the liability of WISHIN hereunder. WISHIN shall provide, at WISHIN's sole cost and expense, throughout the term of this Agreement, the following insurance types and limits issued by an insurance company authorized to do business in all applicable states: (a) general liability insurance in a minimum amount of \$1,000,000 per claim and \$2,000,000 in the annual aggregate, (b) umbrella insurance, following the form of general liability insurance, at a minimum of \$11,000,000 in the aggregate, (c) automobile liability insurance in a minimum amount of \$1,000,000 per accident, for owned and non-owned vehicles, (d) worker's compensation and employer's liability insurance in amounts required in accordance with applicable laws within the state that work is being performed, (e) fidelity bond insurance in a minimum amount of \$25,000 per claim and in the annual aggregate, (f) professional liability (e and o) insurance in a minimum amount of \$1,000,000 per claim and \$3,000,000 in the annual aggregate, and (g) privacy and network security (Cyber Liability) loss arising out of or in connection with loss or disclosure of Confidential Information or PHI, in a minimum amount of \$3,000,000 million per loss. The required limits may be satisfied by a combination of primary and excess policies.

### **13. Term; Modification; Suspension; Termination.**

13.1 Term WISHIN has made special provision for a trial period of 90 days during which Participant's Authorized Users may use the System and the Services identified in Attachment 1. During the 90-day trial period, effective upon the Actual Go-Live Date, Participant is obligated to pay WISHIN only the 90-day Trial One-time Fees under Attachment 5. Unless Participant terminates this Agreement by written notice to WISHIN at least 10 days prior to the end of the trial period, the Agreement shall continue for an initial term ending one year after the Effective Date and, thereafter, shall renew for successive one-year renewal terms until terminated as provided in this Section 13.

13.2 Termination upon Notice In addition to the provisions of Section 13, WISHIN or Participant may terminate this Agreement at any time without cause upon sixty (60) days prior written notice to the other party. If this Agreement is terminated without cause by either party or with cause by Participant, Participant shall be entitled to a refund of any Subscription and Service Fees that Participant has paid in advance for the then-current term of the Agreement.

13.3 Termination for Cause Either party may terminate this Agreement in the event of a material

breach of this Agreement which is not cured to the reasonable satisfaction of the other party within thirty (30) days of delivery of notice of the breach, provided that, if the breach is capable of cure but not within thirty (30) days, this Agreement shall not be terminated as long as the party in breach commences to cure the breach within thirty (30) days, and diligently pursues the cure to completion.

### **13.4 Intentionally Blank**

13.5 Judicial or Administrative Procedures Either party may terminate this Agreement immediately upon notice to the other if: (a) the other party is named as a defendant in a criminal proceeding for a violation of federal or state law, (b) a finding or stipulation that the other party has violated any standard or requirement of federal or state law relating to the privacy or security of health information is made in any administrative or civil proceeding, or (c) the other party is excluded from participation in a federal or state health care program.

### **13.6 Obligations After Termination**

- a) Upon termination of this Agreement, Participant shall cease to use the System and WISHIN may terminate Participant's access to the System. Upon termination for any reason, other than WISHIN's wrongful termination, (i) Participant shall remove all software provided by or on behalf of WISHIN under this Agreement from its computer systems, shall cease to have access to the System, and shall return to WISHIN all hardware, software and documentation provided by or on behalf of WISHIN, (ii) WISHIN shall delete all Participant's Shared Information from the System, including any and all copies.
- b) All the provisions of Section 9, Confidential Information, Section 10, Disclaimers, Section 11, Warranties, Limitations of Liability, and Indemnification, Section 12, Insurance, and Section 13.6, Obligations after Termination and any other term that by its nature provides for survival shall survive after termination. In addition, where the terms of this Agreement specify that certain provisions will survive termination under certain conditions, those provisions shall survive under the applicable conditions.

## **14. Dispute Resolution.**

14.1 WISHIN and Participant understand and agree that the implementation of this Agreement will be enhanced by the timely and open resolution of any disputes or disagreements between such Parties

14.2 Each party hereto agrees to use its best efforts to cause any disputes or disagreements between such Parties to be considered, negotiated in good faith, and resolved as soon as possible

14.3 In the event that any dispute or disagreement between the Parties cannot be resolved to the satisfaction of WISHIN's project manager and Participant's project manager within ten (10) days after either such project manager has notified the other in writing of the need to resolve the specific dispute or disagreement within such ten (10) day period, then the dispute or disagreement shall be immediately referred in writing to a vice-president, president or someone of equivalent authority of Participant and the a vice-president or the CEO of WISHIN (or their respective successors) for consideration in good faith

14.4 No resolution or attempted resolution of any dispute or disagreement pursuant to this Article shall be deemed to be a waiver of any term or provision of this Agreement or consent to any breach or default unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Further, nothing in this Section 14 shall be deemed to limit a party's access to the court system

#### **15. Applicable Law.**

The interpretation of this Agreement and the resolution of any disputes arising under this Agreement shall be governed by the laws of the State of Wisconsin

#### **16. Legal Compliance.**

The Parties acknowledge that nothing in this Agreement obligates Participant to refer patients or business to any Other Participant, and Participant's participation in the System shall not be affected by the value or volume of referrals or other business, if any, between Participant and any Other Participant

#### **17. No Assignment.**

This Agreement may not be assigned or transferred by either party without the prior written consent of the other party. This Agreement shall inure to the benefit of and bind successors and permitted assigns of Participant and WISHIN. In no event shall consent to assignment be conditioned upon the payment of any fee, however, if Participant

assigns or transfers its rights and obligations under this Agreement it must be to an entity who meets the eligibility requirements set forth in Section 2.4 or an Affiliate of such entity

#### **18. Supervening Circumstances.**

No party to this Agreement shall be deemed in violation of this Agreement to the extent and for the time period it is prevented from performing any of the obligations under this Agreement by reason of (a) earthquakes or other natural occurrences, (b) nuclear or other civil or military emergencies, (c) acts of legislative, judicial, executive, or administrative authorities, or (d) any other unforeseeable circumstances that are not within its reasonable control where such party has exercised reasonable care under the circumstances. The occurrence of a force majeure event does not limit or otherwise affect WISHIN's obligation to implement its disaster recovery and business continuation plans

#### **19. Severability.**

Any provision of this Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Agreement, and such other provisions shall remain in full force and effect

#### **20. Notices.**

All notices required or permitted under this Agreement shall be in writing and sent to the other party. For WISHIN, notices shall be addressed to the individual designated on the signature page. For Participant, notices shall be addressed to the individual designated as "Legal Contact" on the signature page, with the exception of invoices which shall be sent to the individual designated as "Invoice Contact" if a different individual is designated by Participant. Either party may substitute from time to time the individual designated by written notice to the other and shall be deemed given upon receipt of such notice whether by certified mail, postage prepaid, nationally recognized overnight delivery or personal or courier delivery

#### **21. Waiver.**

No term of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach



## **22. Complete Understanding.**

22.1 This Agreement contains the entire Agreement and understanding of the Parties with respect to the subject matter of this Agreement, and there are no other written or oral understandings or promises between the Parties with respect to the subject matter of this Agreement other than those contained or referenced in this Agreement

22.2 This Agreement supersedes and replaces, as of the Effective Date, any prior Agreement between Participant and WISHIN to the extent encompassed by the Services and data sharing access under this Agreement, provided, however, that those obligations under such prior Agreement as are specified to survive or by their context otherwise would survive shall continue, including but not limited to confidentiality and indemnification obligations and limitations on liability

22.3 All modifications or amendments to this Agreement shall be in writing, contained in a document whose sole purpose is to amend or modify this Agreement, and signed by authorized representatives of the respective Parties

22.4 Amendment to Comply with the eHealth Exchange (formerly the Nationwide Health Information Network) Subject to and without limiting the Permitted Purposes, WISHIN may amend this Agreement to enable WISHIN and Participant to participate in and comply with a nationwide health information network WISHIN shall provide Participant with at least sixty (60) days prior written notice of any such amendment, and Participant then shall have thirty (30) days to provide written notice to WISHIN that Participant is terminating this Agreement If Participant fails to so notify WISHIN within such thirty (30) days, then the proposed amendment will become effective on the date specified by WISHIN (which date shall in no event be sooner than sixty (60) days after WISHIN provides its amendment notice to Participant)

## **23. Intended Third-Party Beneficiaries.**

It is the explicit intention of the parties hereto that all Other Participants and their respective successors and assigns are third-party beneficiaries of this Agreement and shall be entitled to bring any action to enforce any provision of this Agreement against Participant Likewise, it is the explicit intention of the parties hereto that Participant and its successors and assigns are third-party beneficiaries of WISHIN's Agreements with all Other Participants for the Services and System, and shall be entitled to bring any action to enforce any provision of such Agreements against any Other Participants

## **24. Intentionally Blank.**

## **25. Signature Authority.**

The individuals executing this represent and warrant that they are authorized to execute this Agreement on behalf of the Parties

## **26. No Federal or State Exclusion.**

Participant hereby represents and warrants that it is not and at no time has been (a) excluded from participation in any federally-funded health care program, including Medicare and Medicaid, or (b) ineligible, under Section 16705(9) of the Wisconsin Statutes, to contract with the State of Wisconsin Participant hereby agrees to immediately notify WISHIN of any threatened, proposed, or actual exclusion from any federally-funded program, including Medicare or Medicaid, or ineligibility to contract with the State of Wisconsin In the event that Participant is excluded from any federally-funded health care program or is ineligible to contract with the State of Wisconsin during the Term of this Agreement, or if at any time after the Effective Date of this Agreement, it is determined that Participant is in breach of this section, this Agreement shall, as of the effective date of such exclusion, ineligibility or breach, automatically terminate WISHIN shall screen all of its current and prospective owners, legal entities, officers, directors, employees, contractors, and agents ("Screened Persons") against (i) the United States Department of Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities (available through the Internet at <http://www.oig.hhs.gov>), (ii) the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://www.epls.gov>) and (iii) the State of Wisconsin list of ineligible vendors (available at <http://docs.legis.wisconsin.gov/statutes/statutes/16/IV/705/9?view=section>) (collectively, the "Exclusion Lists") to ensure that none of the Screened Persons (y) are currently excluded, debarred, suspended, or otherwise ineligible to participate in Federal healthcare programs or in Federal or State of Wisconsin procurement or non-procurement programs, or (z) have been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but have not yet been excluded, debarred, suspended, or otherwise declared ineligible (each, an "Ineligible Person") If, at any time during the Term of this Agreement any Screened Person becomes an Ineligible Person or proposed to be an Ineligible Person, WISHIN shall immediately notify Participant of the same Screened Persons shall not include any employee, contractor or agent who is not providing Services under this Agreement

WISHIN hereby represents and warrants that it is not and at no time has been (a) excluded from participation in any federally-funded health care program, including Medicare and Medicaid, or (b) ineligible, under Section 16 705(9) of the Wisconsin Statutes, to contract with the State of Wisconsin. WISHIN hereby agrees to immediately notify Participant of any threatened, proposed, or actual exclusion from any federally-funded program, including Medicare or Medicaid, or ineligibility to contract with the State of Wisconsin, and Participant may then elect to terminate this Agreement upon written notice to WISHIN.

## 27. Definitions.

For the purposes of this Agreement, the terms set forth in this section shall have the meanings assigned to them below. Terms not defined below (whether or not capitalized) shall have the definitions given them in HIPAA, unless the context requires otherwise.

**"Affiliate"** shall mean an entity in which Participant (1) is the sole corporate member, (2) has more than a fifty percent (50%) ownership interest, (3) has voting control of membership/ownership interests, or (4) has the ability to elect a majority of the voting control of the governing board. **"Affiliate"** also shall mean any individual or entity with which Participant has a direct or indirect business relationship and which Participant authorizes to use Participant's electronic health record, and any entity which is part of a chain of entities qualifying as an Affiliate under the requirements as set forth in (1) through (4) above. An Affiliate must qualify as permitted type of participant under Section 2.4.

**"All Participants"** means the Participant and all Other Participants. A list of All Participants can be found at [www.wishin.org](http://www.wishin.org).

**"Authorized User ID"** shall mean a unique identification that Participant obtains from the System and assigns to one of Participant's Authorized Users.

**"Authorized Users"** means those individuals authorized by Participant to have access to the System to assist Participant in providing treatment, obtaining payment for treatment, and/or conducting Participant's, including its Affiliates', health care operations.

**"Confidential Information"** means any information (a) provided by Participant hereunder in connection with the System or Services, and (b) created or derived by WISHIN through use of, access to, analysis of, the Health Data, Authorized User Data, or Participant's and/or its Authorized Users' use of

or access to the System and Services and includes such information regardless of the format or manner in which it is created, maintained or transmitted, including information concerning Participant's business, financial affairs, current or future products or technology, trade secrets, workforce, customers, identity of patients, the content of any medical records, information regarding Medicare, Medicaid and any other third party payor claims submission and reimbursements, or any other information that is treated or designated by such party or Participant as confidential or proprietary, or would reasonably be viewed as confidential or as having value to a competitor of such party or Participant. Confidential Information shall not include information that becomes publicly available or that becomes known to the general public other than as a result of a breach of an Agreement of confidentiality. PHI shall be considered Confidential Information, provided that in no event may PHI be disclosed contrary to the requirements in the HIPAA Business Associate Agreement.

**"Covered Entity"** has the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA regulations.

**"Documentation"** means the written specifications and user and technical manuals provided by WISHIN regarding the functionality and operation of the System.

**"Health Care Operations"** has the meaning set forth at 45 C.F.R. § 164.501 of the HIPAA regulations.

**"Health Care Payer"** means a health insurer, health plan or other entity that pays the cost of health care and is subject to HIPAA.

**"Health Care Provider"** means a person or organization that is a health care provider under HIPAA and is licensed or otherwise permitted to provide health care items and services under applicable state law.

**"Health Data"** means information that is requested, disclosed, stored on, made available through, or sent through the System including, but not limited to, protected health information (as defined under HIPAA), and information created or derived by access to or use of the System. Health Data includes Participant's Shared Information.

**"Health Plan"** has the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA regulations.

**"HIPAA"** means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH Act, and the regulations promulgated

thereunder, including the Privacy Rule and the Security Rule

**"HIPAA Business Associate Agreement" or "Business Associate Provisions"** means the Agreement set forth in Attachment 6, which may be amended from time to time by WISHIN and the Participant

**"HITECH Act"** means Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub L No 111-5 (Feb 17, 2009)

**"InterExchange Data Sharing Agreement"** means a WISHIN data sharing Agreement with another health information exchange or network and includes the Data Use and Reciprocal Support Agreement (DURSA) for the eHealth Exchange. Each InterExchange Data Sharing Agreement will require the other health information exchange/network to have Agreements with each of its participants that include access and use restrictions substantially similar to the DURSA and, at a minimum, require its participants and their authorized users to (i) comply with applicable laws, including but not limited to HIPAA, (ii) access and use Participant's Shared Information only for a Permitted Purpose, (iii) as soon as reasonably practicable after determining that a breach has occurred, report the breach to the affected party, and (iv) refrain from disclosing to any other person any passwords or other security measure that are issued to an authorized user

**"Miscellaneous Charges"** means the miscellaneous charges set forth in Attachment 5, which may be changed in accordance with this Agreement

**"Opt Out"** means an individual's ability to request from WISHIN certain limitations on the disclosures of his/her PHI in the System

**"Other Participants" or "Participants"** means other entities that have access to the System and have signed a participation Agreement containing an obligation, on terms substantially similar to those contained in this Agreement

**"Participant Advisory Board"** means an advisory board of System participants

**"Participant Advisory Board Approval"** means the affirmative vote (by proxy or in person) of, or written consent from, at least two-thirds of the members of the Participant Advisory Board

**"Participant ID"** means a unique user identification assigned to Participant

**"Participant's Shared Information"** means Health Data, including health information relating to Participant's patients or enrollees, that Participant and/or its Authorized Users make available to WISHIN under this Agreement

**"Payment"** has the meaning set forth at 45 C F R § 164.501 of the HIPAA regulations

**"Permitted Purposes"** means one of the following purposes for which Participant and Other Participants may lawfully disclose, receive and use the Health Data

1 Treatment of the individual who is the subject of the Health Data,

2 Public health activities and reporting as permitted by Applicable Law, including the HIPAA Regulations at 45 C F R § 164.512(b) or 164.514(e), to the extent authorized by Participant in Attachment 1 to this Agreement,

3 The uses set forth in the attached Attachment 4, as the same may be revised from time to time by WISHIN to reflect any additional uses that are approved by the WISHIN Board of Directors and the Participant Advisory Board according to the process set forth in Section 1.3

**"Policies and Procedures"** means WISHIN's rules, regulations, policies and procedures for access to and use of the System, which WISHIN may, from time to time, change in accordance with this Agreement and post electronically on the System or otherwise furnish to Participant. The initial Policies and Procedures include the WISHIN Privacy Policies, WISHIN System Security Policies and the WISHIN Pulse and DirectPlus Participant Safeguard Checklist

**"Protected Health Information" or "PHI"** has the same meaning as protected health information under 45 C F R § 160.103 of the HIPAA regulations

**"Privacy Rule"** means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E

**"Psychotherapy Notes"** means notes recorded (in any medium) by a healthcare provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. "Psychotherapy Notes" excludes medication

prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date

**"Public Health Authority"** means an agency or authority of the United States, a state, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate

**"Security Incident"** means the attempted or successful unauthorized access, use, disclosure, modification, loss of information downloaded from the System for other than a Permitted Purposes, or destruction of information or interference with system operations in an information system

**"Security Rule"** means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 160 and part 164, subparts A and C

**"Services"** means the services and access listed in Attachment 1 to this Agreement and access to other health information exchanges and networks for which WISHIN has an InterExchange Data Sharing Agreement

**"Subcontractor"** means any third party engaged by WISHIN to assist in the design or operation of the System or in the performance of WISHIN's obligations under this Agreement

**"Subscription and Service Fees"** means the fees set forth in Attachment 5, which may be changed in accordance with this Agreement

**"System"** means the electronic communication network operated by WISHIN, including all hardware provided by WISHIN, the System Software and the Third-Party Software used or provided by WISHIN, and all documentation provided by WISHIN in connection with the System, paper or electronic, all as more specifically described on Attachment 3 to this Agreement

**"System Software"** means the software licensed to WISHIN by its software licensor which consists of the applications and services described under Description of the System in Attachment 3. System Software does not include the Third-Party Software identified in Attachment 3

**"Technical Requirements"** means the hardware, software and communications systems necessary to use the System. The Technical Requirements can be found at [www.wishin.org](http://www.wishin.org). The Technical Requirements may be changed from time to time by WISHIN in accordance with this Agreement

**"Term"** means the initial term and all renewal terms of this Agreement

**"Third-Party Software" or "Third Party Software and Services"** means the software and services that is provided by third parties other than the licensor of the System Software. The Third-Party Software and Services as of the Effective Date are set forth in Attachment 3

**"Treatment"** has the meaning set forth at 45 C.F.R. § 164.501 of the HIPAA regulations

**"WISHIN's Authorized Personnel"** means WISHIN's employees and independent contractors under confidentiality obligations on terms substantially similar with the confidentiality provisions contained in this Agreement

## **28. Rules of Construction.**

28.1 Words used herein, regardless of the number and gender used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires, and, as used herein, unless the context requires otherwise, the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement

28.2 A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted

28.3 The term "including" shall be deemed to mean "including without limitation"

28.4 Article and section headings used in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement

## SIGNATURES

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate original as of the date(s) indicated below

### PARTICIPANT

City of Franklin

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Fax \_\_\_\_\_

E-mail \_\_\_\_\_

Date Signed \_\_\_\_\_

### WISHIN:

Wisconsin Statewide Health Information  
Network, Inc

Signature \_\_\_\_\_

Printed Name Steve Rottmann

Title Chief Operating Officer

Address 5510 Research Park Drive  
Madison, WI 53711

Phone 608-274-1820

Fax 608-274-8554

E-mail srothmann@wishin.org

Date Signed \_\_\_\_\_

### Legal Contact (if different from above)

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail \_\_\_\_\_

Phone \_\_\_\_\_

### Invoice Contact (if different from above)

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail \_\_\_\_\_

Phone \_\_\_\_\_

Address \_\_\_\_\_

Will a purchase order number be used? ☐ Yes ☐ No

PO Number \_\_\_\_\_

Do you prefer to receive invoices via email? ☐ Yes ☐ No

## ATTACHMENT 1: PRODUCTS AND SERVICES

The Products and Services mix below may change. Products and/or Services added later are subject to additional fees.

### Subscription Services

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#### **[X] WISHIN Pulse Subscription Services\***

Includes

- Wholly-owned clinics on the same data source
- All standard training and training materials
- Onboarding for one data source
- Requires WISHIN Pulse Onboarding (below, under One-Time Services)

Additional WISHIN Pulse services (additional fees may apply)

- ☒ SSO EHR Integration
- ☒ WISHIN Direct+ Secure Messaging
- ☐ Automated Query and Retrieve CCD (QnR)\*
- ☐ Access to ePDMP
- ☐ Syndromic Surveillance data delivery to the State of Wisconsin (PHSS)
- ☐ Immunization data delivery to the State of Wisconsin Immunization Registry (WIR)
- ☐ Lab Results Delivery
- ☐ Additional Data Sources (quantity) \_\_\_\_
- ☐ Additional sites on different EHRs \_\_\_\_

Interfaces (select all that apply)

- ☒ ADT\* (health plan member file)
- ☐ Laboratory
- ☐ Radiology
- ☐ Pathology
- ☐ Transcription
- ☐ EKG
- ☒ CCDA

### One-Time Services

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#### **[X] WISHIN Pulse Onboarding**

#### **[--] WISHIN QnR\***

\* = Designates services available to Payers

## **SCHEDULE 1 TO ATTACHMENT 1: ELECTED PRODUCTS AND SERVICES REQUIREMENTS**

In electing the products and/or services in Attachment 1, Participant agrees to be bound by the following requirements for the applicable elected product and/or service

### **1 Wisconsin Immunization Registry**

#### **1.1 Purpose**

The Division of Public Health (DPH) in partnership with the Division of Health Care Financing has developed the Wisconsin Immunization Registry (WIR). To ensure the reciprocal cooperation that is integral to implementing and maintaining a successful statewide immunization registry that encompasses all public and private providers, all parties must abide by the specific responsibilities listed below.

#### **1.2 Responsibilities**

##### **1.2.1 Division of Public Health**

The WIR will serve as the central repository for all immunizations collected throughout the State. This includes immunizations provided directly to the WIR by participating providers or provided indirectly through other registries or exchange services, such as WISHIN, that may operate within the state. The DPH will provide WISHIN with consultation and technical assistance necessary to ensure ongoing connectivity between the WIR and Participant.

##### **1.2.2 Participant**

The Participant must have a signed *WIR Security and Confidentiality Agreement (DPH 42008)* on file with the Wisconsin Immunization Program and maintain up-to-date provider contact information in the WIR. Participant should contact DPH's Wisconsin Immunization Program to obtain the WIR Security and Confidentiality Agreement (DPH 42008). Questions about the WIR Security and Confidentiality Agreement must be directed to the Wisconsin Immunization Program. The WIR Security and Confidentiality Agreement must be on file with Wisconsin Immunization Program before any protected health information (PHI) may be shared via WISHIN.

Participant agrees that

- Participant will provide only updated immunization information to WISHIN to be sent to the WIR.
- The immunization data sent by Participant will be for all patients with associated immunizations.
- Participant shall work with WISHIN to test immunization data feeds before production data is sent to the WIR. Participant understands that no production data will be sent to the WIR without adequate testing and Participant approval (via a sign-off). In the event that WISHIN performs data transformation services for Participant, those transformations must be approved by Participant prior to production data being sent to the WIR.
- The Participant will inform patients that their data will be shared with the WIR.
- If a parent, guardian or legal custodian chooses to exclude a patient from the WIR or to limit data access to a particular provider, that decision will be honored by the Participant.
- Participant will comply with all technical requirements for data format and transport to WISHIN. This includes establishing a web service connection to WISHIN to send and receive data. Participant understands that their electronic health record (EHR) or other vendor may need to make changes in their EHR or other systems in order to comply with these requirements. Participant understands that their EHR or other vendor(s) may charge separately for these services.
- Participant may receive immunization data from the WIR via WISHIN. Participant agrees to work with WISHIN to test the receipt of the data prior to accepting it in the Participant's production environment. Participant understands that no production data will be sent to their EHR or other system(s) without adequate testing and Participant approval (via a sign-off).

##### **1.2.3 WISHIN**

By way of an established web service connection between Participant and WISHIN, WISHIN will send Participant's supplied immunization data to the WIR on a real-time basis and will send acknowledgements and/or errors from the WIR to Participant. WISHIN does not store immunization data.

After completion of the testing of data feeds and Participant approval described above, WISHIN will pass all immunization data provided by the Participant to the WIR. WISHIN will not filter or restrict the data, however, WISHIN may provide data transformation services to Participant if needed to meet Meaningful Use requirements or to meet requirements of the WIR. Any data transformation must be approved by Participant.

WISHIN may also send immunization data from the WIR to the Participant's EHR or other system.

## **2 WISHIN Direct+**

Participants using WISHIN Direct+ and/or the WISHIN Direct+ product suite must assign at least one Organization Representative. Each Organization Representative must complete an Identity Verification Form (IVF) and comply with the requirements below and in the IVF. A *sample* IVF can be found in Attachment 7, however, WISHIN will supply Participant with the appropriate form as part of the implementation and onboarding process.

### **2.1 Direct Messaging and WISHIN Direct+**

Direct messaging, often called "Direct," is a basic form of health information exchange (HIE) that allows health care providers to securely and electronically send patient information to other specified providers, or to patients themselves. Commonly compared to sending secure email, this information is sent over the Internet in an encrypted, protected way that is HIPAA-compliant.

WISHIN is a Health Information Service Provider (HISP), which means WISHIN is certified to offer Direct addresses (which are similar to email addresses) and WISHIN provides the service to transmit the Direct messages. WISHIN's HISP and Direct messaging product is known as WISHIN Direct+.

With a WISHIN Direct+ address, a health care provider can exchange clinical documentation with providers or patients registered with another HISP anywhere in the United States, provided the other HISP conforms to the standards and requirements required for Direct messaging established by The Direct Project ([www.wiki.directproject.org](http://www.wiki.directproject.org)) and any other requirements identified by the receiving HISP.

### **2.2 The Direct Project**

The Direct Project is a federal government standard designed to enable simple, secure, email-based exchange of clinical documentation between health care providers. Because WISHIN is a HISP, WISHIN customers can assign and administer a WISHIN Direct+ address (similar to an email address) for each health care provider in their "domain." In addition, WISHIN can also assign and administer WISHIN Direct+ addresses on behalf of our customers in our standard "domain."

WISHIN Direct+ conforms to the requirement set forth by the national Direct Project ([www.wiki.directproject.org](http://www.wiki.directproject.org)), including the "Applicability Statement for Secure Health Transport," which describes how to use SMTP, S/MIME, and X 509 certificates to securely transport health information over the Internet.

### **2.3 WISHIN Direct+ Domains and Addresses**

WISHIN customers assign and administer a WISHIN Direct+ address (similar to an email address) for each health care provider in their "domain." Participants who elect to use WISHIN Direct+ will assign and administer the WISHIN Direct+ addresses for health care providers in their "domain."

Participants select a WISHIN Direct+ domain that identifies their hospital or practice. Smaller practices may choose to be a sub-domain of the standard WISHIN Direct+ domain. Some examples:

- direct.practiceA.org
- direct.healthsystem123.com
- practiceB.wishinplus.org
- direct.hospital123.org
- direct.clinicABC.org



(wishinplus.org is WISHIN's standard domain)

Participants are required to manage all of the WISHIN Direct+ addresses for their domain. Some examples of WISHIN Direct+ addresses for the above domains could be

- Jane.Doe@direct.practiceA.org
- John.Doe@healthsystem123.com
- Betty.DoeMD@clinicABC.org
- Ben.DoeMD@hospital123.org
- HIM.Department@hospital123.org\*
- Bob.DoeMD@practiceB.wishinplus.org

\*Note: Department addresses may not be acceptable for Eligible Professionals participating in Meaningful Use Incentive Programs

Participant is required to assign WISHIN Direct+ addresses (see section 2.5 below for more detailed requirements around assigning WISHIN Direct+ addresses)

## 2.4 Exchanging Messages with Health Care Providers on Other HISPs

As noted above, *"with a WISHIN Direct+ address, a health care provider can exchange clinical documentation with providers or patients registered with another HISP anywhere in the United States, provided the other HISP conforms to the standards and requirements required for Direct messaging established by The Direct Project ([www.wiki.directproject.org](http://www.wiki.directproject.org)) and any other requirements identified by the receiving HISP."* Some HISPs also require participation in the Direct Trusted Agent Accreditation Program, or DTAAP, in order to exchange messages with their HISP. This is sometimes referred to as being a "DirectTrust participant."

To ensure Participants using WISHIN Direct+ are able to send Direct messages to other health care providers, regardless of the HISP those others may be using, WISHIN's System Software Licensor is participating in DTAAP and is a "DirectTrust participant."

### 2.4.1 DirectTrust and DTAAP

DirectTrust ([www.directtrust.org](http://www.directtrust.org)) is a non-profit health care industry alliance that has established and maintains rules, standards, and policies associated with the operation of the security and trust-in-identity layer for Direct exchange. Taken together, these make up a Security and Trust Framework that supports both Direct exchange implementers and users.

DirectTrust uses its Security and Trust Framework as the basis for a voluntary accreditation and audit program for Direct implementers and service providers (this program is known as the Direct Trusted Agent Accreditation Program, or DTAAP). DTAAP is operated as a partnership between DirectTrust and the Electronic Healthcare Network Accreditation Commission ([EHNAC](http://www.ehnac.org)).

WISHIN's System Software Licensor is participating in DTAAP which recognizes excellence in health data processing and transactions, and ensures compliance with industry-established standards, HIPAA regulations and the Direct Project.

In addition to DTAAP, DirectTrust distributes what are known as "trust anchor" digital certificates from accredited HISPs so that Direct messages can be exchanged across different HISPs. WISHIN's trust anchor certificate will be part of DirectTrust's "trust bundle" to ensure Participants using WISHIN's HISP are able to exchange information with health care providers on other HISPs in the "trust bundle."

The EHNAC-DirectTrust accreditation program is endorsed by the Office of the National Coordinator for Health IT (ONC).

## 2.5 Participant Requirements

### 2.5.1 Definitions

Health Information Service Provider (HISP) the organizations responsible for on-boarding health care organizations and facilitating the transfer of Direct messages. WISHIN is a HISP. WISHIN Direct+ is the name of WISHIN's HISP and the product WISHIN uses to facilitate the transfer of Direct messages.

Certificate Authorities (CAs) organizations that issue Digital Certificates meeting the requirements set forth in the DirectTrust certificate policy

Registration Authorities (RAs) organizations that verify the identity of users in accordance with the required Levels of Assurance (LoA) Health care providers must meet DirectTrust LoA level 3 (LoA3) requirements (equivalent to NIST LOA3 - NIST publication 800-63) Anyone assigning a Direct address to a user and/or creating a Direct account is an RA **Participant is the RA for any WISHIN Direct+ domain established for their organization.**

Organization Representatives individuals from a Participant that serve as representatives for their organization with regards to RA responsibilities The Organization Representative is responsible for managing use of the certificate for their organization **Organization Representatives are Registration Authorities (RAs) for the WISHIN Direct+ domain established for their organization.**

Trust Agents individuals from a Participant who assist in collecting the documentation necessary to establish Organization Representatives Trust Agents must also be Organization Representatives The Trust Agent then executes an Agreement that appoints them as an agent for the purposes of collecting documentation, verifying identities, and providing identity information

## 2.5.2 Participant Registration Authority Requirements

This section provides a summary of the responsibilities of a Registration Authority Participant must comply with Registration Authority requirements set forth by the Direct Project and DirectTrust

Digital Certificates are required for Direct messaging and thus, required for WISHIN Direct+ In order to receive a Digital Certificate, Participant must assign at least one Organization Representative The assigned Organization Representative must complete the Identity Verification Form in Attachment 7

Organization Representatives are Registration Authorities for their organization's WISHIN Direct+ domain As such, Organization Representatives must comply with all Direct Project and DirectTrust requirements for Registration Authorities

Organization Representatives are required to verify the identity of all users to whom they assign a WISHIN Direct+ address Identity verification must be done in accordance with DirectTrust Level of Assurance 3 (LoA3) standard

Identity verification is typically done by the user presenting paper credentials (like a driver's license) and by records in databases This process is called identity proofing The Organization Representative must maintain records of the identity proofing for all users

To get a Direct address, a health care provider first applies (as an "Applicant") to the Organization Representative The Organization Representative identity proofs that health care provider As the result of successful identity proofing, the health care provider is given a WISHIN Direct+ address and becomes a user of the Digital Certificate assigned to the Participant The table below summarizes the requirements for identity proofing set forth for LoA3

Level of Assurance 3	
In Person	Remote
<b>Applicant Actions ("Applicant" is person requesting a Direct address):</b>	
Possession of verified current primary Government Picture ID that contains applicant's picture and either address of record or nationality (e.g. driver's license or passport)	Possession of a valid Government ID (e.g. a driver's license or passport) number and a financial account number (e.g., checking account, savings account, loan or credit card) with confirmation via records of both numbers
<b>RA / Organization Representative Actions:</b>	

<ul style="list-style-type: none"> <li>• Inspects Photo-ID and verify via the issuing government agency or through credit bureaus or similar databases. Confirms that name, DoB, address and other personal information in record are consistent with the user being provided the account</li> <li>• Compare picture to applicant, record ID number, address and DoB. If ID is valid and photo matches applicant then <ul style="list-style-type: none"> <li>a) If ID confirms address of record, authorize or issue credentials and send notice to address of record, or,</li> <li>b) If ID does not confirm address of record, issue credentials in a manner that confirms address of record</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Verifies information provided by applicant including ID number and account number through record checks either with the applicable agency or institution or through credit bureaus or similar databases, and confirms that name, DoB, address and other personal information in records are consistent with the application and sufficient to identify a unique individual</li> <li>• Address confirmation <ul style="list-style-type: none"> <li>a) Issue credentials in a manner that confirms the address of record supplied by the applicant, or</li> <li>b) Issue credentials in a manner that confirms the ability of the applicant to receive telephone communications at a number associated with the applicant in records, while recording the applicant's voice</li> </ul> </li> </ul>
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In addition to the identity verification and proofing requirements, Participant must comply with the following requirements that are specified by the Direct Project and/or DirectTrust. These are not an exhaustive list. Participants should refer to the Direct Project ([www.wiki.directproject.org](http://www.wiki.directproject.org)) and DirectTrust ([www.directtrust.org](http://www.directtrust.org)) for a complete set of requirements.

- Participants must have a written policy or practice statement that specifies the particular steps taken to verify identities for their WISHIN Direct+ domain and the identity proofing and registration process shall be performed according to that policy/statement
- Participants must provide WISHIN with a list of all WISHIN Direct+ addresses assigned to their organization's domain
- Individuals assigned a WISHIN Direct+ address must know who their Organization Representative is and the Organization Representative represents them

### 3. **WISHIN Pulse**

#### 3.1 Prescription Drug Monitoring Program

WISHIN Pulse may include medication information from Wisconsin's Prescription Drug Monitoring Program ("PDMP"). The PDMP is a statewide program that collects information about monitored prescription drugs that are dispensed to patients in Wisconsin.

The Legislature passed a law in 2010, 2009 Act 362, that directed the Pharmacy Examining Board to create the PDMP through administrative rule. Administration of the PDMP program has since been transferred to the Controlled Substances Board (the "CSB") and is now part of Wis. Adm. Code Ch. CSB. The primary purpose of the PDMP is to improve patient care and safety and reduce the abuse and diversion of prescription drugs in Wisconsin while ensuring patients with a legitimate medical need for the drugs are not adversely affected.

The PDMP contains information submitted to it by pharmacies and practitioners, including physicians, dentists, advance practice nurse prescribers, and others. As such, the CSB makes no claims, promises, or guarantees about the accuracy, completeness, or adequacy of the contents of the data in the PDMP and expressly disclaims liability for errors and omissions in the contents of this report.

##### 3.1.1 PDMP Data and Timing

"Monitored prescription drugs" are defined in the administrative rules of CSB Ch. 4. While the CSB may change the definition in the future, the current list of monitored prescription drugs is

- controlled substances included in § 961 385(1) of the Wisconsin Statutes (e.g. controlled substances listed in Schedule II, III, IV or V)
- Any other drug identified by the CSB as having a substantial potential for abuse

By law, dispensers of monitored prescription drugs are required to collect and submit information to the PDMP about each dispensing of a monitored prescription drug. Dispensers have up to seven (7) days to submit data after dispensing a monitored prescription drug, which means that the data may be up to seven (7) days old. PDMP data is made available to WISHIN Pulse at the time it is available to the PDMP.

The PDMP has been fully operational since June 1, 2013.

### 3.1.2 PDMP and HIPAA

HIPAA regulations state that health care providers may disclose protected health information without patient consent if the disclosure is mandated by statute or regulation. Reporting to the PDMP is required by § 961 385, Wis. Stats., and Wis. Adm. Code § CSB 4.05 (1). Therefore, dispensers do not violate HIPAA by disclosing to the PDMP protected health information without patient consent.

### 3.1.3 Authorized Access to PDMP Data via WISHIN Pulse

Participant's Authorized Users may see PDMP data for a given patient within WISHIN Pulse. Whether or not the PDMP data is made available to the Participant's Authorized Users depends on the role and security permissions of the Authorized User in WISHIN Pulse and the patient's opt out status (see section below for more information on PDMP data for opted out patients).

Under § CSB 4.09, only pharmacists, pharmacist delegates, practitioners, and practitioner delegates are able to access the PDMP data directly. Pharmacists and practitioners may delegate the task of accessing and querying the PDMP for information. However, the licensed pharmacist or practitioner has to verify the delegation and remains responsible for the delegate's use of the PDMP data. These same requirements apply when the PDMP data is accessed via WISHIN Pulse.

Under § CSB 4.11, other users, such as patients, patient delegates, federal and state agencies, Department of Safety and Professional Services investigatory staff, medical examiners, and law enforcement authorities, must submit requests for information and provide proof that the information is for a legally authorized purpose. WISHIN Pulse does not support these types of users and will not disclose PDMP data to these types of users.

WISHIN shall only disclose PDMP data to pharmacists, practitioners, and delegates of pharmacists or practitioners, for Treatment and as such persons are otherwise authorized to access similar confidential patient health care records under Sections 146.82 and 961 385 of the Wisconsin Statutes, CSB Ch. 4 and other state or federal laws and regulations relating to the privacy of patient health records.

### 3.1.4 Conditions to Accessing PDMP data provided via WISHIN

The following are conditions to accessing and using the Wisconsin PDMP data through WISHIN:

1. Participant will restrict access to PDMP data to only those Authorized Users who satisfy all requirements and are eligible to create an account to access PDMP data in the Wisconsin PDMP database pursuant to Wisconsin Administrative Code section CSB 4.09 and their designated delegates (a "PDMP Authorized User"). No other Authorized Users will be allowed access to the PDMP data.
2. Participant understands that access to the Wisconsin PDMP database through WISHIN and use of PDMP data by PDMP Authorized Users is permitted only for Treatment purposes or as otherwise permitted or required by applicable state and federal law.
3. Participant understands that any other access or disclosure of PDMP data is a violation of Wisconsin law and may result in civil sanctions or disciplinary action. Participant will otherwise treat the PDMP data in the system as any other health care information and will protect the information in accordance with federal and state laws governing health care information.

4 Participant understands that Wisconsin law requires each PDMP Authorized User to be responsible for all use of his/her user name and password and any use of the system by his/her delegate PDMP Authorized Users are to never share their password with anyone, including co-workers PDMP Authorized Users will be required to immediately notify Participant if any authentication or password is lost or compromised, or if a PDMP Authorized User who is a delegate no longer needs that access, and Participant agrees to immediately close the compromised account or terminate such delegate's access to PDMP data

5 Participant understands that all use of the Wisconsin PDMP database may be monitored and audited by the CSB and the State of Wisconsin for unusual or potentially-unauthorized use

### 3.1.5 PDMP Data for Opted-Out Patients

While patients cannot opt out of having their monitored prescription drugs included in the PDMP, patients can opt out of having their information shared via WISHIN Pulse In the event that a patient has opted out of having their information shared via WISHIN Pulse their PDMP information will not be available to Participant's Authorized Users via WISHIN Pulse, even though the information may be available directly from the PDMP

### 3.2 Payer Access to WISHIN Pulse Community Health Record

As a condition of Participants, which are Health Care Payer, having access to this Service, the Participant must make certain Health Data, relating to the payer's enrollees, members and/or insureds and their dependents, available through the System The required Health Data will be set forth in a WISHIN payer access policy (the "Payer Access Policy") (i) developed in consultation with WISHIN Participants or potential participants that include both payers and health care providers, and (ii) approved by the Participant Advisory Board and the WISHIN Board of Directors Participant is required to make such Health Data available upon the granting of those approvals of the Payer Access Policy and the System having been configured to accept and share the Health Data The WISHIN participant's right to access to this Service will immediately cease if Participant fails to make the required Health Data available after the date required by the Payer Access Policy

## ATTACHMENT 2: SOFTWARE MAINTENANCE AND SUPPORT; SERVICE LEVELS AND CREDITS

### 1. Software Maintenance and Support.

WISHIN and the licensor of the System Software (the "**System Software Licensor**") will provide maintenance and support for the System Software. This Attachment generally describes WISHIN's support and maintenance obligations to Participant, which are intended to maintain a high level of System availability and performance.

#### 1.1 Definitions

**Problem Resolution.** Resolution is defined as (a) Providing a reasonable solution to the incident, or (b) Providing a reasonable work-around to the incident, or (c) Determination by WISHIN that the incident is an enhancement request and forwarding the request to the System Software Licensor, or (d) Escalation by WISHIN of the incident/bug to the System Software Licensor for review.

**Standard Help Desk Hours ("Standard Hours").** WISHIN's Standard Hours are Monday through Friday 8:00 a.m. Central to 4:30 p.m. Central, except WISHIN published holidays.

**Off-Hours Help Desk Hours ("Off Hours").** WISHIN's Off Hours are Monday through Friday 4:30 p.m. Central to 8:00 a.m. Central, Saturday and Sunday all day, and WISHIN published holidays.

**Authorized Participant Contacts ("Participant Contacts").** Participant shall designate at least one and no more than five persons who shall serve as Participant's point of contact for all support and service activities related to the System Software.

### 2. Support Scope.

#### 2.1 Included Support

- WISHIN will provide to Participant, Upgrades on a "when and if available" basis. "Upgrade" means a successor version of the System Software.
- Resolving performance and operational issues of the System Software.

#### 2.2 Excluded Support

- Problems caused by Participant's computer system, hardware or third party software, power outage, network equipment related failures and Internet or Intranet downtime.
- Problems caused by personnel (other than those of WISHIN or its System Software Licensor) making changes to the System.
- System or database backups, restoration and maintenance not following mutually agreed upon processes.
- User administration issues.

### 3. Support Priority.

Participant and WISHIN will mutually assign a priority associated with a given call, as specified in the table below. All reported incidents will be addressed, but the highest priority incidents will be expedited through the Resolution process.

PRIORITY	DESCRIPTION	RESPONSE TIMING
1	<p>Loss of service, or serious impairment of service, which cannot be circumvented</p> <p>Examples of this type of problem are</p> <ul style="list-style-type: none"> <li>• Web server not accepting connections due to functionality or performance issues</li> <li>• Persistent inability to access clinical information due to functionality or performance issues</li> <li>• Critical product feature does not work (identifiable part of functionality), no workaround exists or workarounds are impractical</li> <li>• User data is corrupted</li> <li>• Reproducible, unavoidable crash or deadlock</li> <li>• Legally incorrect text or graphics</li> </ul>	<p>During Standard Hours WISHIN will</p> <ul style="list-style-type: none"> <li>• Acknowledge receipt of the problem report within fifteen (15) minutes</li> <li>• Verify the problem and notify the Participant Contact with the plan of action, within one (1) hour</li> <li>• Provide updates at least every thirty (30) minutes, or at a frequency mutually agreed upon by WISHIN and the Participant Contact</li> </ul> <p>During Off Hours WISHIN and/or the System Software Licensor will</p> <ul style="list-style-type: none"> <li>• Acknowledge receipt of the problem report within thirty (30) minutes</li> <li>• Verify the problem and notify the Participant Contact with the plan of action within one (1) hour</li> <li>• Provide updates at least every thirty (30) minutes, or at a frequency mutually agreed upon by WISHIN/the System Software Licensor and Participant Contact</li> </ul>
2	<p>A problem exists which can be reasonably circumvented or does not materially affect normal operations</p> <p>Examples of this type of problem are</p> <ul style="list-style-type: none"> <li>• A non-functioning product feature which is not critical to a User (identifiable part of functionality)</li> <li>• Part of a product feature is affected, a viable workaround exists</li> <li>• Performance is less than optimum</li> <li>• Highly visible usability problem that doesn't affect functionality</li> </ul>	<p>During Standard Hours WISHIN will</p> <ul style="list-style-type: none"> <li>• Acknowledge receipt of the problem report within thirty (30) minutes</li> <li>• Verify the problem and notify the Participant Contact with the plan of action within two (2) hours</li> <li>• Provide updates at least once every one-hour (1) or at a frequency mutually agreed by WISHIN and Participant Contact</li> </ul> <p>During Off Hours WISHIN and/or the System Software Licensor will</p> <ul style="list-style-type: none"> <li>• Acknowledge receipt of the problem report within thirty (30) minutes</li> <li>• Verify the problem and notify the Participant Contact with the plan of action within two (2) hours</li> <li>• Provide updates at least every one-hour (1) , or at a frequency mutually agreed upon by WISHIN and Participant Contact</li> </ul>
3	<p>Failure of a system which does not have any effect on normal operations</p>	<p>During Standard Hours WISHIN will</p> <ul style="list-style-type: none"> <li>• Verify the problem and notify the Participant Contact with an acknowledgement within one (1) hour and plan of action within forty-eight (48) hours</li> <li>• Provide updates at least once every ten (10) business days or at a frequency mutually agreed by the WISHIN and Participant Contact</li> </ul> <p>During Off Hours</p> <ul style="list-style-type: none"> <li>• No Off Hours support provided for Priority 3 problem reports</li> </ul>

#### 4 Support Channels.

The following support channels are available to Participant Contacts

CHANNEL	PRIORITY	AVAILABILITY	USAGE CONSTRAINT
Phone support 1-888-WISHIN1	1 & 2	24 by 7	Participant Contact has followed the support protocol (to exclude problems caused by Participant Software, Participant power outages, and/or Participant's network)
Email support Wishin support@wishin.org	3	Standard Hours	Participant Contact has followed the support protocol (to exclude problems caused by Participant Software, Participant's power outages, and/or Participant's network)

Participant Contact may email WISHIN's support mailbox to check the status of an open problem report, regardless of priority. Participant Contact may request that an open problem report be re-prioritized. Reprioritization requests must be made to WISHIN's Help Desk through one of the support channels defined above.

WISHIN will use commercially reasonable efforts to perform the support services provided for under this Agreement. Information provided by Participant Contact in connection with WISHIN's performance of the support services may be used without restriction by WISHIN to support or enhance WISHIN's products and services.

WISHIN will use reasonable efforts to resolve reported issues that have been determined to be product bugs in a timely manner. Reported bugs will generally be addressed as part of a scheduled maintenance release, by severity, on a first come, first served basis. Severe bugs that fall outside of the scheduled maintenance release will be evaluated for correction on a case-by-case basis.

#### 5. Quality Assurance.

Prior to WISHIN's providing or making available to Participant any patch, enhancement, update or any other release of the System Software, WISHIN and Participant, as applicable, shall test and validate that such release meets or exceeds the requirements of this Agreement, including but not limited to the security obligations and obligations regarding prevention or introduction of viruses. Participant must also verify that Participant's data continues to be accurately represented by the System.

#### 6 Service Levels and Credits.

WISHIN has negotiated a System availability service level with the System Software Licensor, who is providing hosting services for the System for those Participants that request hosting. The service level and credits that WISHIN may receive if the System Software Licensor fails to meet the service level (the "SLA") are set forth below. If WISHIN receives any SLA credits, WISHIN will pass those credits through to All Participants, who were System participants at the time of the deficiency in the service level ("Affected Participants"). The credits will be allocated amongst the Affected Participants in proportion to their relative Subscription Fees and applied as a credit towards their next Subscription Fees.

#### 7 SYSTEM AVAILABILITY Service Level Agreement (SLA) with Participant

##### 7.1 Definitions

**"System Availability"** will be defined as maintaining availability to the production system less Time Exclusions.

**"Time Exclusions"** shall mean any time during which any of the following conditions exist:



- The System is inaccessible during Planned Maintenance hours, which includes regular monthly maintenance hours for applying patches, bug fixes, or upgrades to the System,
- The System is inaccessible during non-planned maintenance hours, provided that at least 24 hours' notice has been given to Participant Contact,
- The System is inaccessible during planned upgrades,
- The System Software Licensor is given an "alert" by an operating system or other software vendor to install one or more patches for any virus(es) or other needs for which the time of application is reasonably and mutually agreed upon by WISHIN and the System Software Licensor,
- When WISHIN or the System Software Licensor are loading a new release in the production environment,
- Force majeure conditions or during the System Software Licensor-declared disaster, or
- Participant's breach of the Agreement

**"Planned Maintenance"** shall mean regularly scheduled monthly maintenance windows

**"Unscheduled Downtime"** shall mean the occurrence of any of the following conditions which are the primary fault of WISHIN

- System is inaccessible due to an outage of the System Software Licensor's contracted carrier lines
- System is inaccessible due to a System Software Licensor data center-based hardware or infrastructure software outage
- Any of the following Application Services are completely inoperable
  - All WISHIN Pulse User Login Functions
  - All WISHIN Pulse Patient Inquiry Functions
  - All WISHIN Pulse Patient Chart Display Functions

## 7.2 System Availability Service Levels

Excluding any Time Exclusions, WISHIN will achieve a 99.9% System Availability of WISHIN's production environment measured monthly and calculated in accordance with Section 7.2.1 below. System Availability and SLA Credits will be determined on a monthly basis.

Affected Participants shall be entitled to an SLA Credit as set forth below:

- a) Affected Participants shall be entitled to a SLA Credit of no more than 10% of Affected Participant's monthly portion of Participant's annual Subscription Fee for each month that the System Availability falls below 99.9% for the applicable application. SLA credits shall be distributed based on the table below. SLA Credits will be applied toward Participant's next annual Subscription Fee. In no event shall the SLA Credits exceed 10% of the Participant's next annual Subscription Fee.

Less Than:	Equal To or More Than:	SLA Credit
0.999	0.998	1%
0.998	0.997	2%
0.997	0.996	3%
0.996	0.995	4%
0.995	0.994	5%
0.994	0.993	5%
0.993	0.992	7%
0.992	0.991	8%
0.991	0.99	9%
0.99		10%

For example: If Affected Participant's annual Subscription Fee is \$24,000, the monthly portion would be \$2,000 (\$24,000/12). If System Availability fell between 99.6% and 99.7% for one month, the Affected Participant would be entitled to an SLA Credit of 3%, or \$60 (\$2,000\*3%). The \$60 SLA Credit would be applied toward the Participant's next annual Subscription Fee. The total SLA Credits for the Affected Participant in this example could never exceed \$2,400 (\$24,000\*10%).

- b) If WISHIN fails to meet 99.9% System Availability in any three (3) consecutive months then, in addition to the SLA Credits provided herein, Participant may, at its sole election, be entitled to terminate the remote hosting services provided by WISHIN or the Agreement upon sixty (60) days prior written notice to WISHIN
- c) The SLA Credits and Participant's rights to terminate in this Section 7.2 constitute Participant's sole remedies, and WISHIN's sole obligation and liability, for a failure of System Availability

#### 7.2.1 System Availability Calculation

The percentage of System Availability is calculated by dividing the number of minutes of actual System Availability achieved during the month by the number of minutes of System Availability scheduled to be available each month

- a) Possible Minutes (PM) is the total number of minutes in any month
- b) Time Exclusions (TE) is the number of minutes described above in Time Exclusions
- c) Unscheduled Downtime (UD) is the number of minutes that the System is not available for that month that do not fall within Time Exclusions
- d) Special Exception (SE) is the number of minutes of downtime as a result of project exceptions contingent on prior written approval by Participant

$$\% \text{ Availability} = (\text{PM} - \text{TE} - \text{SE} - \text{UD}) / (\text{PM} - \text{TE} - \text{SE})$$

### ATTACHMENT 3: DESCRIPTION OF THE SYSTEM; THIRD-PARTY SOFTWARE

<b>WISHIN Direct+ Product Suite</b>	
Enables providers to securely exchange patient information across the community by using the ONC Direct Project standards	
<b>WISHIN Direct+ Messaging Application</b>	An application that supports practice-to-practice and practice-to-organization Direct messaging. This application queries the Provider Directory. This application may also provide inboxes for receiving Direct messages. The WISHIN Direct+ Messaging application utilizes HISP Services to deliver the Direct messages.
<b>WISHIN Direct+ Referrals Application (limited availability)</b>	An application that supports practice-to-practice and practice-to-organization referrals. This application queries the Provider Directory and provides organization level inboxes for receiving referrals. Providers receiving referrals can create custom templates so that any referral it receives follows a standard format and includes the required information needed by the organization receiving the referral. This application can also use the WISHIN Direct+ Messaging to deliver the referral. The application also allows secure communication between the referring and receiving providers in order to facilitate closed-loop referrals.
<b>Provider Directory Service</b>	Registers Direct addresses to providers, practices and organizations and may also administer the domain, depending on configuration.
<b>HISP Gateway Service</b>	Manages all inbound and outbound communication requests to the WISHIN Direct+ HISP. The HISP Gateway Service also evaluates the type of encryption needed to encrypt and decrypt direct messages and will route to the appropriate endpoint.
<b>SMTP Gateway Service</b>	Uses SMTP protocol combined with S/MIME to allow secure messages to be sent HISP to HISP with other organizations. The SMTP gateway also allows end users to send/receive their Direct messages using preferred email clients such as Outlook using a secure TLS or SSL connection.
<b>Certificate Service</b>	Manages the HISP certificate policy and issues domain level x509 certificates to each registered domain within the WISHIN HISP. The service also allows for Certificate discovery.
<b>WISHIN Pulse</b>	
The following services are essential HIE services for improving data quality and consistency across a network of connected providers.	
<b>WISHIN Pulse Community Health Record</b>	Web-based application that provides a single point of access to acute care and ambulatory patient information – acquired and aggregated visually from multiple systems throughout the community, across care settings and organizational boundaries. May be integrated with an EHR.
<b>Data Services</b>	Data transformation and normalization services based on industry-standard communication protocols that allow data from disparate systems to display in a common format while accounting for technology, nomenclature, data-element and coding-transactions standards. This allows for data to be consumed by any system connected to the HIE – across acute care and ambulatory settings – in the appropriate format for the system.
<b>Identity Management Services</b>	Patient-identity reconciliation services that automate the task of reconciling patient information from different inpatient and ambulatory systems from multiple care locations across the community, resulting in a community master person index, patient choice management, and de-identification services. This service uses configurable, distributed algorithms tailored to the Participant to establish a true longitudinal community patient record.
<b>Data-staging Service</b>	Acquires and aggregates health information from inpatient and ambulatory data sources to build a clinical data repository (CDR), or series of repositories, for clinical use and rapid retrieval and display by end-user applications. Staging the data enables access anytime in a highly secure and scalable environment. Data in data stages are owned by Participant. Data Stage servers can be hosted by WISHIN/the System Software Licensor or by the Participant. Data is not comingled across Participant data stages.

<b>Record Locator Service</b>	Rapidly locates patient information in a confederated deployment with multiple databases containing patient information from disparate hospitals, health systems and communities. Works in concert with the Identity Management Services to efficiently index the location of all relevant data for a specific patient, enabling the rapid retrieval and display of the patient's longitudinal community patient record.
<b>Orders</b> (limited availability)	This module leverages the HIE to automate the order initiation and communication between the ordering clinician and the hospital or organization filling the order – eliminating communication errors while improving workflow and efficiency. This module adapts to the needs of the ordering clinician, enabling ordering directly from an EHR or from an electronic order entry module for paper-based practices. The hospital management component offers several integration options, which can be incrementally layered, depending upon internal system capabilities, policy and procedures, and hospital business strategy.
<b>HIE Operational Analytics</b>	HIE operational analytics designed to help organizations evaluate the data they are currently capturing and what insight might be derived from that data.
<b>eHealth Exchange/HIE Gateway</b>	Connects an HIE to any other HIE using IHE profiles – promoting true, connected healthcare for care collaboration locally, regionally, statewide and across the nation.
<b>Biosurveillance Gateway</b>	Monitors, formats, and transmits electronic syndromic surveillance data to empower public health agencies with early detection, early information-sharing, and the ability to make informed decisions about public health threats.
<b>Immunization Gateway</b>	Enables providers to view a patient's immunization record or electronically submit immunization administration information to their state.
<b>Novo Grid</b>	
The Novo Grid is patented distributed technology for "last mile" connectivity to physician practices. It is the HIE foundation for achieving Meaningful Use and creating a network of providers across a community of care. The Grid connects disparate systems across multiple inpatient and ambulatory care locations for the seamless exchange of health information.	
<b>HCS</b>	
HCS medication reconciliation is an add-on option available to WISHIN Pulse customers via the WISHIN Pulse web portal. This feature includes the ability to obtain a patient's prior medication history including medication fill and refill information as part of the WISHIN Pulse community health record. This feature does not come standard with WISHIN Pulse and must be purchased separately.	
<b>Third-Party Software</b>	
<p>The following Third-Party Software may be used as part of the System Software</p> <ul style="list-style-type: none"> <li>• Software developed by the Apache Software Foundation (<a href="http://www.apache.org">www.apache.org</a>) including the Apache Web servers and the Tomcat application server</li> <li>• Java SE Runtime Environment (JRE) Version 6.0 from Sun Microsystems (<a href="http://www.sun.com">www.sun.com</a>)</li> <li>• The HAPI Java-based HL7 2.x parser (<a href="http://hi7api.sourceforge.net">http://hi7api.sourceforge.net</a>)</li> <li>• Java UUID Generator (<a href="http://www.doomdark.org/doomdark/proj/jug">www.doomdark.org/doomdark/proj/jug</a>)</li> <li>• The iText library that allows you to generate PDF files on the fly (<a href="http://www.lowagie.com/itext">www.lowagie.com/itext</a>)</li> <li>• Apache Jakarta Commons libraries (<a href="http://jakarta.apache.org/commons">http://jakarta.apache.org/commons</a>)</li> <li>• XML Im-/Exporter library (<a href="http://xml-im-exporter.sourceforge.net/">http://xml-im-exporter.sourceforge.net/</a>)</li> <li>• The Bouncy Castle Crypto APIs (<a href="http://www.bouncycastle.org/index.html">www.bouncycastle.org/index.html</a>)</li> <li>• The Font-Box library</li> </ul>	

#### ATTACHMENT 4: PERMITTED USES: APPROVED USE CASES

#	Use Case Name	Description	Date Approved	Category
1	Creation, modification, maintenance, and inactivation of participant users	This use case allows technical security staffs at each Participant organization to create, modify, and deactivate the participant user accounts for their organization	7/18/2013	Health Care Operations
2	Auditing of participant end user system activities	This use case allows privacy and security staff at each Participant organization to access audit logs and reports showing system activity for their users and their patients	7/18/2013	Health Care Operations
3	Notifications to Payers	<p>This use case allows for reports or notifications of health care encounters to be provided by WISHIN to Payers. The reports or notifications include Health Data related to the Payer's covered members who have had a recent health care encounter and is intended to assist the Payer in the management of its members. The reports or notifications promptly alert Payers of their members' health care encounters well before any subsequent claim would be received by the Payer. This can enable care managers to follow up with members more promptly, help members get assigned to a primary care provider, and ensure the patients honor their scheduled appointments</p> <p>The reports or notifications are based on the payer-supplied enrollment data</p>	7/18/2013 Updated: 8/11/2014, 2/11/2015, 3/23/2016, 5/21/2018	Care Coordination by MCOs
5	Notifications to Health Care providers	<p>This use case allows for reports or notifications of health care encounters to be provided by WISHIN to Health Care Providers. The reports or notifications are intended to assist Health Care Providers in the management of their patients and enable Health Care Providers to promptly follow up with the patients, address any potential avoidable hospital visits, or schedule follow-up appointments as appropriate</p> <p>The reports or notifications are delivered only to Health Care Providers that have a treatment relationship with the patient or to whom the patient is attributed for care-management purposes</p>	7/18/2013 Updated 8/11/2014, 2/11/2015, 3/23/2016, 5/21/2018	Care Coordination by providers
6	Quality organization (not owned by a Health Care Payer) receipt of Health Data for specific quality initiatives/measures	<p>This Use Case would allow WISHIN participants the option of having their clinical data shared via WISHIN to quality organizations not owned by a Health Care Payer in support of specific initiatives.</p> <p>Data sharing would be limited to</p> <ol style="list-style-type: none"> <li>1. only participants that have agreed to include their data in the data sent to the quality organization, and</li> <li>2. only data needed for the specific quality initiative/measure</li> </ol> <p>WISHIN participants will have the option of having their data included in the Health Data that get sent to the quality organizations.</p>	8/11/2014	Quality reporting and measures

#	Use Case Name	Description	Date Approved	Category
7	Send transactions to payer organizations for their members	<p>This Use Case would allow WISHIN participants the option of having their clinical data shared via WISHIN to payer organizations</p> <ol style="list-style-type: none"> <li>1 Data would be shared with a payer or payers only if the participant agrees to permit such sharing, and only for uses mutually agreed-upon by the payer and participant</li> <li>2 Patient data would be sent to the payer only if both the following criteria are met (a) the patient appears on the current member file supplied to WISHIN by the payer, and (b) the patient is identified in the participant's ADT transactions as being covered by the payer on the date of the transaction</li> <li>3 Care Summaries (CCDAs) will not be shared as part of this use case</li> </ol> <p>WISHIN participants will have the option of having their data included in the Health Data that gets sent to the payer organizations</p>	5/6/2015	Provider-Payer data sharing
8	Health Care Payer Access for Claims Adjudication, Prior Authorization, Care Management and Collection of Quality Data	This Use Case allows Participants, which are Health Care Payers, to access and use Health Data of individuals insured or covered by a health benefit plan administered by the Health Care Payer, for claims adjudication, prior authorizations, care management and collection of quality data. No other access to, and use of, Health Data is permitted under this Use Case including, but not limited to pricing and underwriting	10/11/2017	Provider-Payer data sharing
9	Ambulance and EMS Provider Access for Billing and Collection	This Use Case allows Participants, which are ambulance services or emergency-medical-services (EMS) providers, to access encounter Health Data for billing and collection. The accessed Health Data would be for patients to whom the ambulance/EMS provider rendered services and from the encounter data prepared by the Participant to which the patient was transferred by the ambulance/EMS provider	10/11/2017, 5/21/2018	Provider Billing Operations

## ATTACHMENT 5: SUBSCRIPTION AND SERVICE FEES

Participant Organizations Covered under this Agreement include:

Wholly-owned, Independent, or Affiliate	Organization Name	Organization Type (e.g., hospital, clinic, nursing home, etc.)	City	Number of Providers*
Municipality	Franklin Health Department	Public Health	Franklin	1
Municipality	Franklin Fire Department	EMS	Franklin	

\*Providers = MDs, DOs, PAs, APNPs, and any other ordering and/or prescribing staff

1 Number of Providers (MDs, DOs, PAs, APNPs, and any other ordering and/or prescribing staff)

2 Number of Participant Organizations listed above

### Covered Providers or Members under this Agreement (WISHIN Pulse)

As used in this Attachment 5, "**Providers**" means all ordering and/or prescribing providers of Participant and the above-listed Participant Organizations, and "**Members**" means those subscribers, employees and their dependents for whom Participant provides or administers health insurance or self-insured health benefits and for whom Participant will utilize WISHIN Pulse. Participant certifies that the current number of Members and/or Providers of Participant and the Participant Organizations is **correctly stated above**.

### Pricing

#### Subscription Fees

WISHIN Pulse Subscription Fee	\$3,500.00
<b>Total Subscription Fees:</b>	<b>\$3,500.00</b>
<b>90-day Trial Subscription Fees:</b>	<b>\$0.00</b>

#### One-time Fees

WISHIN Pulse Onboarding Fee (further discovery necessary with Participant's vendor)	\$1,500.00
<b>Total One-time Fees:</b>	<b>\$1,500.00</b>
<b>90-day Trial One-time Fees:</b>	<b>\$0.00</b>

WISHIN will make the Services identified in Attachment 1 available to the Participant's Authorized Users for an exclusive 90-day trial period. During that trial period, Participant will pay only the 90-day Trial One-time Fees in the amount of **\$0.00**, which shall be due upon execution of the Participation Agreement.

After the 90-day trial, the balance of the initial annual Subscription and Service Fees (**\$3,500.00**) and balance of the Total One-time Fees (**\$1,500.00**) will be due, unless Participant terminates the Agreement prior to the end of the trial period in accordance with Section 13 of the Agreement.

WISHIN may change the annual subscription rate for any renewal term in accordance with Section 8.1 of the Agreement and if Participant requests additional Products and/or Services.

#### Reconciliation

At the end of any term, WISHIN and Participant will verify the number of Members or Providers for the preceding twelve (12) months. If the number of Members or Providers exceeds the number of Members or Providers used in calculating Subscription Fees for that year, Participant shall pay WISHIN an additional Subscription Fee for the preceding twelve (12) months for such excess number of Members or Providers. If the number of Members or Providers is less than the number of Members or Providers used in calculating Subscription Fees for that year, Participant shall receive a credit for the reduced number of Providers, which will be applied to Participant's Subscription Fee for the new twelve (12) month period.

In no event will the annual Subscription and Service Fees be less than \$3,000 00

WISHIN may change the per Members or Provider per year rate for the Subscription and Service Fees for renewal terms in accordance with Section 8.1 of the Agreement. WISHIN also may invoice Participant for additional Subscription and Service Fees at any time there is a significant increase in the number of Members or Providers and at any time Participant subscribes for additional products and/or Services.

#### **Additional Fees**

##### *Subscription and Service Fees*

In addition to any changes in the Subscription and Service Fees on the anniversary dates and any changes in the per Members or Provider per year rate, Subscription and Service Fees may be modified by WISHIN when

- Any new Participant Organization or Members or Providers are added, with the fees prorated for any partial contract year,
- Participant subscribes for any additional product or Services,
- There is a significant increase in the number of Providers or Members (as applicable) above the number certified above in this Attachment 5
- Hospitals The annual subscription fee for any additional hospital is based on WISHIN's pricing formula applied to the hospital's net patient revenue. Fees for additional hospital(s) would be added to the Participant Organizations covered under this Agreement.
- Non-hospital Participant Organizations The annual subscription fee is based on the number of non-hospital Participant Organizations and the number of Providers covered by this Agreement. Subscription fees will be increased when there is a net increase in the number of Participant Organizations and/or the number of Providers or Members (as applicable) over the number at the time of execution of this Agreement. New Participant Organizations would be added to the Participant Organizations covered under this Agreement.

##### *Fees for One-time Services*

- When additional Participant Organizations are added to an existing data source requiring no new interface to the WISHIN system, there shall be no additional WISHIN Pulse onboarding fees.
- When new interfaces are requested by Participant or are required due to a new data source, one-time onboarding fees may apply.
- The addition of new products and/or Services (including new interfaces) may require additional one-time fees.
- When additional patient or member files are added.
- Prices listed assume that interface onboarding will occur in the number of phases listed in the Products and Services section above under "Onboarding Phases". Additional one-time fees may apply if interface onboarding occurs over more phases than indicated.



## ATTACHMENT 6: BUSINESS ASSOCIATE PROVISIONS

This Attachment applies if Participant is a "covered entity" under HIPAA. In that event, WISHIN and any WISHIN Subcontractor shall be a "Business Associate" of Participant for purposes of HIPAA and this Attachment.

### 1. **Definitions.** The following terms used in this Attachment are defined as follows:

- a) "**Breach**" shall have the same meaning as the term "breach" in 45 C.F.R. § 164.402
- b) "**Breach Notification Rule**" means 45 C.F.R. Part 164, Subpart D
- c) "**Electronic Protected Health Information**" or "**EPHI**" has the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103
- d) "**Electronic Transactions Rule**" means the final regulations issued by HHS concerning standard transactions and code sets under 45 C.F.R. Parts 160 and 162
- e) "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, as amended and as implemented by the Department of Health and Human Services regulations, including the Privacy Rule, the Security Rule and the Breach Notification Rule. As used in this Attachment, "HIPAA" includes those provisions of the HITECH Act relating to the privacy or security of Protected Health Information
- f) "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act, as amended
- g) "**HHS**" means the United States Department of Health and Human Services
- h) "**Individual**" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g)
- i) "**Privacy Rule**" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E
- j) "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, but shall be limited to Participant's PHI. PHI includes EPHI
- k) "**Required By Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103
- l) "**Secretary**" shall mean the Secretary of HHS or his designee
- m) "**Security Incident**" has the same meaning as the term "security incident" in 45 C.F.R. § 164.304
- n) "**Security Rule**" means the Security Standards and Implementation Specifications at 45 C.F.R. Part 160 and 164, Subpart C
- o) "**Subcontractor**" has the same meaning given to the term "subcontractor" in 45 C.F.R. § 160.103. Pursuant to 45 C.F.R. § 160.103, a Subcontractor is a "business associate" under HIPAA
- p) "**Transaction**" shall have the same meaning as the term "transaction" in 45 C.F.R. § 160.103
- q) "**Unsecured Protected Health Information**" has the same meaning given to the term "unsecured protected health information" in 45 C.F.R. § 164.402

Capitalized terms used, but not otherwise defined, in this Attachment shall have the same meaning as those terms in the Privacy Rule, the Security Rule or the Breach Notification Rule.

### 2. **Business Associate Compliance with HIPAA.** Business Associate shall comply with all provisions of HIPAA that are applicable to business associates including, if Business Associate creates, receives, maintains or transmits EPHI on behalf of Participant, the Security Rule. Except as permitted by HIPAA or a valid authorization obtained from an individual in accordance with 45 C.F.R. 164.508, Business Associate shall not directly or indirectly receive remuneration in exchange for the PHI of the individual.

### 3. **Permitted Uses and Disclosures of PHI.**

- a) **Services for Participant.** Business Associate may use and disclose PHI received from, or created or received on behalf of, Participant only as permitted or required by any Agreement for services between Business Associate and Participant, this Attachment, as permitted by law, or as otherwise authorized in writing by Participant.
- b) **Business Associate's Operations.** Business Associate may use and disclose PHI for proper management and administration of Business Associate's business and to carry out its legal

responsibilities Business Associate only may use or disclose PHI pursuant to this paragraph if (i) such use or disclosure is required by law, or (ii) Business Associate receives reasonable written assurance from any person or organization to whom Business Associate will disclose PHI that the person or organization will hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization and the person or organization will notify Business Associate of any breach of confidentiality related to the PHI If the disclosure is to a Subcontractor, these reasonable assurances shall include a written contract or other arrangement that complies with the requirements for business associate contracts under 45 C F R § 164.314(a)(2)

- c) **Data Aggregation.** Business Associate may use or disclose PHI to provide data aggregation services on behalf of Participant relating to the health care operations of Participant
- d) **Minimum Necessary.** In its performance of the functions, activities, services, and operations specified above, Business Associate will make reasonable efforts to use, disclose, and request only the minimum amount of Participant's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Participant is required to limit its use, disclosure or request to the minimum necessary To the extent it uses, discloses, and requests PHI in a manner that involves Business Associate, Participant will make reasonable efforts to use, disclose, and request only the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request to the extent it is required to do so under HIPAA The phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act
- e) **De-identified Use of PHI.** Business Associate may de-identify PHI in accordance with the requirements outlined in the Privacy Rule Data that has been de-identified will no longer be subject to the terms of this Attachment
- f) **Performance of Participant's Obligations.** To the extent Business Associate is to carry out Participant's obligations under the Privacy Rule, Business Associate will comply with the Privacy Rule's requirements that apply to Participant in the performance of such obligations

4. **Unauthorized Uses and Disclosures of PHI.** Business Associate shall not (and shall ensure that its officers, directors, agents, employees and Subcontractors do not) use or disclose PHI that Business Associate receives from Participant or any other HIPAA business associate of Participant in any manner other than as permitted or required by any Agreement for services between Business Associate and Participant, this Attachment, or as Required by Law This Attachment does not authorize Business Associate to use or disclose Participant's Protected Health Information in a manner that would violate the Privacy Rule if done by Participant

5. **Safeguards Against Misuse of Information.** Business Associate will develop and use appropriate administrative, technical and physical safeguards as are required by HIPAA to prevent the improper use or disclosure of PHI Such safeguards shall include, but not be limited to, developing, documenting and keeping current policies and procedures and training personnel regarding the proper use and disclosure of PHI If Business Associate creates, receives, maintains or transmits EPHI on behalf of Participant, Business Associate shall implement safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Participant's EPHI as required by the Security Rule Such safeguards shall include, but not be limited to, developing, implementing and maintaining adequate administrative safeguards to manage the selection, development, implementation, and maintenance of security measures to protect EPHI, physical safeguards to protect Participant's EPHI from natural and environmental hazards, and unauthorized intrusion, and technical safeguards for its use that protect EPHI and control access to such information

6. **Disclosures To Third Parties.** Prior to disclosing PHI to an agent or Subcontractor of Business Associate, Business Associate shall obtain written assurance from such party that it agrees to be bound by the same restrictions and conditions that apply to Business Associate with respect to PHI If the disclosure is to a Subcontractor, the assurance shall include a written contract or other arrangement that complies with the requirements for business associate contracts under 45 C F R § 164.314(a)(2) Business Associate shall provide Participant with copies of such written assurance upon request

7 **Reporting of Any Breach, Improper Use or Disclosure, and Security Incidents**

- a) **Breach.** Business Associate shall notify Participant without unreasonable delay (and in no case later than 10 days after discovery of a Breach) of any Breach of Protected Health Information
- b) **Security Incidents.** Business Associate will report to Participant any Security Incident within 10 days of Business Associate becoming aware of the Security Incident. The parties acknowledge that this paragraph constitutes notice by Business Associate to Participant of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Participant shall be required. "Unsuccessful Security Incidents" means pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI
- c) **Other Improper Uses and Disclosures.** Business Associate shall report to Participant any use or disclosure of Participant's PHI that is not provided for by this Attachment within 10 days of Business Associate becoming aware of such use or disclosure
- d) **Details for Notices and Reports.** Business Associate's notices and reports under this Section 7 shall identify
  - the nature of the Breach, unauthorized use or disclosure or Security Incident, which shall include the date(s) of the same and the date of discovery,
  - the PHI used or disclosed, on an individual basis (such as whether full names, dates of birth, home addresses, etc. were involved),
  - how the Breach, unauthorized use or disclosure or Security Incident occurred,
  - the identity, if known, of any individual who received PHI due to an unauthorized use or disclosure,
  - what Business Associate has done or shall do to mitigate any effect of the use or disclosure

8. **Access to PHI.** If PHI is in a Designated Records Set, Business Associate agrees to make available PHI in accordance with 45 C F R § 164.524

9. **Amendments to PHI.** If PHI is in a Designated Records Set, Business Associate agrees to make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C F R § 164.526

10. **Accounting of Disclosures.** Business Associate agrees to make available the information required to provide an accounting of disclosures in accordance with 45 C F R § 164.528

11. **Availability of Books and Records.** Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Participant available to the Secretary of the United States Department of Health and Human Services for purposes of determining Participant's compliance with the Privacy Rule

12. **Return or Destruction of PHI.** Upon termination of the Agreement, Business Associate shall cease all use and disclosures of Participant's PHI except as directed by Participant. In addition, Business Associate will, if feasible, return or destroy all PHI of Participant, including all PHI Business Associate has disclosed to its employees, Subcontractors and/or agents. Destruction shall include destruction of all copies including backup tapes and other electronic backup medium. If such return or destruction is not feasible, Business Associate will extend the protections of this Attachment to the information and limit further uses and disclosures to those purposes that make return or destruction of the information infeasible

13. **Participant's Obligations.** Participant shall promptly notify Business Associate of the following

- a) Any limitation(s) in Participant's notice of privacy practices in accordance with 45 C F R § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI

- b) Any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI
- c) Any restriction to the use or disclosure of PHI that Participant has agreed to in accordance with 45 C F R § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI

14. **Breach of Agreement/Termination of Agreements.** In the event either party (the "Non-breaching Party") has evidence that the other party, or the other party's agent, Subcontractor, or contractor (the "Breaching Party"), has committed a material breach of this Attachment or violation of HIPAA, the Non-breaching Party shall have the right to (i) provide the Breaching Party with an appropriate period to cure the breach or end the violation, (ii) terminate this Attachment and any other Agreement between the parties if the Breaching Party does not cure the breach or end the violation within the time specified by the Non-breaching Party, or (iii) if termination is not feasible, report the problem to the Secretary of the HHS. The Non-breaching Party may exercise its right to terminate this Attachment and any other Agreement between the parties by providing written notice of termination stating the breach of the Agreement that provides the basis for termination. No waiver of any breach of any provision of this Attachment shall constitute a waiver of any prior, concurrent or subsequent breach.

15. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.

16. **Judicial and Administrative Proceedings.** If Business Associate is legally compelled by law, process or order of any court or governmental agency or otherwise to disclose PHI submitted to Business Associate by Participant, Business Associate shall, prior to making any such disclosure, give Participant prompt notice to permit Participant to seek a protective order or to take other appropriate action.

17. **Enactments and Amendments to HIPAA.** If there are amendments to HIPAA, or if there are any changes in the manner in which HIPAA is interpreted by the agencies or courts, the parties shall take those actions necessary to comply with the current state of the law, including by amending this Attachment.


18. **Interpretation.** Any ambiguity in this Attachment shall be resolved to permit compliance with HIPAA.

19. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to these Business Associate provisions.

20. **Compliance with Law.** To the extent Business Associate is to carry out Participant's obligations under the Privacy Rule, Business Associate will comply with the Privacy Rule's requirements that apply to Participant in the performance of such obligation.

**ATTACHMENT 7: SAMPLE WISHIN DIRECT+ ORGANIZATION REPRESENTATIVE IDENTIFY  
VERIFICATION FORM**

Following is a SAMPLE Identity Verification Form DO NOT USE WISHIN will provide the appropriate form as part of the implementation and onboarding process for WISHIN Direct+

 **WISHIN Direct+**  
Organization Representative Identity Verification Form

**WISHIN Direct+ Identity Verification Form for  
Organization Representatives**

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**#Name**  
**#Domain**

**CONFIDENTIAL**

I



**WISHIN Direct+**  
**Organization Representative Identity Verification Form**

**Purpose**

Your organization has contracted with the Wisconsin Statewide Health Information Network (WISHIN) to receive WISHIN Direct+ services.

Your organization has selected the following WISHIN Direct+ domain #Domain

This WISHIN Direct+ Identity Verification form must be completed by at least one representative from your organization for the above WISHIN Direct+ domain

By completing this form, you are agreeing to perform the responsibilities and comply with the requirements set forth in this document.

**Overview**

**1 WISHIN Direct+**

**1.1 Direct Messaging and WISHIN Direct+**

Direct messaging, often called "Direct," is a basic form of health information exchange (HIE) that allows health care providers to securely and electronically send patient information to other specified providers, or to patients themselves. Commonly compared to sending secure email, this information is sent over the Internet in an encrypted, protected way that is HIPAA-compliant.

WISHIN is a Health Information Service Provider (HISP), which means WISHIN is certified to offer Direct addresses (which are similar to email addresses) and WISHIN provides the service to transmit the Direct messages. WISHIN's HISP and Direct messaging product is known as WISHIN Direct+

With a WISHIN Direct+ address, a health care provider can exchange clinical documentation with providers or patients registered with another HISP anywhere in the United States, provided the other HISP conforms to the standards and requirements required for Direct messaging established by The Direct Project ([www.wiki.directproject.org](http://www.wiki.directproject.org)) and any other requirements identified by the receiving HISP

**1.2 The Direct Project**

The Direct Project is a federal government standard designed to enable simple, secure, email-based exchange of clinical documentation between health care providers. Because WISHIN is a HISP, WISHIN customers can assign and administer a WISHIN Direct+ address (similar to an email address) for each health care provider in their "domain." In addition, WISHIN can also assign and administer WISHIN Direct+ addresses on behalf of our customers in our standard "domain."

WISHIN Direct+ conforms to the requirement set forth by the national Direct Project ([www.wiki.directproject.org](http://www.wiki.directproject.org)); including the "Applicability Statement for Secure Health Transport," which describes how to use SMTP, S/MIME, and X.509 certificates to securely transport health information over the Internet

**1.3 WISHIN Direct+ Domains and Addresses**

WISHIN customers assign and administer a WISHIN Direct+ address (similar to an email address) for each health care provider in their "domain."

Your organization has selected the following WISHIN Direct+ domain #Domain



WISHIN Direct+  
Organization Representative Identity Verification Form

Organizations are required to assign and manage all of the WISHIN Direct+ addresses for their domain

**1.4 Exchanging Messages with Health Care Providers on Other HISPs**

As noted above, "with a WISHIN Direct+ address, a health care provider can exchange clinical documentation with providers or patients registered with another HISP anywhere in the United States, provided the other HISP conforms to the standards and requirements required for Direct messaging established by The Direct Project ([www.wiki.directproject.org/](http://www.wiki.directproject.org/)) and any other requirements identified by the receiving HISP." Some HISPs also require participation in the Direct Trusted Agent Accreditation Program, or DTAAP, in order to exchange messages with their HISP. This is sometimes referred to as being a "DirectTrust participant."

To ensure our customers are able to send Direct messages to other health care providers, regardless of the HISP those others may be using, WISHIN's System Software Licensor is participating in DTAAP and is a "DirectTrust participant." WISHIN is also a member of DirectTrust.

**1.4.1 DirectTrust and DTAAP**

DirectTrust ([www.directtrust.org](http://www.directtrust.org)) is a non-profit health care industry alliance that has established and maintains rules, standards, and policies associated with the operation of the security and trust-in-identity layer for Direct exchange. Taken together, these make up a Security and Trust Framework that supports both Direct exchange implementers and users.

DirectTrust uses its Security and Trust Framework as the basis for a voluntary accreditation and audit program for Direct implementers and service providers (this program is known as the Direct Trusted Agent Accreditation Program, or DTAAP). DTAAP is operated as a partnership between DirectTrust and the Electronic Healthcare Network Accreditation Commission (EHNAC).

WISHIN's System Software Licensor is participating in DTAAP which recognizes excellence in health data processing and transactions, and ensures compliance with industry-established standards, HIPAA regulations and the Direct Project.

In addition to DTAAP, DirectTrust distributes what are known as "trust anchor" digital certificates from accredited HISPs so that Direct messages can be exchanged across different HISPs. WISHIN's trust anchor certificate will be part of DirectTrust's "trust bundle" to ensure Participants using WISHIN's HISP are able to exchange information with health care providers on other HISPs in the "trust bundle."

The EHNAC-DirectTrust accreditation program is endorsed by the Office of the National Coordinator for Health IT (ONC).



## Participant Requirements

### 1 Definitions

Health Information Service Provider (HISP): the organizations responsible for on-boarding health care organizations and facilitating the transfer of Direct messages. WISHIN is a HISP. WISHIN Direct+ is the name of WISHIN's HISP and the product WISHIN uses to facilitate the transfer of Direct messages.

Certificate Authorities (CAs): organizations that issue Digital Certificates meeting the requirements set forth in the DirectTrust certificate policy.

Registration Authorities (RAs): organizations that verify the identity of users in accordance with the required Levels of Assurance (LoA). Health care providers must meet DirectTrust LoA level 3 (LoA3) requirements (equivalent to NIST LOA3 - NIST publication 800-63). Anyone assigning a Direct address to a user and/or creating a Direct account is an RA. Your organization is the RA for your organization's WISHIN Direct+ domain.

Organization Representatives: individuals that serve as representatives for their organization with regards to RA responsibilities. The Organization Representative is responsible for managing use of the certificate for their organization. By completing this form you are applying to be the Organization Representative and Registration Authority (RA) for your organization's WISHIN Direct+ domain.

Trust Agents: individuals who assist in collecting the documentation necessary to establish Organization Representatives. Trust Agents must also be Organization Representatives. The Trust Agent then executes an agreement that appoints them as an agent for the purposes of collecting documentation, verifying identities, and providing identity information.

### 2 Participant Registration Authority Requirements

Digital Certificates are required for Direct messaging and thus, required for WISHIN Direct+. In order to receive a Digital Certificate, your organization must assign at least one Organization Representative. The assigned Organization Representative must complete this Identity Verification Form.

By completing this form you are applying to become the Organization Representative for your organization's WISHIN Direct+ domain. Organization Representatives are Registration Authorities for their organization's WISHIN Direct+ domain. As such, Organization Representatives must comply with all Direct Project and DirectTrust requirements for Registration Authorities.

Organization Representatives are required to verify the identity of all users to whom they assign a WISHIN Direct+ address. Identity verification must be done in accordance with DirectTrust Level of Assurance 3 (LoA3) standard. Typically, a health care provider will request a Direct address from you (as the Organization Representative). To verify that provider's identity you would verify the provider's paper credentials (like a driver's license) and/or verify credential records in databases. This process is called identity verification. As the Organization Representative you must maintain records of the identity verification you perform for all users you assign a Direct address to.

As the result of successful identity verification, the health care provider is given a WISHIN Direct+ address and becomes a user of the Digital Certificate assigned to your organization.

The table below summarizes the requirements for identity proofing set forth for LoA3.





WISHIN Direct+  
Organization Representative Identity Verification Form



Level of Assurance 3	
In Person	Remote
Applicant Actions ("Applicant" is person requesting a Direct address)	
Possession of verified current primary Government Picture ID that contains applicant's picture and either address of record or nationality (e.g. driver's license or passport)	Possession of a valid Government ID (e.g. a driver's license or passport) number and a financial account number (e.g. checking account, savings account, loan, or credit card) with confirmation via records of both numbers
RA / Organization Representative Actions	
<ul style="list-style-type: none"><li>• Inspects Photo-ID and verify via the issuing government agency or through credit bureaus or similar databases. Confirms that name, DOB, address and other personal information in record are consistent with the user being provided the account.</li><li>• Compare picture to applicant, record ID number, address and DOB. If ID is valid and photo matches applicant then:<ul style="list-style-type: none"><li>a) If ID confirms address of record, authorize or issue credentials and send notice to address of record, or</li><li>b) If ID does not confirm address of record, issue credentials in a manner that confirms address of record.</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Verifies information provided by applicant including ID number and account number through record checks either with the applicable agency or institution or through credit bureaus or similar databases, and confirms that name, DOB, address and other personal information in records are consistent with the application and sufficient to identify a unique individual.</li><li>• Address confirmation:<ul style="list-style-type: none"><li>a) Issue credentials in a manner that confirms the address of record supplied by the applicant, or</li><li>b) Issue credentials in a manner that confirms the ability of the applicant to receive telephone communications at a number associated with the applicant in records while recording the applicant's voice.</li></ul></li></ul>

In addition to the identity verification requirements, your organization must comply with the following requirements that are specified by the Direct Project and/or DirectTrust. These are not an exhaustive list. Participants should refer to the Direct Project ([www.wiki.directproject.org](http://www.wiki.directproject.org)) and DirectTrust ([www.directtrust.org](http://www.directtrust.org)) for a complete set of requirements.

- Your organization must have a written policy or practice statement that specifies the particular steps taken to verify identities for your WISHIN Direct+ domain and the identity verification and registration process must be performed according to that policy/statement.
- Your organization must provide WISHIN with a list of all WISHIN Direct+ addresses assigned to your WISHIN Direct+ domain.
- Individuals assigned a WISHIN Direct+ address must know who their Organization Representative is and that the Organization Representative represents them.



WISHIN Direct+  
Organization Representative Identity Verification Form

IDENTITY VERIFICATION AND AUTHORIZATION FORM

**PARTICIPANT ORGANIZATION INFORMATION**

Organization Name:		Organization NPI:	
Organization Address (street):		Organization Phone #:	
(city, state):		Direct+ Domain:	
(zip):			

**ORGANIZATION REPRESENTATIVE APPLICANT ("Applicant") INFORMATION**

First Name:		Last Name:	
Home Address (street):		Date of Birth:	
(city, state):		Email:	
(zip):		Phone Number:	

The undersigned Applicant and, if Applicant does not have signing authority for the organization, the signing authority, each warrants that all facts and information provided are accurate, current, complete and not misleading and further

- 1 Agrees to comply with the responsibilities associated with being a Participant, including the terms and conditions found in this WISHIN Direct+ Participant Agreement,
- 2 Agrees to the terms of the Direct Certificate Authorization included in this document and acknowledge that DigiCert<sup>®</sup> may rely on your adherence to the attached terms in issuing a digital certificate to WISHIN
- 3 Agrees that Participant and all Participant Authorized Users shall accurately represent themselves in all communications using the digital certificate

**PARTICIPANT ORGANIZATION AUTHORIZATION**

*If Applicant above does not have signing authority for the organization, the following information must be completed.*

PRINTED NAME and TITLE OF ORGANIZATION'S SIGNING AUTHORITY	SIGNATURE OF ORGANIZATION'S SIGNING AUTHORITY
--	---



WISHIN Direct+  
Organization Representative Identity Verification Form

**INSTRUCTIONS FOR NOTARY**

**FOR THE PURPOSES OF THIS DOCUMENT, PERSONAL ACQUAINTANCE WITH THE INDIVIDUAL IS INSUFFICIENT  
YOU MUST:**

- 1 Review two forms of current government-issued IDs containing the individual's name and photograph
- 2 Record the serial number and type of government-issued IDs presented by the Applicant. You should also record in your "notary's journal" the ID serial number of the identification that was presented to you.

**TO BE COMPLETED BY APPLICANT IN THE PRESENCE OF THE NOTARY**

Signed By: \_\_\_\_\_  
(Sign Only in the Presence of Notary)

Printed Name: \_\_\_\_\_  
First Name Middle Initial Last Name

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

Date: \_\_\_\_\_ Time: \_\_\_\_\_ A.M. / P.M.

Identification #1	Type of Document	Photo Y N
	Issued By	Serial #
	Name on ID#1	Expiration Date
Identification #2	Type of Document	Photo Y N
	Issued By	Serial #
	Name on ID#2	Exp Date

**TO BE COMPLETED BY THE NOTARY**  
**Acknowledgement**

State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instruments were acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
the signer and subject of the above form (the Applicant), who personally appeared before me and signed or  
attested the same in my presence, and presented the following government-issued photo ID card as proof of  
his/her identity:

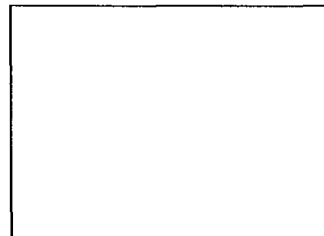
Notary Signature: \_\_\_\_\_

Print Notary Name: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ A.M. / P.M.

\_\_\_\_\_  
Name of Organization Employing Notary

Phone: \_\_\_\_\_ Email: \_\_\_\_\_





WISHIN Direct+

Organization Representative Identity Verification Form

DIRECT CERTIFICATE AUTHORIZATION

PLEASE READ THIS AUTHORIZATION CAREFULLY BEFORE PROCEEDING YOU MUST CHECK "I AGREE" AND INITIALING BELOW TO ACKNOWLEDGE THAT YOU HAVE READ THIS AUTHORIZATION, THAT YOU UNDERSTAND IT, AND THAT YOU APPROVE ISSUANCE OF THE CORRESPONDING DIGITAL CERTIFICATE IF YOU HAVE ANY QUESTIONS REGARDING THIS AUTHORIZATION OR DO NOT WISH TO AUTHORIZE THE CERTIFICATE, PLEASE E-MAIL DIGICERT AT [LEGAL@DIGICERT.COM](mailto:LEGAL@DIGICERT.COM) OR CALL 1-800-896-7973 DO NOT CHECK "I AGREE" AND DO NOT PROCEED IF YOU DO NOT ACCEPT THE TERMS HEREIN OR AUTHORIZE THE CERTIFICATE'S ISSUANCE.

☐ I AGREE. \_\_\_\_\_  
Initials

DigiCert, Inc. ("DigiCert") issues X.509 v 3 digital certificates ("Certificates") to customers of WISHIN. You, as either an individual or organization that will be named in a certificate, are providing this authorization to assist WISHIN in performing certain digital certificate-related duties that are normally reserved for Certificate subjects, usually an entity's equipment, personnel, or agents. These tasks include managing keys, registering devices, authenticating personnel with DigiCert and its Certificate systems, and installing, configuring, and managing issued Certificates. Therefore, you hereby agree and authorize WISHIN and DigiCert as follows:

- 1 **Certificates.** WISHIN may request and approve Certificates in your name and use issued Certificates for your benefit. DigiCert may issue, refuse to issue, revoke, or restrict access to Certificates in accordance with the instructions provided by WISHIN and rely on these instructions as if originating from you.
- 2 **Representations.** You represent that you are (1) a HIPAA-covered entity; (2) a HIPAA business associate, or, (3) a healthcare organization that treats protected health information with privacy and security protections that are equivalent to those required by HIPAA (each of the foregoing is defined herein as a "DigiCert-Qualified Entity"). You represent that you will limit your use of the digital certificate for the purposes required as such a DigiCert-Qualified Entity.
- 3 **Authorization.** You explicitly appoint WISHIN's employees and agents as your agent for the purpose of requesting, using, and managing Certificates and corresponding private keys. WISHIN's employees and agents are authorized to fulfill all obligations imposed by DigiCert with respect to the Certificate, communicate with DigiCert regarding the management of key sets and Certificates, and fulfill all roles related to Certificate issuance, such as a certificate requester, certificate approver, and contract signer (as used in the CA/Browser Forum's Extended Validation Guidelines for SSL Certificates). You hereby authorize WISHIN and its employees to:
  - (i) Request Certificates for domains and emails owned or controlled by you or your affiliates,
  - (ii) Request Certificates naming you or your equipment, employees, agents, or contractors as the subject and
  - (iii) Accept terms and conditions related to Certificates issued on your behalf
- 4 **Documentation.** For each certificate ordered by WISHIN under your authorization, DigiCert must obtain a personal attestation and a copy of all documentation necessary to verify the entity's identity. DigiCert may reuse this information in some cases. DigiCert may rely solely on the information you provide or previously provided when issuing a Certificate or may elect to perform additional verification prior to issuing a Certificate. You agree to provide at all times, accurate, complete, and true information to DigiCert. If any information provided to DigiCert changes or becomes misleading or inaccurate, then you agree to promptly



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update the information. You consent to (i) DigiCert's public disclosure of information embedded in an issued Certificate, and (ii) DigiCert's transfer of your personal information to DigiCert's servers, which are located inside the United States. DigiCert shall follow the privacy policy posted on its website when receiving and using information from you or WISHIN. DigiCert may modify the privacy policy in its sole discretion.

- 5 **Representation** You represent that you have the authority to execute this authorization and, if applicable, bind your organization by its terms. By submitting documentation to DigiCert, you represent to DigiCert that (i) you have verified any named individual's name, address, email address, telephone number, birthdate, and any other information required by DigiCert and in accordance with any instructions provided by DigiCert, (ii) you have examined any relied upon documents for modification or falsification and believe that the documents are legitimate and correct, and (iii) you are unaware of any information that is reasonably misleading or that could result in a misidentification of the verified entity. These representations survive termination of this appointment until all Certificates that rely on the documentation expire.
- 6 **Duration** This authorization lasts until revoked by you, and you are responsible for all Certificates requested by WISHIN on your behalf until after DigiCert receives a clear email message revoking the authorization at [legal@digicert.com](mailto:legal@digicert.com). Even after revocation, all representations and obligations herein survive until all Certificates issued under this authorization expire or are revoked in accordance with DigiCert's agreement with WISHIN. DigiCert may require that you periodically renew this authorization by resubmitting a copy of this authorization to DigiCert.
- 7 **Certificate Revocation and Termination** DigiCert will revoke any Certificate issued to WISHIN on your behalf after receiving notice from you and after verifying the legitimacy of the revocation request. DigiCert may also revoke a Certificate issued to WISHIN on your behalf for any reason and without notice.
- 8 **Warranty Disclaimers** DIGICERT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" TO THE MAXIMUM EXTENT PERMITTED BY LAW. DIGICERT DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DIGICERT DOES NOT WARRANT THAT ANY SERVICES WILL MEET ANY EXPECTATIONS OR THAT ACCESS TO SERVICES WILL BE TIMELY OR ERROR-FREE. DigiCert may modify or discontinue specific service or product offerings at any time. Nothing herein requires DigiCert to provide Certificates or other related services to you or WISHIN.
- 9 **Limitation on Liability** YOU HEREBY WAIVE ANY RIGHT TO ANY DAMAGES RELATED TO DIGICERT'S SERVICES, INCLUDING THE ISSUANCE OR USE OF CERTIFICATES. DIGICERT IS NOT LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OR ANY LOSS OF PROFIT, REVENUE, DATA, OR OPPORTUNITY, EVEN IF DIGICERT IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. The limitations in this section apply to the maximum extent permitted by law and apply regardless of (i) the reason for or nature of the liability, including tort claims, (ii) the number of claims of liability, (iii) the extent or nature of the damages, or (iv) whether any other provisions of this agreement were breached or proven ineffective.
- 10 **Notices** You must send all notices (i) in writing, (ii) with delivery confirmation via first class mail, commercial overnight delivery service, facsimile transmission, email, or by hand, and (iii) addressed to DigiCert, Inc., Attn: Legal Department, 2600 West Executive Parkway, Suite 500, Lehi, Utah 84043, email [legal@digicert.com](mailto:legal@digicert.com), fax 1-866-842-0223. DigiCert may change its address for notices by sending notice of the change to WISHIN. WISHIN is solely responsible for conveying notices to you. All notices to DigiCert are effective on receipt. DigiCert will deliver notices to you by delivering the notice to WISHIN. Notices are effective when sent to WISHIN in accordance with DigiCert's agreement with WISHIN.



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- 11 Severability The invalidity or unenforceability of a provision under this authorization, as determined by an arbitrator, court, or administrative body of competent jurisdiction, does not affect the validity or enforceability of the remainder of this agreement. The parties shall substitute any invalid or unenforceable provision with a valid or enforceable provision that achieves the same economic, legal, and commercial objectives as the invalid or unenforceable provision
- 12 Intended Beneficiaries. WISHIN and DigiCert are express and intended beneficiaries of your obligations and representations under this agreement.

BY CHECKING "I AGREE" AND INITIALING ABOVE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS DIRECT CERTIFICATE AUTHORIZATION, THAT YOU AGREE TO IT, AND THAT YOU AUTHORIZE ISSUANCE OF THE CERTIFICATE

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<b>APPROVAL</b> <i>Slaw PH</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>Apr 21, 2020</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Authorize the City of Franklin to participate in an Intergovernmental Cooperation Agreement for Procuring Personal Protection Equipment and other Necessary Sanitation and Medical Supplies in Response to the COVID-19 Public Health Emergency</b>	<b>ITEM NUMBER</b> <b>G.5.</b>

### **Background**

The City of Franklin participates in the Intergovernmental Cooperation Council of Milwaukee County. In keeping with that participation, and the declaration of the Public Health Emergency, a Unified Emergency Operations Center (UEOC) for Milwaukee County has been activated.

That UEOC has established a working group to procure hard to obtain personal protection equipment in support of front line public Safety personnel. Franklin's Fire Chief requests that Franklin participate in this effort which will make the procurement of the needed PPE more efficient than would otherwise be possible if the Milwaukee County municipalities procured the PPE independently of each other.

The term of this agreement is for the duration of the Public Health Emergency, but the City has the ability to opt out of the agreement upon 30 days written notice. The City may participate at whatever level that it chooses. Milwaukee County will serve as the fiscal agent for the Agreement. The City of West Allis has agreed to provide the logistics for supplies procured under the Agreement.

The City Attorney's office has participated in the drafting of the attached Intergovernmental Cooperation Agreement. As of April 16, 2020, some provisions of the agreement are still being hammered out between the various agencies. A revised DRAFT agreement is likely to be made available at the April 21, 2020 meeting.

The Franklin Fire Chief, as chair of the Franklin Emergency Operations Center will serve as Franklin's representative on the UEOC procurement team.

### **Recommendation**

The Franklin Fire Chief recommends Franklin's participation in the proposed Intergovernmental Cooperation Agreement.

### **COUNCIL ACTION REQUESTED**

Motion authorizing the City of Franklin to participate in an Intergovernmental Cooperation Agreement for Procuring Personal Protection Equipment and other Necessary Sanitation and Medical Supplies in Response to the COVID-19 Public Health Emergency



**INTERGOVERNMENTAL COOPERATION AGREEMENT FOR PROCURING  
PERSONAL PROTECTION EQUIPMENT AND OTHER NECESSARY  
SANITATION AND MEDICAL SUPPLIES IN RESPONSE  
TO THE COVID-19 PUBLIC HEALTH EMERGENCY**

This Intergovernmental Cooperation Agreement, (“Agreement”), is entered into respectively as of the date signed by the respective parties each with proper authorization to execute this Agreement, (herein referred to collectively as “the Parties” and individually as “a Party”), and is made pursuant to Wis Stat § 66 0301

WHEREAS, each Party recognizes that combining efforts to procure Personal Protective Equipment (PPE), Sanitation Supplies and Medical Supplies during the current public health emergency brought on by the COVID-19 pandemic promotes cost effective and efficient use of public resources, and

WHEREAS, the Parties have specifically identified that combining procurement efforts will mutually benefit the communities they serve by increasing the likelihood of successful procurement requests and decreasing costs, and

WHEREAS, the Parties desire to enter into this Agreement to establish procedures for requesting, assigning, distributing, and funding PPE, Sanitation, and Medical procurement, as well as for defining their respective relative rights and responsibilities

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed as follows

- 1 The terms of this Agreement are made pursuant to Wis Stat. § 66 0301.
- 2 Definitions
  - a) “Fiscal Agent” is Milwaukee County
  - b) “Medical Supplies” means thermometers, other medical devices, and medications that a party desires the Procurement Team to acquire during the current Public Health Emergency.
  - c) “Order” means a request by the Fiscal Agent to a third party to acquire PPE, Medical Supplies or Sanitation Supplies
  - d) “Personal Protection Equipment (PPE)” means N95 masks/respirators, surgical masks (standard disposable), KN95 respirators, latex gloves, isolation gowns, shoe/boot coverings, face shields, eye protection and other equipment that a party desires the Procurement Team to acquire during the current Public Health Emergency

- e) "Priority Formula" shall be the formula utilized by the Procurement Team to determine the Ordering and disbursement of PPE, Medical Supplies and/or Sanitation Supplies and is attached hereto as Exhibit A and incorporated herein.
  - f) "Procurement Requests" are requests from a Designated Representative to the Procurement Team Liaison to be included in the next Order
  - g) "Sanitation Supplies" means toilet paper, paper towels, hand sanitizer, disinfectant sprays (bleach based or otherwise), disinfecting wipes and other supplies that a party desires the Procurement Team to acquire during the current Public Health Emergency
  - h) Procurement Team is a committee of individuals that each party appoints to administer this Agreement. The Procurement Team members shall have experience in procurement, purchasing and qualifying vendors. Each party shall appoint one person to serve on the Procurement Team. The Procurement Team shall select one individual to serve as a Liaison (hereinafter referred to as the "Liaison") to the parties and to the Fiscal Agent.
- 3 The parties hereby grant the Procurement Team the authority to administer this Agreement only where such authority is explicitly given to the Procurement Team
- 4 Each party shall appoint one representative who shall have authority to make purchase requests for PPE, Sanitation Supplies, and/or Medical Supplies ("Designated Representative"). Each Party shall notify the Liaison in writing of its Designated Representative and shall include
- a) The Designated Representative's name, office address, office phone number, email address and mobile phone number (must accept text messages)
- 5 The Procurement Team shall maintain one centralized database ("Database") that is accessible online to each Designated Representative. The database shall include the following information.
- a) Current inventory of PPE, Sanitation Supplies, and Medical Supplies of received by the Procurement Team (to be updated by Liaison)
  - b) Current inventory of PPE, Sanitation Supplies, and Medical Supplies of each party, by department (to be updated by each Designated Representative)
  - c) Current projection of 7 day, 14 day, 21 day, and 21+ day projection of needs for PPE, Sanitation Supplies, and Medical Supplies

- d) Pending Orders made by the Fiscal Agent to suppliers including anticipated delivery date (to be maintained by Fiscal Agent)
  - e) Procurement requests made by parties awaiting inclusion in an Order (to be maintained by Liaison)
- 6 The Fiscal Agent shall make purchases of PPE, Medical Supplies, and/or Sanitation Supplies as directed by the Liaison. The Procurement Team shall use its best efforts when assembling Orders to combine Procurement Requests made by parties. All Procurement Requests may not be included in an Order. The Procurement Team will determine which Procurement Requests to include in an Order in its discretion and considering existing market forces and the Priority Formula. The Procurement Team shall use best efforts when assembling Orders to ensure that said Orders qualify for any federal or state grant reimbursement when possible.
- 7 The PPE, Medical Supplies, and Sanitation Supplies purchased by Fiscal Agent shall be received and housed by the City of West Allis until such time that they are distributed to requesting parties. The City of West Allis shall be responsible for any losses that occur while storing any PPE, Medical Supplies, and Sanitation Supplies. The Liaison will coordinate pick-up of supplies with a West Allis representative and a Designated Representative.
- 8 Procurement Requests shall be made by a Designated Representative to the Liaison in writing, on a form provided by the Procurement Team. Each request shall include the type of PPE, Medical Supplies, and/or Sanitation Supplies requested, the quantity of each item, and an itemization of the department/staff that will be receiving the requested items. The Liaison shall confirm receipt of the request and provide the Designated Representative with a quote for the cost of the request. The Procurement Team shall establish a per-unit price for each item acquired, by dividing the total cost by the number of such items acquired, so that each party pays the same price per unit. The Designated Representative shall respond in writing whether to proceed with the request within two hours of the Liaison sending the quote. If the Designated representative does not respond to the quote within two hours, the Procurement Request may not be included in the next Order. If a Procurement Request is included in an Order, the Fiscal Agent shall communicate payment terms to each requesting party, and each party shall comply with said terms prior to the supplies being released to the requesting party. Each party is obligated by this agreement to pay no more and no less than the actual cost of PPE, Medical Supplies, and/or Sanitation Supplies that party receives based on that member's Procurement Requests subject to any administrative costs shared by the parties pursuant to Paragraph 12. The Procurement Team and Fiscal agent shall use best efforts in ensuring that all Orders and purchases qualify for any state and federal grant reimbursement funds.
- 9 This is not an agreement to exclusively purchase the subject goods under this Agreement. The parties may choose to purchase PPE, Sanitation Supplies,

and Medical Supplies through alternative means without cooperation or permission from the Procurement Team or any other party at any time.

10. Each party is responsible for its own application for any monetary grant or reimbursement offered through federal, state, governmental or other sources. Each party that receives such a grant or reimbursement shall retain it. However, upon written agreement by a party, the Fiscal Agent may apply for a monetary grant or reimbursement on behalf of that party. Each party applying for its own monetary grant or reimbursement shall use its best efforts to include administrative costs (as defined in Paragraph 12) in such application and shall work with Fiscal Agent to track and define such administrative costs.
11. Each party shall direct its respective representatives on the Procurement Team to act in accordance with this Agreement.
12. The Fiscal Agent will be responsible for the receipt, inventory, order fulfillment, bookkeeping and delivery of PPE, Sanitation Supplies, and Medical Supplies to all parties. The Fiscal Agent shall use best efforts to secure reimbursement for administrative costs associated with the foregoing activities through federal or state grants. Should grant funds be denied, the Fiscal Agent shall invoice each party for its share of any administrative costs paid to third parties. Administrative costs means monies paid to third parties or costs otherwise incurred by the Fiscal Agent to assist in the administration of the Fiscal Agent's duties under this Agreement, examples of which include: bank fees and interest, storage fees, shipping fees not already included in an Order and Fiscal Agent staff time dedicated to procurement, bookkeeping, inventory tracking and related activities hereunder.
13. Each Party shall be solely responsible for the acts or omissions of its own employees under this Agreement. Any employee providing services under this Agreement shall be considered to be acting under the scope employment of his or her employer, shall be considered to be the employee of his or her employer, and shall be covered by his or her employer for any and all fringe or other benefits and any liability.
14. The Parties agree to hold each other harmless solely for its acts or omissions under this Agreement. The parties shall hold harmless the members of the Procurement Team. In the event a loss occurs, the Fiscal Agent shall pursue any legal remedies on behalf of the parties and the parties shall share in any loss proportionately.
15. The Parties acknowledge that numerous parties to this Agreement are governmental entities entitled to various defenses, immunities, or limitations under the law; nothing contained herein is intended as a waiver of any defenses, immunities, or limitations to which they are entitled pursuant to statutory or common law.

- 16 A Party may terminate its participation in this Agreement by providing thirty days written notice to the other parties. However, any terminating party will remain obligated to pay for its own Procurement Requests that have been included in Orders and its share of administrative costs under Paragraph 12. The Agreement shall remain in effect as to non-terminating parties. This Agreement shall terminate when the current public health emergency, as Declared by the State of Wisconsin, expires, unless otherwise extended upon the mutual agreement of two or more parties.
- 17 This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin. This Agreement represents a complete understanding of the Parties with respect to the subject matter referred to herein and may not be amended except in writing. This Agreement may be executed in multiple counterparts or duplicate originals, each of which shall constitute and may be deemed as one in the same document.
18. This Agreement shall take effect upon execution by the Fiscal Agent and at least one other party. Additional parties may sign on to this Agreement after initial execution unless objected to by existing signatories unanimously.

This signatory certifies that this Intergovernmental Cooperation Agreement has been adopted and approved by resolution or other manner approved and allowed by law.

Municipal Corporation

Signatory

Date

Municipal Corporation

Signatory

Date



# EXHIBIT A

## Unified Emergency Operations Center

UEOC@milwaukeecountywi.gov

*jurisdictions within Milwaukee County*

## 5 PROCEDURAL STEPS

### 5.1 DISTRIBUTION PROCEDURE

Given the scarcity of supplies nationally, the U-EOC developed a framework for prioritization of supplies across the stakeholders in the Milwaukee-area community that are in need of Personal Protective Equipment (PPE).

The U-EOC Logistics section will use a prioritization framework as a guideline in fulfilling orders, and will aim to distribute supplies in accordance to the tier ratios described below. It will use best judgment to balance supply of PPE and demands on the ground. The prioritization list does not guarantee that every order that meets the priority criteria will be fulfilled. The U-EOC Logistics section may consider holding a reserve of supplies in order to meet acute needs going forward.

#### 5.1.1 Description of Tiers

The U-EOC developed a Tiers framework, loosely based on Washington State Department of Health's framework released on 3/21/20<sup>2</sup>, for the distribution of donated supplies. On 4/10/20, that framework was modified by the U-EOC Logistics Team for application to the distribution of U-EOC joint direct procurement of PPE and other supplies.

**There is no intra-tier prioritization of supplies. Police, Fire, EMS, MCSO and Public Health are considered as equal priority.**

The framework is as follows

Tier	Milwaukee Area U-EOC Description
Tier 1	First Responders, including: Police Departments Milwaukee County Office of the Sheriff Fire Departments Emergency Management Services (EMS) Public Health Departments  Health Care Providers, including: Jails, Correctional Facilities and/or Detention Sites Emergency Management Services (EMS)

<sup>2</sup> <https://www.doh.wa.gov/Newsroom/Articles/ID/1126/Department-of-Health-Releases-Personal-Protective-Equipment-Distribution-Guidelines>



# Unified Emergency Operations Center

UEOC@milwaukeecountywi.gov

*jurisdictions within Milwaukee County*

	Municipal- or County-run Health Care Facilities
<b>Tier 2</b>	<b>Essential Staff in the areas of:</b> Police Departments Milwaukee County Office of the Sheriff Fire Departments Emergency Management Services (EMS) Public Health Departments Jails, Correctional Facilities and/or Detention Sites Public Works - Critical Infrastructure Support <sup>3</sup> Election Activities Municipal- or County-run Health Care Facilities
<b>Tier 3</b>	<b>Essential Staff in the areas of:</b> Public Transit Public Works Essential Office Settings (Courts, DHHS, Family Services)
<b>Tier 4</b>	<b>Non-essential Governmental Workers</b>

## 5.1.2 Distribution Among Tiers

Personal Protective Equipment (PPE) distribution will be prioritized by Tier as follows

1. Priority will be given to first responders and health care providers with < 10 days of supply presently in stock.
2. Priority will be given to Tiers 2 and 3 if supply falls below 7 days of stock.
3. Priority will be given to active IGA members. If and when a new member joins the IGA, they will be eligible to receive stock from future orders only

The U-EOC will aim to distribute PPE weekly. Each organization should make every effort to adhere to the listed tiering above in distribution within the organization

## 5.1.3 Distribution within Tiers

Distribution within Tiers shall be based on two factors

<sup>3</sup> Critical Infrastructure Support includes work with a high chance of contact with infected persons such as homeless encampment work, repair of emergency vehicles in the field, etc

<sup>4</sup> Public Works activities such as bus refueling, etc which require PPE but do not involve high chance of contact with infected persons



## Unified Emergency Operations Center

UEOC@milwaukeecountywi.gov

*jurisdictions within Milwaukee County*

1. The availability of PPE resources within a particular jurisdiction – jurisdictions with < 7 day supply will be prioritized.
2. The number of first responders and health care providers<sup>5</sup> within a given jurisdiction.

Jurisdictions will be responsible for providing 7, 14, 21, and >21 day projection of needs data to the U-EOC Support Team to ensure availability of supplies. **Failure to provide accurate data may result in reduced distribution of purchased supplies.** Jurisdictions are advised to be as cautious in their estimates as necessary.

### 5.1.4 Eligibility and Request Procedure

To be eligible for distribution, each Milwaukee County-based entity requesting PPE will meet the following criteria

1. Requesting agency has executed the IGA and is a participant in the U-EOC,
2. Requesting agency has consistently implemented CDC strategies to optimize use of N95 respirators, and has otherwise put in place PPE conservation guidelines,
3. Requesting agency has adhered to the tiering system above in distribution of PPE internally to its workers,
4. Shortage or depletion is impacting ability to ensure patient care and/or worker safety.

Eligible entities will make requests for PPE through their municipal/county Emergency Operations Center. The municipal/county EOC will share those requests via U-EOC's designated formal request form.

Each distribution will be documented via a receipt that will track distribution, to inform any potential future reimbursements

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<sup>5</sup> Health care providers are defined as individuals providing medical service (emergent or otherwise) to individuals with a high likelihood of infection with COVID-19



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APPROVAL <i>Slw</i> <i>PA</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Apr 21, 2020
REPORTS & RECOMMENDATIONS	Report on Expenditures related to the COVID-19 Public Health Emergency thru April 15, 2020	ITEM NUMBER <i>G.6.</i>

### **Background**

On March 17, 2020 the Common Council authorized spending up to \$250,000 in response to the COVID-19 Public Health Emergency.

Thru April 15, 2020, the City has spent \$60,412 of Labor funds, \$31,931 in operating costs (principally \$20,000 in extra postage for absentee ballots), and \$11,587 on equipment (with an additional \$5,596 on order). Details of the expenditures are:

Elections	23,304
Info Systems	447
Finance	55
Muni Buildings	175
Police	2083
Fire	2216
Highway	1400
Parks	2251
Total	31,931

Total expenditures and encumbrances are \$109,525.

The FEMA grant will potentially cover overtime costs, which total \$32,605 currently. Very little else of these funds are recoverable under the COVID-10 FEMA grant, as they don't meet the requirements of the grant.

### **COUNCIL ACTION REQUESTED**

Information Only – no action requested..

# The Economy and Cities: **WHAT AMERICA'S LOCAL LEADERS ARE SEEING**



Local leaders understand the needs of their residents and are best positioned to make emergency management decisions related to allocation of resources.

The federal government **MUST** act to ensure every city, town and village impacted by this pandemic—regardless of size—has direct access to emergency funding.

## UNDER THE CURRENT CARES ACT:

Only municipalities of more than **500,000** residents will receive direct funding through the Coronavirus Relief Fund

Only **36 of 19,000** American cities, towns and villages are 500,000+

That equals less than **0.5%** of all municipalities

And only represents **14%** of the country's total population

## MUNICIPALITIES OF ALL SIZES WILL FEEL THE ECONOMIC IMPACT OF COVID-19.

Nearly 100% of cities with populations above 50,000 will see a revenue decline this year.

**87%**  
of municipalities <50,000  
anticipate a revenue shortfall this year

**100%**  
of municipalities 200k-499,999  
anticipate a revenue shortfall this year

**98%**  
of municipalities 50k-199,999  
anticipate a revenue shortfall this year

**100%**  
of municipalities 500,000+  
anticipate a revenue shortfall this year

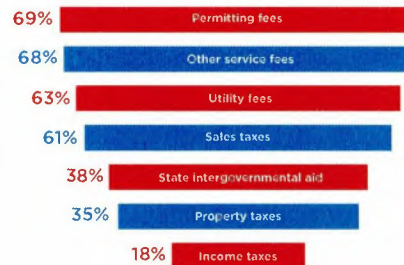
**96%** OF ALL CITIES REPORT THAT BUDGET SHORTFALLS ARE THE RESULT OF UNANTICIPATED REVENUE DECLINES.

## PRIMARY FACTOR FOR SHORTFALL

**53%**  
UNANTICIPATED REVENUE  
DECLINE ONLY

**43%**  
UNANTICIPATED REVENUE  
DECLINES AND UNANTICIPATED  
EXPENDITURE INCREASES

## LOCAL LEADERS ARE REPORTING AN IMMEDIATE ECONOMIC IMPACT FROM LOSS OF REVENUE SOURCES THEY DEPEND ON TO FUND ESSENTIAL SERVICES.



## PUBLIC SERVICES WILL BE IMPACTED BY THE ECONOMIC STRAIN OF COVID-19.

**50%**  
of municipalities <50,000  
are anticipating having to cut  
public services.

**70%**  
of municipalities 200k-499,999  
are anticipating having to cut  
public services.

**63%**  
of municipalities 50k-199,999  
are anticipating having to cut  
public services.

**76%**  
of municipalities 500,000+  
are anticipating having to cut  
public services.

MORE THAN **HALF** OF ALL CITIES OF ALL SIZES REPORTED THAT POLICE WILL BE AFFECTED.

## CORONAVIRUS WILL HAVE A STAGGERING IMPACT ON ALL MUNICIPAL EMPLOYMENT.

### THERE WILL BE FURLOUGHS

**26%** OF MUNICIPALITIES <50,000  
will have to furlough their employees

**55%** OF MUNICIPALITIES 50K-199,999  
will have to furlough their employees

**54%** OF MUNICIPALITIES 200K-499,999  
will have to furlough their employees

**59%** OF MUNICIPALITIES 500,000+  
will have to furlough their employees

### AND THERE WILL BE LAYOFFS

**26%** OF MUNICIPALITIES <50,000  
will have to lay off their employees

**36%** OF MUNICIPALITIES 50K-199,999  
will have to lay off their employees

**39%** OF MUNICIPALITIES 200K-499,999  
will have to lay off their employees

**47%** OF MUNICIPALITIES 500,000+  
will have to lay off their employees



<b>APPROVAL</b>  <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>4/21/2020</b>
<b>REPORTS AND RECOMMENDATIONS</b>	<b>Authorization to Cover 1<sup>st</sup> Dollar Medical Costs For COVID-19 Treatment for Employees Covered on the City's Health Insurance Plan</b>	<b>ITEM NUMBER</b>  <b>G.7.</b>

UnitedHealthcare, the third-party administrator that processes our employee health plan, required a decision from us by April 8<sup>th</sup> as to whether we wanted to cover treatment for COVID-19 with no employee cost sharing for employees. We were given two options to select from:

1. Waive member cost share for in and out of network inpatient treatment-related medical expenses and covered services associated with COVID-19 through 5/31/2020 (may be extended based on need).
2. Treatment for COVID-19 will follow standard plan provisions so the applicable deductible, coinsurance and copays will apply.

UnitedHealthcare has waived member costs for all of their fully-insured health plans. As the City of Franklin is a self-insurance plan, we are able to make an independent selection.

Staff has recommended option 1 above with no employee cost sharing for COVID-19 treatment. This selection has been conveyed to UnitedHealthcare and will stay in effect unless the Common Council decides to change this direction.

Maximum out-of-pocket expenses for an employee or a dependent on our plan are \$4500/year. The fiscal impact of this authorization request would be a maximum of \$4500 per participant needing COVID-19 treatment. (To date there have been no expenses submitted due to COVID-19.)

A large percentage of our employees are not covered by the Families First Coronavirus Response Act as we elected to exclude our First Responders. In addition, many of our employees have been exposed to outside hazards during the recent election, etc. Employees that may contract COVID-19 will have a hard time proving the illness as work related. Our workers compensation carrier has indicated that they will deny claims as work related unless an employee can show that they had a lengthy work-related exposure to someone that tested positive. As such, it is felt that the City should not penalize employees who have diligently reported to work by having to pay the \$4500 out-of-pocket costs.

### **COUNCIL ACTION REQUESTED**

Motion to Authorize Coverage of 1<sup>st</sup> Dollar Medical Costs For COVID-19 Treatment for Employees Covered on the City's Health Insurance Plan.

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE April 21, 2020
Reports & Recommendations	A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A DEVELOPMENT AGREEMENT WITH THE DEVELOPER OF KNOLLWOOD LEGACY APARTMENTS	ITEM NO. <i>G.8.</i>

### **BACKGROUND**

Pursuant to the approval of the Knollwood Legacy Apartments project, the developer, WAB Holdings KWL LLC. is ready to proceed with the development. The development is called Knollwood Legacy Apartments and it is necessary to enter into a development agreement at an estimated cost of \$233,995.57.

### **ANALYSIS**

Ordinance No. 2019-2392 amended the City of Franklin 2025 Comprehensive Master Plan to change the City of Franklin 2025 Future Land Use Map for property generally located at South Scepter Drive and West Church Street from Mixed Use to Residential, Multi-Family Use.

This project includes 40 apartments, with public improvements including sidewalks and utility work.

Approval of this development agreement is required.

### **OPTIONS**

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

### **FISCAL NOTE**

Municipal services and contingencies are accepted with percentages and are included in bond.

### **RECOMMENDATION**

Motion to adopt Resolution No. 2020- \_\_\_\_\_ a resolution authorizing certain officials to execute a development agreement with the developer of Knollwood Legacy Apartments upon review and acceptance by City Attorney.

Department of Engineering GEM

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2020- \_\_\_\_\_

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A  
DEVELOPMENT AGREEMENT WITH THE DEVELOPER OF  
KNOLLWOOD LEGACY APARTMENTS

-----  
WHEREAS, the Common Council at its regular meeting on October 15, 2019, adopted Ordinance No. 2019-2392 amending the City of Franklin 2025 Comprehensive Master Plan to change the City of Franklin 2025 Future Land Use Map for property generally located at South Scepter Drive and West Church Street from Mixed Use to Residential, Multi-Family Use.; and

WHEREAS, it is in the best interest of the City of Franklin to provide an orderly planned development known as Knollwood Legacy Apartments; and

WHEREAS, the developer of the subdivision is willing to proceed with the installation of the improvements provided for in the Development Agreement; and

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

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

Introduced at a regular meeting of the Common Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 by Alderman \_\_\_\_\_.

Passed and adopted by the Common Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

APPROVED:

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

ATTEST:

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

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

Engineering/GEM

**CITY OF FRANKLIN**

**WISCONSIN**

**DEVELOPMENT AGREEMENT**

**FOR**

**KNOLLWOOD LEGACY APARTMENTS**

**April 2020**



**DEVELOPMENT AGREEMENT  
FOR  
KNOLLWOOD LEGACY APARTMENTS**

ARTICLES OF AGREEMENT (THIS "Agreement") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2020, by and between WAB Holdings KWL LLC, a [limited liability corporation], hereinafter called the "Developer" as party of the first part, and the City of Franklin, a municipal corporation of Milwaukee County, Wisconsin, party of the second part, hereinafter called the "City".

**WITNESSETH:**

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

WHEREAS, the Developer having applied to the City for a development of 40 apartment units, and the approval[s] thereof by the City of Franklin providing that as a condition of approving the Development, that the Developer make and install, or have made and have installed, any public improvements reasonably necessary, to wit: and

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

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

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

1. The legal description of the Development is set forth on attached Exhibit "A".
2. The improvements aforementioned shall be as described in Exhibit "B" except as noted in Exhibit "E".
3. The Developer shall prepare plans and specifications for the aforesaid Improvements and to be approved by the City Engineer. After receiving the City's approval thereof, the Developer shall take bids, and award contracts (the "Improvements Contracts") for and install all of the improvements in accordance with standard engineering and public works practices, and the applicable statutes

of the State of Wisconsin. The Improvements shall be based on the construction specifications stated in attached Exhibit "F".

4. The full cost of the Improvements will include all labor, equipment, material, engineering, surveying, inspection and overhead costs necessary or incidental to completing the Improvements (collectively the "Improvements Costs"). Payment for the Improvements Costs will be made by the Developer periodically as the Improvements are completed as provided in the Improvements Contracts. The total estimated cost of the Improvements is (IN WORDS) Two Hundred Thirty-Three Thousand, Nine Hundred Ninety-Five and Fifty-Seven/100 Dollars as itemized in attached Exhibit "D".
5. To assure compliance with all of Developer's obligations under this Agreement, prior to the issuance of any building permits, the Developer shall file with the City a Financial Guarantee (the "Financial Guarantee", which may be either in the form of a Letter of Credit or a Performance Bond and such form shall be the choice of the Developer) in the initial amount of \$233,995.57 representing the estimated costs for the Public Improvements as shown in attached Exhibit "D". Upon the written approval of the City Engineer, the amount of the Financial Guarantee may be reduced periodically as the Improvements are paid for and approved by the City so that following each such reduction, the Financial Guarantee equals the total amount remaining for Improvements Costs pertaining to Improvements for which Developer has not paid as set forth in the Improvements Contracts for the Improvements or which remain unapproved by the City. The Financial Guarantee shall be issued by a bank or other financial institution (the "Surety Guarantee Issuer") reasonably satisfactory to the City, for the City as "Beneficiary", in a form satisfactory to the City Attorney. Failure to file the Financial Guarantee within ten (10) days after written demand by the City to the Developer shall make and render this Agreement null and void, at the election of the City. Upon acceptance by the City (as described below) of and payment by Developer for all the completed Improvements, the Financial Guarantee shall be released and surrendered by the City to the Developer, and thereafter the Developer shall have no further obligation to provide the Financial Guarantee to the City under this Paragraph 5., except as set forth under Paragraph 13. below.
6. In the event the Developer fails to pay the required amount for the Improvements or services enumerated herein within thirty (30) days or per contract after being billed for each improvement of each stage for any Improvement Costs at the time and in the manner provided in this Agreement, and if amounts remain unpaid after an additional thirty (30) days written notice to Developer, the City may notify the Guarantee Issuer in writing to make the said payments under the terms of the Financial Guarantee to the Contractor, within the later of the time frame stipulated in the Financial Guarantee or five (5) days after receiving a written demand from the City to make such payment. Demand shall be sent by registered letter with a return receipt requested, addressed to the Surety Guarantee Issuer at the address

indicated on the Financial Guarantee, with a copy to the Developer, described in Paragraph five (5) above. It is understood between the parties to this Agreement, that billings for the Improvement Costs shall take place as the various segments and sections of the Improvements are completed and certified by the City Engineer as complying with the approved plans and applicable provisions of the Franklin Municipal Code.

In addition, the City Engineer may demand that the Financial Guarantee be extended from time to time to provide that the Financial Guarantee be in force until such time that all improvements have been installed and accepted through the one (1) year guarantee period as set forth under Paragraph 13. below, including the fourteen (14) months following substantial completion of the Improvements and 10% limitations also set forth thereunder. For the purposes of this Agreement, "Substantial Completion" is defined as being the date that the binder course of asphalt is placed on the public roadway of the Development. Demand for said extension shall be sent by registered letter with a return receipt, with a copy to the Developer. If said Financial Guarantee is not extended for a minimum of a one (1) year period prior to expiration date of the Financial Guarantee (subject to any then applicable of the aforementioned limitations), the City may send written notice to the Surety Guarantee Issuer to make payment of the remaining balance of the Financial Guarantee to the City to be placed as an escrow deposit.

7. The following special provisions shall apply:
  - (a) Those special provisions as itemized on attached Exhibit "C" and attached Exhibit "E" are hereby incorporated by reference in this Agreement and made a part hereof as if fully set forth herein.
  - (b) The laterals mentioned in Exhibit "B" are to be installed before street surfacing mentioned in Exhibit "B" is commenced.
  - (c) Gas Company is to install all necessary mains before the street surfacing mentioned in Exhibit "B" is commenced. Also, any other underground work by any other utilities is also to be completed before said street surfacing is commenced.
  - (d) To the extent necessary to accommodate public utilities easements on the Development, easements will be dedicated for the use of the Electric Company, the Telephone Company and Cable Company to provide utility services to the Development. All utilities shall be underground except for any existing utility poles/lines.
  - (f) Fee title to all of the Public Improvements and binding easements upon lands on which they are located, shall be dedicated and given by the Developer to the City, in form and content as required by the City, without

recourse, and free and clear of all liens or encumbrances, with final inspection and approval of the Public Improvements and accompanying title and easement documents by the City constituting acceptance of such dedication. The Public Improvements shall thereafter be under the jurisdiction of, the City and the City shall maintain, at the City's expense, all of the Public Improvements after completion and acceptance thereof by the City. Necessary permits shall be obtained for all work described in this Agreement.

8. The Developer agrees that it shall be fully responsible for all the Public Improvements in the Development and appurtenances thereto during the period the Improvements are being constructed and continuing until the Public Improvements are accepted by the City (the "Construction Period"). Damages that may occur to the Improvements during the Construction Period shall be replaced or repaired by the Developer. The Developer's obligations under this Paragraph 8., as to any public improvement, terminates upon acceptance of that improvement by the City.
9. The Developer shall take all reasonable precautions to protect persons and property of others on or adjacent to the Development from injury or damage during the Construction Period. This duty to protect shall include the duty to provide, place and maintain at and about the Development, lights and barricades during the Construction Period.
10. If the persons or property of others sustain loss, damage or injury resulting directly or indirectly from the work of the Developer or its subcontractors or materialmen in their performance of this Agreement or from its failure to comply with any of the provisions of this Agreement or of law, the Developer shall indemnify and hold the City harmless from any and all claims and judgments for damages, and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason thereof, provided; however, that the City shall provide to the Developer promptly, in writing, notice of the alleged loss, damage or injury.
11. Except as otherwise provided in Paragraph 12. below, the Developer shall indemnify and save harmless the City, its officers, agents and employees, and shall defend the same, from and against any and all liability, claims, loss, damages, interest, actions, suits, judgments, costs, expenses, and attorneys' fees, to whomsoever owed and by whomsoever and whenever brought or obtained, which in any manner results from or arises in connection with:
  - (a) the negligent or willfully wrongful performance of this Agreement by the Developer or any subcontractor retained by the Developer;
  - (b) the negligent or willfully wrongful construction of the Improvements by the Developer or by any of said subcontractors;

- (c) the negligent or willfully wrongful operation of the Improvements by the Developer during the Construction Period;
  - (d) the violation by the Developer or by any of said subcontractors of any applicable law, rule, regulation, order or ordinance; or
  - (e) the infringement by the Developer or by any of said subcontractors of any patent, trademark, trade name or copyright.
12. Anything in this Agreement to the contrary notwithstanding, the Developer shall not be obligated to indemnify the City or the City's officers, agents or employees (collectively the "Indemnified Parties") from any liability, claim, loss, damage, interest, action, suit, judgment, cost, expenses or attorneys fees which arise from or as a result of the negligence or willful misconduct of any of the Indemnified Parties.
13. The Developer hereby guarantees that the Public Improvements will be free of defects in material and/or workmanship for a period of one (1) year from the date of acceptance of the Public Improvements by the City. To secure the Developer's obligations under said guaranty upon acceptance of the Improvements by the City, the Developer will provide to the City a Financial Guarantee equal to 10% of the sub-total in Exhibit "D" of the total Public Improvements Costs, which Financial Guarantee shall expire one (1) year after the Public Improvements have been accepted by the City or continue the existing base Financial Guarantee maintaining a minimum of 10% of the sub-total in Exhibit "D" of the total Public Improvements Costs for one (1) year after the improvements have been accepted by the City. This Financial Guarantee shall be a partial continuation of, and not in addition to, the Financial Guarantee described in Paragraph 5. above.
14. (a) The Developer shall not commence work on the Improvements until it has obtained all insurance coverage required under this Paragraph 14. and has filed certificates thereof with the City:
- (1) **COMPREHENSIVE GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE** - Coverage shall protect the Developer and all subcontractors retained by the Developer during the Construction Period and all persons and property from claims for damages for personal injury, including accidental death as well as claims for property damages, which may arise from performing this Agreement, whether such performance be by the Developer or by any subcontractor retained by the Developer or by anyone directly or indirectly employed by either the Developer or any such subcontractor. The City shall be named as an additional insured on all such insurance coverage under this Paragraph 14.(a)(1) and Paragraph 14.(a)(2). The amounts of such insurance coverage shall be as follows:

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

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

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

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

15. The Developer shall not be released or discharged of its obligations under this Agreement until the City has completed its final inspection of all the Public Improvements and the City has issued its written approval of all of the Public Improvements, which approval shall not be unreasonably withheld or delayed, and Developer has paid all of the Improvements Costs, at which time the Developer shall have no further obligations under this Agreement except for the one (1) year guaranty under Paragraph 13.
16. The Developer and the City hereby agree that the cost and value of the Public Improvements will become an integral part of the value of the Development and that no future lot assessments or other types of special assessments of any kind will be made against the Development by the Developer or by the City for the benefit of the Developer, to recoup or obtain the reimbursement of any Improvement Costs for the Developer.
17. Execution and performance of this Agreement shall be accepted by the City as adequate provision for the Public Improvements required by City of Franklin pursuant to the approved plan.
18. Penalties for Developer's failure to perform any or all parts of this Agreement shall be in accordance with Division 15-9.0500, Violations, Penalties, and Remedies of the Unified Development Ordinance and §1-19. Penalty provisions of the City of Franklin Municipal Code, as amended from time to time, in addition

to any other remedies provided by law or in equity so that the City may obtain Developer's compliance with the terms of this Agreement as necessary.

This Agreement shall be binding upon the parties hereto and their respective successors and assigns, excepting that the parties hereto do not otherwise intend the terms or provisions of this Agreement to be enforceable by or provide any benefit to any person or entity other than the party of the first part and the party of the second part. Developer shall not convey or assign any of its rights or obligations under this contract whatsoever without the written consent of the City, which shall not be unreasonably withheld upon a showing that any successor or assignee is ready, willing and able to fully perform the terms hereof and the Developer remains liable hereunder. This Agreement shall run with the land.

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

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

SEALED IN PRESENCE OF: WAB Holdings KWL LLC \_\_\_\_\_  
[Developer/Entity]

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

Party of the First Part

STATE OF WISCONSIN )  
 )ss.  
\_\_\_\_\_ COUNTY )

Personally came before me this \_\_\_\_\_ (day) of \_\_\_\_\_, 2020, the above named \_\_\_\_\_ of \_\_\_\_\_ and acknowledged that [she/he] executed the foregoing instrument as such officer as the deed of said \_\_\_\_\_ by its authority.

or

This instrument was acknowledged before me on \_\_\_\_\_ (date) by \_\_\_\_\_ (name(s) of person(s)) as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.) of \_\_\_\_\_ (name of party on behalf of whom instrument was executed).

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

CITY OF FRANKLIN

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

COUNTERSIGNED:

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



Party of the Second Part

STATE OF WISCONSIN )  
 )ss.  
\_\_\_\_\_ COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2020, the above named Stephen R. Olson, Mayor, and Sandra L. Wesolowski, City Clerk, of the above named municipal corporation, City of Franklin, to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they had executed the foregoing instrument as such officers as the Deed of said municipal corporation by its authority and pursuant to Resolution No. \_\_\_\_\_, adopted by its Common Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

This instrument was drafted by the City Engineer for the City of Franklin.

Form approved:

\_\_\_\_\_  
Jesse A. Wesolowski, City Attorney

**INDEX OF EXHIBITS  
TO  
DEVELOPMENT AGREEMENT  
FOR  
KNOLLWOOD LEGACY APARTMENTS**

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

**EXHIBIT "A"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**KNOLLWOOD LEGACY APARTMENTS**

LEGAL DESCRIPTION  
OF DEVELOPMENT

**EXHIBIT "B"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**KNOLLWOOD LEGACY APARTMENTS**

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

Description of improvements required to be installed to develop the [Name of] Development.

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

General Description of Public Improvements  
(refer to additional sheets for concise breakdown)

1. Erosion control within the Development in conformance with the approved grading plan. \*S
2. Laterals and appurtenances from sanitary sewer main to each lot line; one for each building as determined by the City. \*S
3. Water main and fittings in the streets and/or easement in the Development, to such size and extent as determined by the master water plan and/or the City Engineer as necessary to provide adequate service for the final Development and service area. \*S
4. Laterals and appurtenances from water main to the street line; one for each building, as determined by the City Engineer together with curb stop as specified by the City. \*S
5. Hydrants and appurtenances provided and spaced to adequately service \*S

the area and as the City shall require.

6. Concrete public sidewalks in the right-of way on Scepter Dr. to the approved grade and in accordance with the approved plan \*S
7. Protective fencing adjacent to pedestrian ways, etc. (N.A.)
8. Engineering, planning and administration services as approved. \*S
9. Drainage system as determined and/or approved by the City to adequately drain the surface water from the Development and drainage basin area in accordance with the master drainage plan and/or approved system plan. \*S
10. Street signage in such locations and such size and design as determined by the City. \*C
11. Title evidence on all conveyances. \*S

**EXHIBIT "C"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**KNOLLWOOD LEGACY APARTMENTS**

<b>GENERAL DEVELOPMENT REQUIREMENTS</b>
---

I. GENERAL

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

II.

III. WATER SYSTEM

A. Availability

- 1. Each and every building in the Development shall be served by a water main.
- 2. The Developer shall provide for the extension of the water system to abutting properties by laying water pipe in public right-of-way or in water easement to the exterior lot line of the Development as directed by the City Engineer.
- 3. Laterals shall be laid to each and every building. Size shall be approved by the City Engineer.
- 4. Fire hydrants shall be available to the City's Fire and Public Works Departments, and both City Departments shall have free and unlimited use of the water.

B. Construction

- 1. All construction shall be in accordance with the specifications of the City.

2. Inspection of the work shall be at the Developer's expense.
3. Mains and appurtenances including all pipe, hydrants, gate valves, laterals and curb stop boxes shall be installed.

#### IV. SANITARY SEWER SYSTEM

##### A. Components

Sanitary sewerage service through and within the Development shall be provided. It shall consist of without limitation because of enumeration, sanitary sewer, manholes, appurtenances, laterals, and other appurtenances.

##### B. Availability

1. Each and every building in the Development shall be served by a sanitary sewer.
2. Laterals shall be laid to the lot line of each and every building.
3. The Developer shall provide for the extension of the sanitary sewer system to abutting properties by laying sewer pipe to the exterior lot lines of the Development as directed by the City Engineer, and in accordance with system plans as approved by Milwaukee Metropolitan Sewerage District.

#### V. STORM DRAINAGE

##### A. Components

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

##### B. Endwalls

1. Endwalls shall be approved by the City Engineer.
2. Endwalls shall be installed on each and every culvert and at all open ends of storm sewers.

C. Outfalls and Retaining Walls

1. Outfalls and retaining walls shall be built where required by the City Engineer.
2. The aesthetic design of said structures shall be approved by the Architectural Board.
3. The structural design of said structures shall be done by an engineer or architect registered in the State of Wisconsin.

D. Responsibility of Discharged Water

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

VII. EASEMENTS

A. Drainage

1. All drainage easements dedicated to the public shall be improved as follows:
  - a) Storm sewer or lined invert open channel, unless otherwise agreed upon by the Developer and the City.
  - b) Side slopes no steeper than 4:1.
  - c) Landscaped in accordance with the applicable City regulations and/or approvals conditions for the Development for landscaping requirements or, in the case of storm sewer, as directed by the City Engineer.



## VIII. PERMITS ISSUED

### A. Building Permits

1. No occupancy permits shall be issued until:
  - a) The sanitary and storm sewer and water mains have been installed, tested and approved.
  - b) Drainage has been rough graded and approved.
  - c) All Development monuments have been set.

### B. Occupancy Permits

1. No temporary occupancy permits shall be issued until:
  - a) Streets have been paved except for the final lift of asphalt, weather permitting
  - b) The gas, telephone and electrical services have been installed and are in operation.
  - c) The water system is installed, tested and approved.
  - d) The site is stabilized and all drainage facilities have been re-certified.

## IX. DEED RESTRICTIONS

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

X. CHARGES FOR SERVICES BY THE CITY OF FRANKLIN

A. Fee for Checking and Review

At the time of submitting the plans and specifications for the construction of the Development improvements, a fee equal to two-and-one-fourth percent (2¼ %) of the cost of the improvements as estimated by the City Engineer at the time of submission of improvement plans and specifications, to partially cover the cost to the City of checking and reviewing such plans and specifications provided that cost does not exceed \$250,000.00; a fee equal to one-and-three-fourth percent (1¾ %) of such cost, if the cost is in excess of \$250,000.00, but not in excess of \$500,000.00; and one-and-one-fourth percent (1¼ %) of said cost in excess of \$500,000.00. At the demand of the Developer or City Engineer, the fee may be recomputed after the work is done in accordance with the actual cost of such improvements and the difference, if any, shall be paid by or remitted to the Developer. Evidence of cost shall be in such detail and form as required by the City Engineer.

B. For the services of testing labs, consulting engineers and other personnel, the Developer agrees to pay the City the actual charge plus five (5%) percent for administration and overhead.

**EXHIBIT "D"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR KNOLLWOOD LEGACY APARTMENTS**

<b>ESTIMATED IMPROVEMENT COSTS</b>
------------------------------------

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

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

DESCRIPTION	COSTS
Grading (including Erosion Control)	8,000.00
Sanitary System	
Water System	66,381.00
Storm Sewer System	
Public sidewalks	38,710.00
Street Trees (0x \$400/lot)	\$4,000.00
Street Lights (0) @ approximately \$5,000/ea.	-----
Street Signs	200.00
Underground Electric, Gas and Telephone	
Bio-filtration Basin	67,000.00
SUBTOTAL	184,091.00
Engineering/Consulting Services	
Municipal Services (7% of Subtotal)	12,886.37
Contingency Fund (20% of Subtotal)	36,818.20
TOTAL:	233,995.57

Total: Two Hundred Thirty-Three Thousand, Nine Hundred Ninety-Five and Fifty-Seven/100 Dollars.

APPROVED BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Glen E. Morrow, City Engineer

**EXHIBIT "E"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**KNOLLWOOD LEGACY APARTMENTS**

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

1. The Developer shall make every effort to protect and retain all existing trees, shrubbery, vines and grasses pursuant to the approved Natural Resource Protection Plan (the "NRPP"). Trees shall be protected and preserved during construction in accordance with sound conservation practices as outlined in §§15-8.0204A. through F. of the Unified Development Ordinance.
2. The Developer shall cause all grading, excavations, open cuts, side slopes and other land surface disturbances to be so mulched, seeded, sodded or otherwise protected that erosion, siltation, sedimentation and washing are prevented in accordance with the plans and specifications approved by the City Engineer as outlined in §§15-8.0203H.1. through 5. of the Unified Development Ordinance.
3. The Developer shall be responsible for cleaning up the debris that has blown from buildings under construction within the Development. The Developer shall clean up all debris within forty-eight (48) hours after receiving a notice from the City Engineer.
4. The Developer shall be responsible for cleaning up the mud and dirt on the roadways until such time as the final lift of asphalt has been installed. The Developer shall clean the roadways within forty-eight (48) hours after receiving a notice from the City Engineer.
5. Developer has submitted for approval by the City Engineer an erosion and silt control plan. Said plan shall provide sufficient control of the site to prevent siltation downstream from the site. The Developer shall maintain the erosion and siltation control until such time that vegetation sufficient to equal pre-existing conditions has been established.
6. The Developer shall preserve the environmental natural resource features as shown on the Natural Resource Protection Plan and shall install an orange snow fence and silt fence around the environmental natural resource features prior to land disturbing.
7. The Developer shall install an 8-inch diameter water main in the right of way from the existing water main located at S. Scepter Dr. of the Development.

8. The Developer shall construct storm water management facilities as required in the Storm Water Management Plan in accordance with the plans and specifications approved by the City Engineer. Maintenance of said storm water management facilities shall be the responsibility of the Developer and/or owners association.
9. Construction Requirements:
  - a) Prior to any construction activity on the site, Developer shall prepare a gravel surfaced parking area within the boundaries of the site.
  - b) During construction, all vehicles and equipment shall park on the site. Parking shall not be permitted on any external public right-of-way.
  - c) Prior to issuance of any occupancy permits other than in the case of the issuance of any model structure permits, all necessary grading and improvements shall be completed as directed by the City Engineer.
  - d) All traffic shall enter the site from S. Scepter Drive.

**EXHIBIT "F"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**KNOLLWOOD LEGACY APARTMENTS**

<b>CONSTRUCTION SPECIFICATIONS</b>
------------------------------------

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

ITEM	SPECIFICATION
Storm & Sanitary Sewer	STANDARD SPECIFICATIONS FOR SEWER AND WATER CONSTRUCTION IN WISCONSIN, most current edition CITY OF FRANKLIN
Water Mains	STANDARD SPECIFICATIONS FOR SEWER AND WATER CONSTRUCTION IN WISCONSIN, most current edition CITY OF FRANKLIN
Concrete Curb & Gutter	CITY OF FRANKLIN
Streets:	
Construction	CITY OF FRANKLIN
Materials	
Asphalt	CITY OF FRANKLIN
Aggregate	CITY OF FRANKLIN
Concrete	CITY OF FRANKLIN
Cross Section	CITY OF FRANKLIN

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE April 21, 2020
REPORTS & RECOMMENDATIONS	REQUEST TO PAY FOR STORM WATER REVIEWS RELATED TO A PRIVATE DRAINAGE ISSUE AT 9611 S 58TH ST (KRONES, INC.) TAX KEY 899-9990-062	ITEM NUMBER <i>G.9.</i>

#### **BACKGROUND**

Recently, Krones, Inc. completed development and construction of a product demonstration and training facility on their property located at 9611 S. 58<sup>th</sup> Street. The project involved a storm water control facility with overflow to a natural drainage way to the west. The storm water system is in full compliance with all City, State and federal requirements. As most storm water ponds are designed, this system does increase the total volume of water by limiting the flow rate for an extended period of time. This modification to the drainage patterns has been a continuous concern to the neighbors (9550 S. 60th Street and 9610 S. 60th Street).

Because of the many neighbor complaints, Staff has had multiple conversations with Krones and the affected neighbors concerning this private property to private property drainage issue. Staff has suggested some solutions on the neighboring properties, but no one has been willing to implement those solutions. To further complicate the issue, it appears that some grading to the north has occurred that is prohibiting open drainage as may have been historically available. Krones suggested a solution that would redirect the storm water pond outlet east directly to a public stormwater system in S. 58<sup>th</sup> Street. Staff was willing to entertain the concept and Krones had their consultant provide a survey and design. As with any stormwater design, the applicant's engineer submitted to one of the two stormwater consultants used by the City. After a few iterations, Krone's plan was approved.

Upon receipt of the invoices for the storm water reviews by the City's consultant, Krones is requesting that they not pay for the reviews. The City's consultant has been paid by the City and invoices to Krones do include some late fees. It is expected that the total of all reviews will be less than \$3,000. Note that some invoices are still forthcoming so this total is an estimate.

On April 14, 2020, the Board of Public Works discussed this issue and made a recommendation to Common Council that the City should "cover the cost of these invoices on a non-precedent setting basis." The Board discussed how Krones is spending approximately \$60k of their money to provide a solution. The Board also noted that Krones has a functioning stormwater system and fully complaint with all Federal, State, and local rules and regulations.

#### **OPTIONS**

- A. Rescind current and future invoices to Krones related to the review of the redesign of the storm water system; or
- B. Continue collections on current and future invoices to Krones related to the redesign of the storm water system;
- or
- C. Refer back to Staff with additional direction.

#### **FISCAL NOTE**

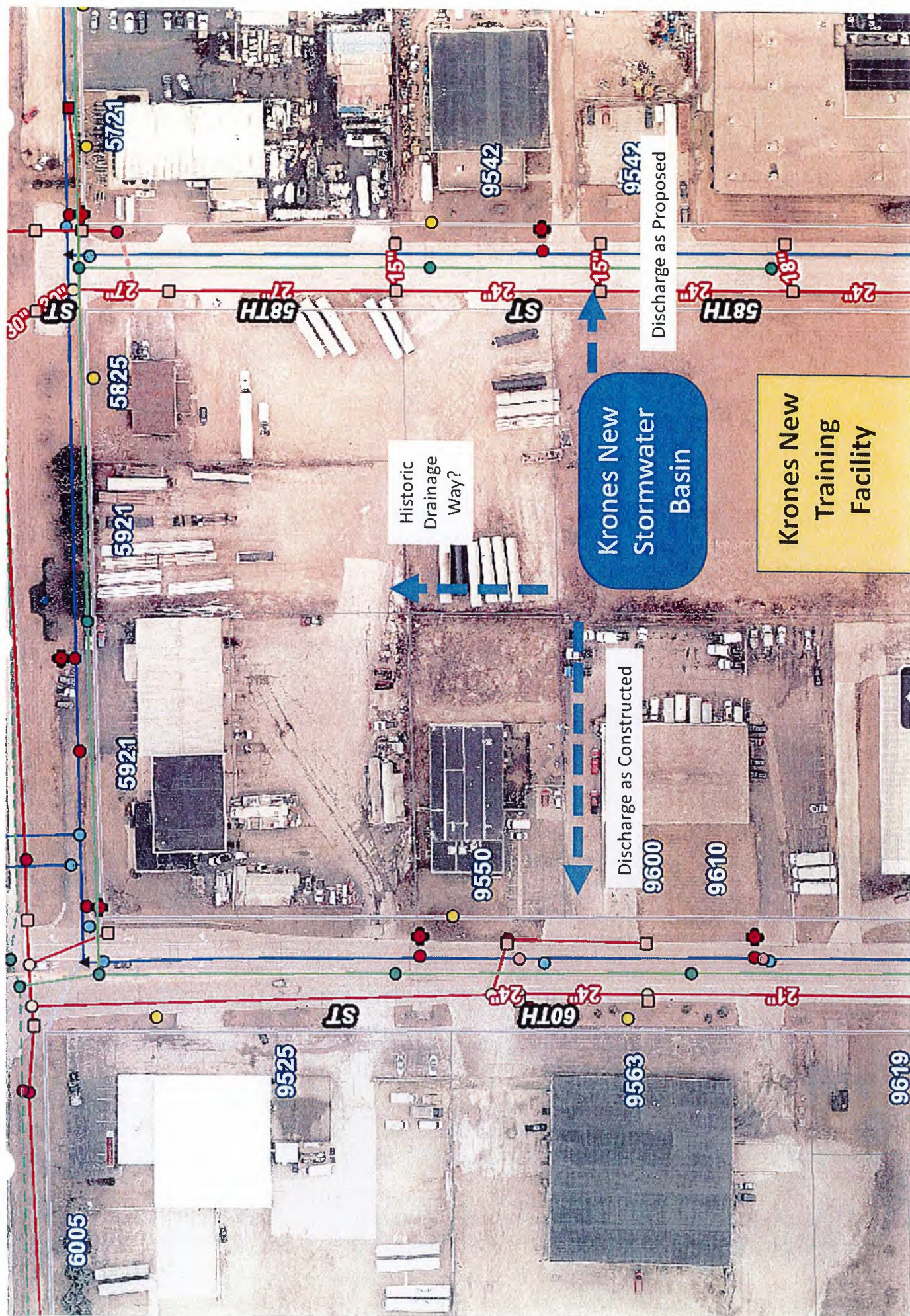
The 2020 budget includes \$315,000 for expenditures to consultants who perform various tasks for developments that are billed to the developers. Approval of this request would be direction to Staff to not seek reimbursement.

#### **COUNCIL ACTION REQUESTED**

Option A, B, or C per the Common Council's direction.

Engineering: GEM







<b>APPROVAL</b>  <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>4/21/2020</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Purchase of twenty-nine (29) replacement chairs from Building Services, Inc. (BSI) for \$9,425.00</b>	<b>ITEM NUMBER</b>  <b>6,10.</b>

The adopted 2020 Municipal Buildings Furniture/Fixtures Capital Outlay Budget (41.0181.5812) has \$9,500 for replacement chairs in the lower level Conference Room and Hearing Room (*the original 2020 budget request of \$18,000 included funding for 56 replacement chairs in the above rooms and the Aldermen's and Lobby Conference Rooms*).

Staff reviewed several chair styles from various vendors and compared comfort, style, ergonomics, durability, cleanability, warranty and cost.

Based on our review, staff is recommending that the City purchase the SitOnIt "Focus" high-back/mesh back chair at a cost of \$325.00/chair. The "Focus" chair also features swivel/tilt control, height adjustable arms, and a back-support feature.

A sample of the selected chair (only mesh chair in the room) will be on display in the Council Chambers at the center staff table.

Bob Tesch has worked with BSI on several previous chair purchases and has had positive experience with them regarding delivery, service, and pricing. Staff recommends approval. Payment is upon delivery and includes shipping. As with previous chair purchases, the chairs will be unboxed and set-up by staff.

Looking forward to the 2021 budget, staff will request an additional amount of approximately \$8,500 to fund and complete the replacement of chairs in the Aldermen's Room, Lobby Conference Room, and Council Chambers staff table chairs.

### **COUNCIL ACTION REQUESTED**

Motion to authorize the Operations Supervisor to execute a quotation and purchase order with Building Services, Inc. (BSI) for a purchase of twenty-nine (29) SitOnIt "Focus" 5623TB1.A152 high-back mesh chairs, for \$9,425.00 and to authorize release of the check.



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April 13, 2020

Project #113099

City of Franklin  
9229 W. Loomis Road  
Franklin, WI 53132  
Attn: Bob Tesch

Proposal for: **Conference Room Seating**

**\*\*FURNISHINGS PROPOSAL\*\***

BSI is pleased to submit this proposal to furnish materials required to perform all work in accordance with the following attachment

Attachment #1 – Description of Work

**Project Total: \$9,425.00**

***Tariffs & Surcharges: As you are aware, the U.S. government has begun to enact a two tier tariff process from 10% to 25% on many imported products and raw material. If a tariff or surcharge affects this proposal prior to ordering of product from our manufacturers, BSI will notify you of the increase due. You will have the option of cancelling the contract at that time.***

**Terms of Payment**

- All invoices due within 30 days of receipt. 2.5% interest will be charged on all delinquent payments.
- No payment shall be withheld on any invoice because of partial delivery of the entire order
- BSI limits credit card transactions to \$1000.00 per contract, all transactions will be assessed a 4% processing fee

This proposal is subject to written acceptance within (30) days of its date.  
The terms on the attached are expressly made a part of this agreement

Accepted by \_\_\_\_\_ Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Title \_\_\_\_\_

Presented by \_\_\_\_\_ Date 4/13/20  
*Mike Kehoe*  
Mike Kehoe  
Account Executive  
BSI (Building Service Inc.)

**All sales are final upon receipt of signed proposal or customer purchase order issued to BSI, and accepted by an officer of Building Service Inc.**

\_\_\_\_\_  
BSI (Building Service Inc ) Date

\_\_\_\_\_  
Title



## CITY OF FRANKLIN CONFERENCE CHAIR OPTIONS

4/13/2020

BSI Account Representative.

Mike Kehoe

mkehoe@buildinservice.com

2629556246



Building Service, Inc.  
W222 N630 Cheaney Rd.  
Waukesha, WI 53186

Line #



					<u>Sell \$</u>	<u>Ext Sell \$</u>
	<b>5623TB1.A152</b>	<b>Focus, Highback, Mesh Back, Swivel Tilt Cntrl, A152 Height Adj Arms, Sport Edition</b>	<b>QTY</b>	<b>29</b>	\$325.00	\$9,425.00
Mesh Back Colors	MC1	Black Mesh				
Fabric or Leather Upholstery Selection	FABRIC	Fabric Grade Selections				
3 Fire Std Option for Fabric Selection	~	No Selection				
Fabric Grade Selections	FG1	Fabric Grade 1				
Fabric Grade 1 Selections	DASH	Dash Color Selection				
Dash Color Selections	MIDNIGHT	Dash Midnight				
Back Support Color Option	Z1	Black Back Support				
Cylinder Height Option	S0	Standard Cylinder				
Base Option Selection	~	Std Black Base				
Caster Selection	C15	55mm Caster, Std				
Adjustable Lumbar Support Option	~	No Adjustable Lumbar Support				
Packaging Options	~	Std Packaging				
<b>Subtotal:</b>					<b>\$9,425.00</b>	
<b>Grand Total:</b>					<b>\$9,425.00</b>	



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## Terms and Conditions

Signature of proposal or receipt of customer purchase order binds client to the following terms and conditions.

### Warranty

- All work is warranted by BSI (Building Service, Inc.) to be free from defects in materials or workmanship for a period of twelve (12) months from date of delivery /or substantial completion, or for the length of manufacturers stated warranty (whichever is longest). No agent or representative of BSI is authorized to make any additional representations or warranties unless in writing and made part of these terms and conditions of sale.

### Delays

- If delivery cannot be made as scheduled (due to non-BSI related conditions) buyer will pay any applicable warehousing and redelivery charges. The product will be made available for inspection at the designated storage facility and will be invoiced according to original schedule and payment terms.

### Safety & Storage

- Purchaser agrees to furnish a safe place for storage of BSI supplies and equipment as well as all furnishings and materials, described herein. In addition, supply without cost, necessary light, heat, power, elevator service and a safe environment for BSI and its associates. BSI associates shall be informed by the owner of all hazardous substances which they may come in contact with at the site.
- The site shall be clean, clear and free of debris prior to commencement of work. Adequate facilities for off-loading, staging, moving and handling shall be provided.
- After arrival at site, any loss or damages by weather, fire or other elements, other trades, or buyers' personnel, shall be the responsibility of the buyer. On drop shipments not installed by BSI, client is responsible to receive, unload, inspect, deliver and install the product. Client must notify BSI, in writing, of any claim for damages to goods within 2 days of drop ship delivery, to be eligible for filing a freight claim. In the event of damages BSI reserves the right to repair damaged product or replace the item as deemed appropriate by BSI.

### Asbestos/Mold

- In the event it shall be determined or found during the course of BSI's performance of this contract that there is asbestos or mold in the area of the work being so performed, it is understood and agreed that BSI shall discontinue its work until such time as the asbestos or mold is removed by owner and/or general contractor with whom this contract is being made. In the event the asbestos or mold is not so removed, or other suitable arrangements are not made, this contract shall then terminate, and BSI shall then be paid for the work performed by it up to the time of the termination of its performance. BSI shall not be responsible for the removal, cost of removal or the cost of any construction delays which shall be caused, incurred and/or sustained by reason of the presence of asbestos or mold on the subject premises.
- After asbestos containing materials or mold has been removed by a qualified abatement contractor, the owner shall provide BSI with a written air clearance sample results (as determined by laboratory analysis) that are no greater than 0.01 fibers per cubic centimeter as analyzed by phase contrast microscopy or as accepted by EPA transmission electron microscopy clearance standard.

### Changes

- All change orders or proposals for additional work must be signed before work will commence. No credit allowance shall be made for alterations, unless such credit or allowance has been agreed to by BSI in writing.
- All additions, amendments, or changes of any manner whatsoever, subsequent to this contract, shall be now and at all times subject to the provisions, restrictions, limitations, conditions and remedies provided for in this contract, whether or not such orders, additions, amendments or changes be evidenced by further writings.
- In the event a cancellation must be made after this proposal is approved and submitted by the purchaser to BSI, it is understood and agreed that BSI will be paid for materials ordered, all stock inventory and all work already accomplished on the project to date of cancellation, as well as all manufacturer cancellation/change penalties.

### Prime Contractor

- Where BSI is Prime Construction Contractor the following notice is hereby given in accordance with Sec. 779.02(2) of the Statutes of the State of Wisconsin, to wit:

"AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, BSI HEREBY NOTIFIES OWNER THAT PERSONS OR COMPANIES FURNISHING LABOR AND MATERIALS FOR THE CONSTRUCTION ON OWNER'S LAND MAY HAVE LIEN RIGHTS ON OWNER'S LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO THE UNDERSIGNED BSI, ARE THOSE WHO CONTRACT DIRECTLY WITH THE OWNER OR THOSE WHO GIVE THE OWNER NOTICE WITHIN 60 DAYS AFTER THEY FIRST FURNISH LABOR OR MATERIALS FOR THE CONSTRUCTION. ACCORDINGLY, OWNER PROBABLY WILL RECEIVE NOTICES FROM THOSE WHO FURNISH LABOR OR MATERIALS FOR THE CONSTRUCTION AND SHOULD GIVE A COPY OF EACH NOTICE RECEIVED TO THE MORTGAGE LENDER, IF ANY. CONTRACTOR AGREES TO COOPERATE WITH THE OWNER AND THE OWNER'S LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID."



APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE April 21, 2020
REPORTS & RECOMMENDATIONS	A RESOLUTION TO SIGN A TEMPORARY GRADING EASEMENT FOR 8003 S. 68 <sup>TH</sup> STREET (TAX KEY 804-9991-002) FOR WORK ON THE S. 68TH STREET VERTICAL ALIGNMENT IMPROVEMENTS PROJECT	ITEM NUMBER <i>6.11.</i>

### **BACKGROUND**

At the January 7, 2020, Common Council meeting, Wanasak Corporation was awarded the S. 68th Street Vertical Alignment Improvements Project for \$298,430.00.

### **ANALYSIS**

It is desirable to obtain a temporary grading easement from one property at 8003 S. 68<sup>th</sup> Street. Staff has discussed the options with the property owner and although keeping the work within the right-of-way is possible, they would prefer that the driveway be extended to a flatter slope. Staff is willing to extend the driveway and the impact was already considered in the bid.

Common Council should note that to accommodate the school year, it was anticipated that the project would start construction on or after June 15, 2020. Wanasak has requested that they be allowed to start early. With the COVID19 issues, Staff has verified that the Franklin Public Schools has no issue with the altered schedule and Wanasak's asphalt subcontractor, Stark Paving, is coincidentally the selected contractor to perform the 2020 Road Program. It is anticipated that the entire section of S. 68<sup>th</sup> Street could be paved by Stark in one pass.

Staff will also be asking Common Council to authorize Wanasak a change order to provide additional work outside of their construction limits.

### **OPTIONS**

- A. Accept a Temporary Grading Easement for 8003 S. 68<sup>th</sup> street; or
- B. Refer back to Staff with additional direction.

### **FISCAL NOTE**

No impact to budgets. The quantities included in the bid considered the additional work beyond the right of way line.

### **COUNCIL ACTION REQUESTED**

(OPTION A) Resolution 2020-\_\_\_\_\_ a resolution to sign a Temporary Grading Easement for 8003 S. 68<sup>th</sup> Street (Tax Key 804-9991-002) for work on the S. 68th Street Vertical Alignment Improvements Project.

Engineering: GEM

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO 2020 - \_\_\_\_\_

RESOLUTION TO SIGN A TEMPORARY GRADING EASEMENT  
FOR 8003 S. 68TH STREET (TAX KEY 804-9991-002)  
FOR WORK ON THE S. 68TH STREET VERTICAL ALIGNMENT IMPROVEMENTS  
PROJECT

-----

WHEREAS, the City of Franklin is constructing a road project on S 68<sup>th</sup> Street to improve vertical alignments; and

WHEREAS, lowering a vertical crown in a road will affect the slopes of any driveway connecting to that section of roadway; and

WHEREAS, the project on S. 68th Street will affect a driveway for 8003 S. 68th Street and the resulting slope may be lessened if the reconstruction were extended beyond the right-of-way onto private property; and

WHEREAS, the property owners at 8003 S. 68th Street are granting the City and its contractor permission to enter private property for the purposes of making the necessary improvements.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that it would be in the best interest of the City to accept such easement, and, therefore the Mayor and City Clerk are hereby authorized and directed to execute the easement accepting it on behalf of the City.

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

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by Alderman \_\_\_\_\_

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2020

APPROVED:

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

ATTEST:

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

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

## **TEMPORARY GRADING EASEMENT**

Charles F. and Julie A. Surrett  
8003 S 68<sup>th</sup> Street Franklin WI, 53132  
804 9991 002

THIS EASEMENT is made by and between the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City", and Charles F. and Julie A. Surrett as Owners (including successors and assigns of above Owners as may be or may become applicable), hereinafter called "Grantor", (if more than one Grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such as Grantors)

### **WITNESSETH**

WHEREAS, Grantor is the owner and holder of record Title to certain real property particularly described on Exhibit "A" which is attached hereto and incorporated herein (the property), and

WHEREAS, City of Franklin desires the right to perform temporary grading per the approved plan as shown on the plan attached hereto as Exhibit "A".

NOW THEREFORE, in consideration of the grant of the easement hereinafter described, the grading within the described easement, and the payment of One Dollar (\$1.00) and other valuable consideration to the Grantor the receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described, does hereby grant unto the City temporary grading easement, more particularly described on Exhibit "A" attached hereto (the "Easement area").

- 1 That said easement used only for grading purposes and driveway construction
- 2 Removal of zero (0) trees as marked
- 3 That the length of term of this easement shall expire 10/1/2020.
- 4 That no structures shall be placed within the limits of this easement
- 5 That City of Franklin shall be responsible for landscaping within the easement area  
Landscaping shall consist of establishing and maintaining a residential quality grass cover through the term of this easement



IN WITNESS WHEREOF, the Grantor has hereunto set its hands and seals

ON THIS DATE OF Apr 1, 2020

Charles F & Julie A Surret  
Company Name

By

By

STATE OF WISCONSIN)  
SS  
COUNTY OF MILWAUKEE)

Before me personally appeared on the 2<sup>nd</sup> day of Apr 1, A D 2020 the

above named Charles Surret

President or Name printed

Julie Surret

Secretary or Name printed

to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said corporation



Kathleen S Rivedal  
Notary Public

My commission expires 06/23/2023

CITY OF FRANKLIN

By

Stephen R Olson Mayor

By

Sandra L Wesolowski, City Clerk

STATE OF WISCONSIN )  
SS  
COUNTY OF MILWAUKEE)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared Stephen R Olson and Sandra L Wesolowski, who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority, and pursuant to Resolution File No \_\_\_\_\_, adopted by its Common Council on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, Milwaukee County Wisconsin

My commission expires \_\_\_\_\_

Exhibit A

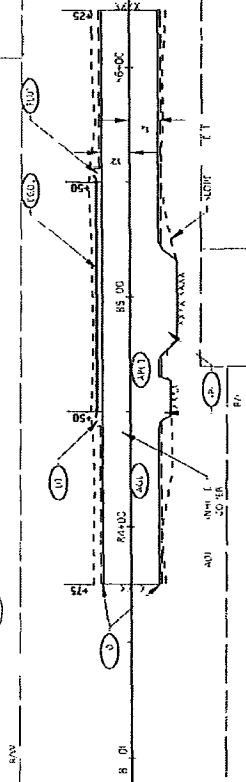
Temporary Grading Easement

NOTE: ALL DIMENSIONS ARE IN FEET UNLESS NOTED OTHERWISE. DIMENSIONS FOR THE LOCATION OF CURBS TO DRIVE SHALL BE BASED ON THE LOCATION OF THE DRIVE. DIMENSIONS FOR THE LOCATION OF THE DRIVE SHALL BE BASED ON THE LOCATION OF THE DRIVE.

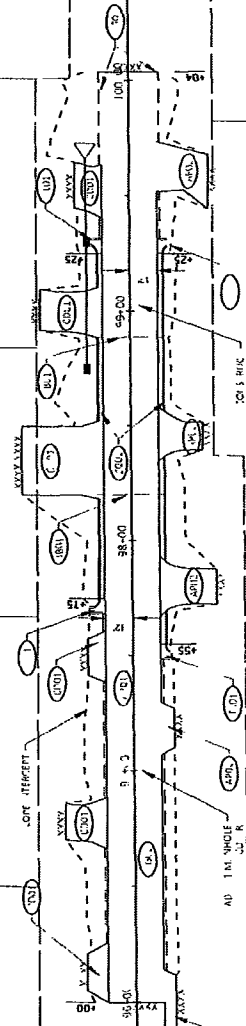
8215

LEGEND

- (A) ASPHALT DRIVE
- (B) ASPHALT DRIVE
- (C) ASPHALT DRIVE
- (D) ASPHALT DRIVE
- (E) ASPHALT DRIVE
- (F) ASPHALT DRIVE
- (G) ASPHALT DRIVE
- (H) ASPHALT DRIVE
- (I) ASPHALT DRIVE
- (J) ASPHALT DRIVE
- (K) ASPHALT DRIVE
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- (P) ASPHALT DRIVE
- (Q) ASPHALT DRIVE
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- (S) ASPHALT DRIVE
- (T) ASPHALT DRIVE
- (U) ASPHALT DRIVE
- (V) ASPHALT DRIVE
- (W) ASPHALT DRIVE
- (X) ASPHALT DRIVE
- (Y) ASPHALT DRIVE
- (Z) ASPHALT DRIVE



8215



PROJECT NO. 2030 1

HWY 65TH ST

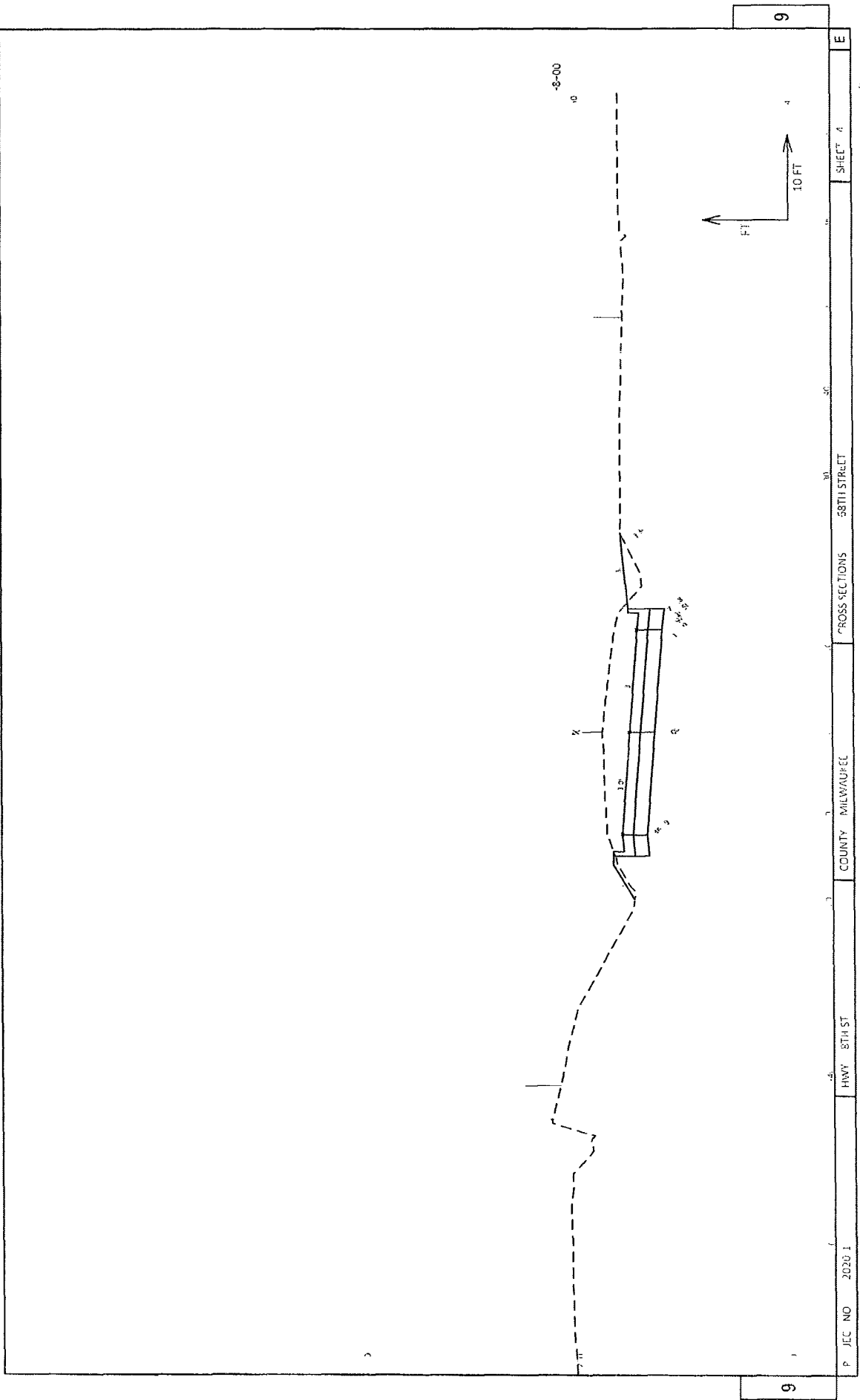
COUNTY MILWAUKEE

PLAN DETAILS

SHEET

E





9

EE

SHEET 4

58TH STREET

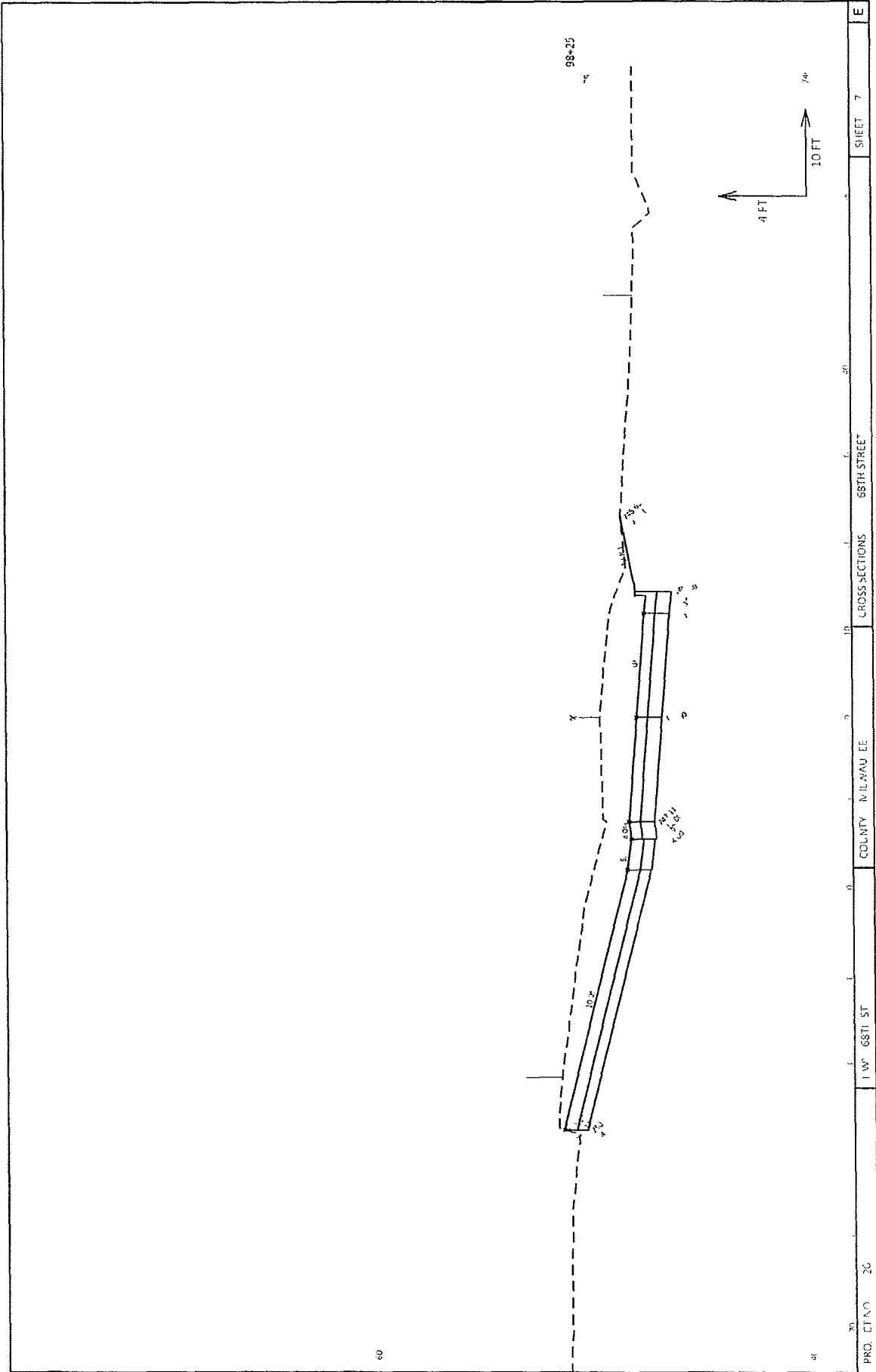
CROSS SECTIONS

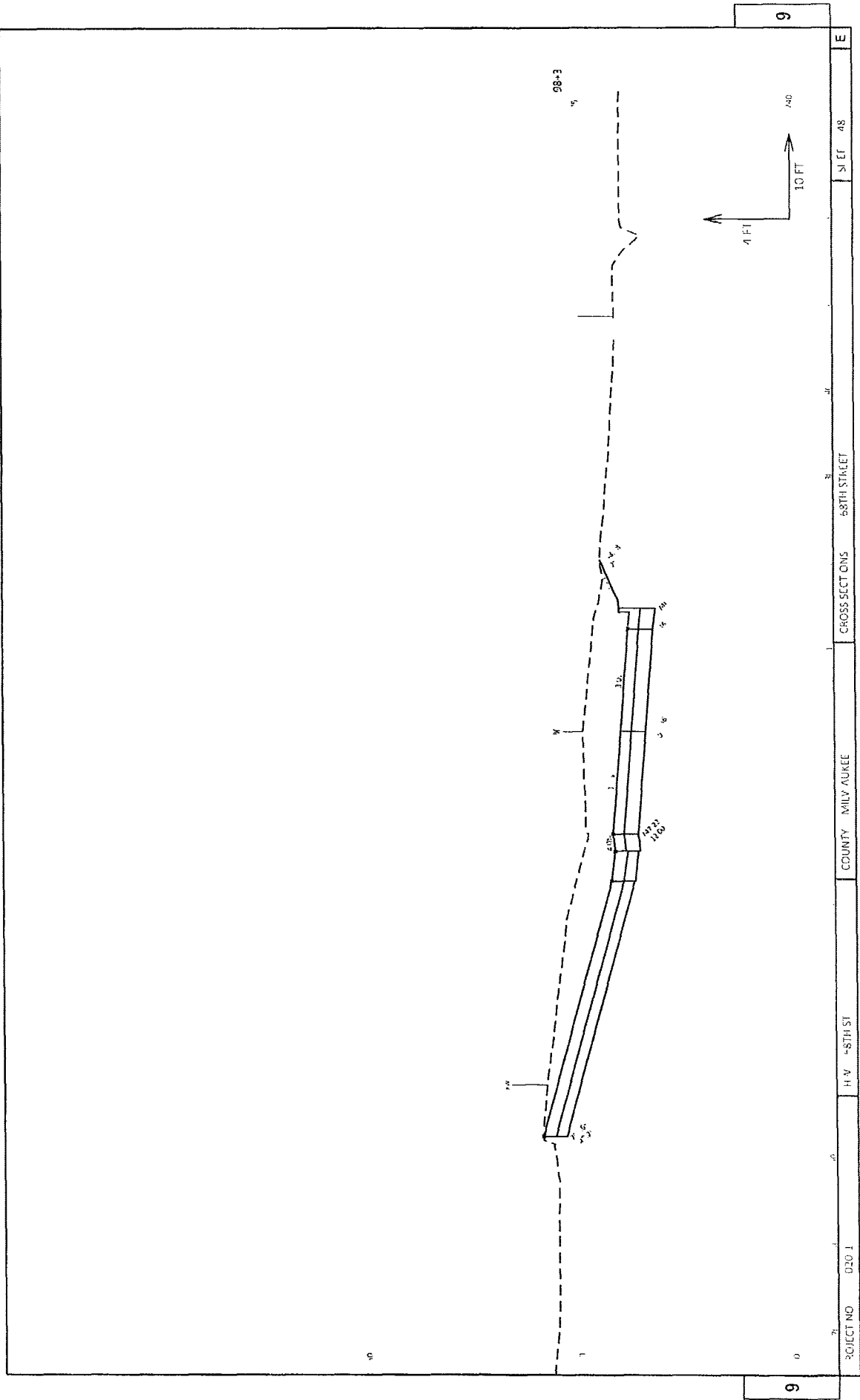
COUNTY MILWAUKEE

HWY 8TH ST

JEC NO 2020 1

9

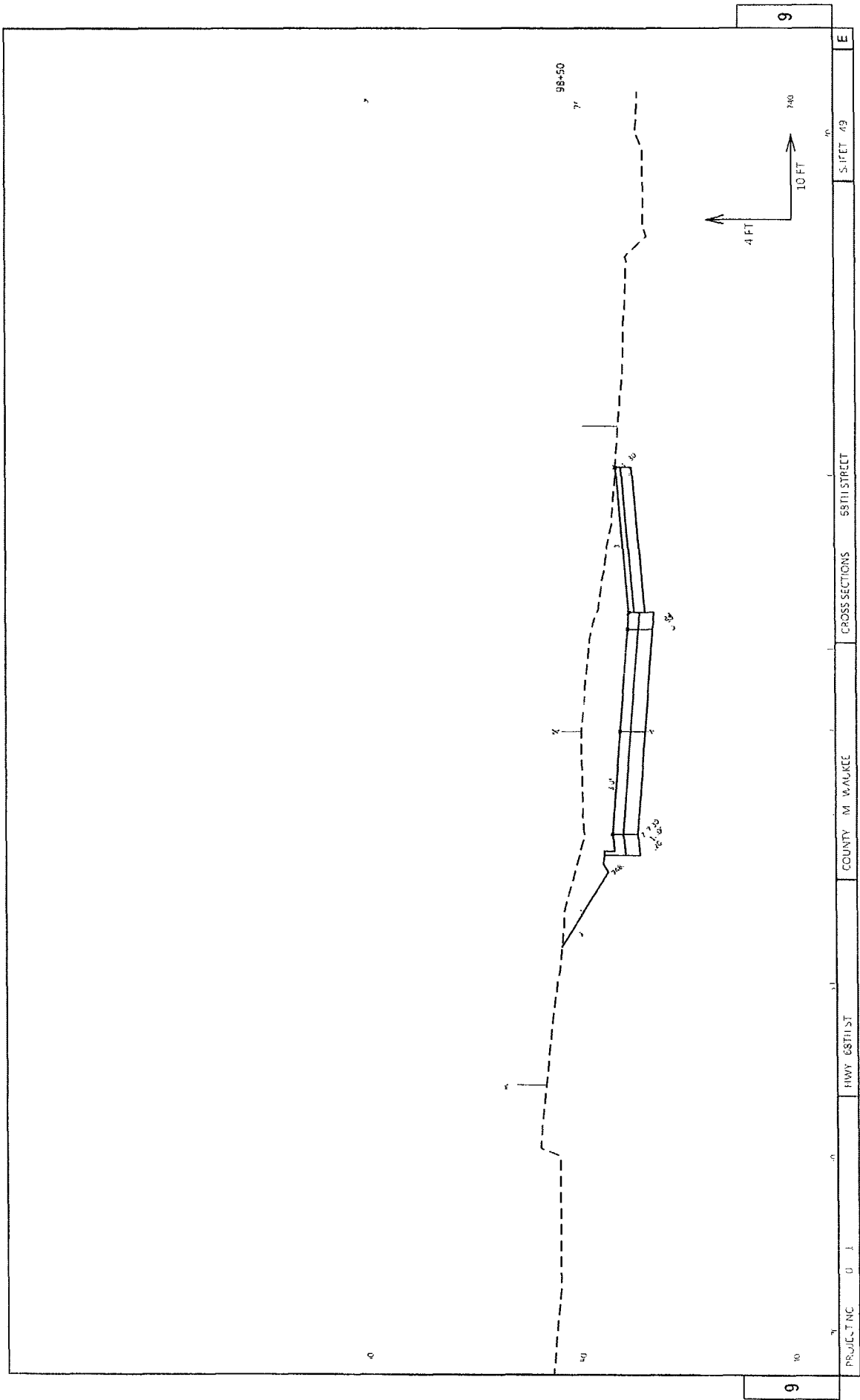




9

9

PROJECT NO. 0201 H.W. 48TH ST COUNTY MILY AUKEE CROSS SECTION 68TH STREET SITE 48 E

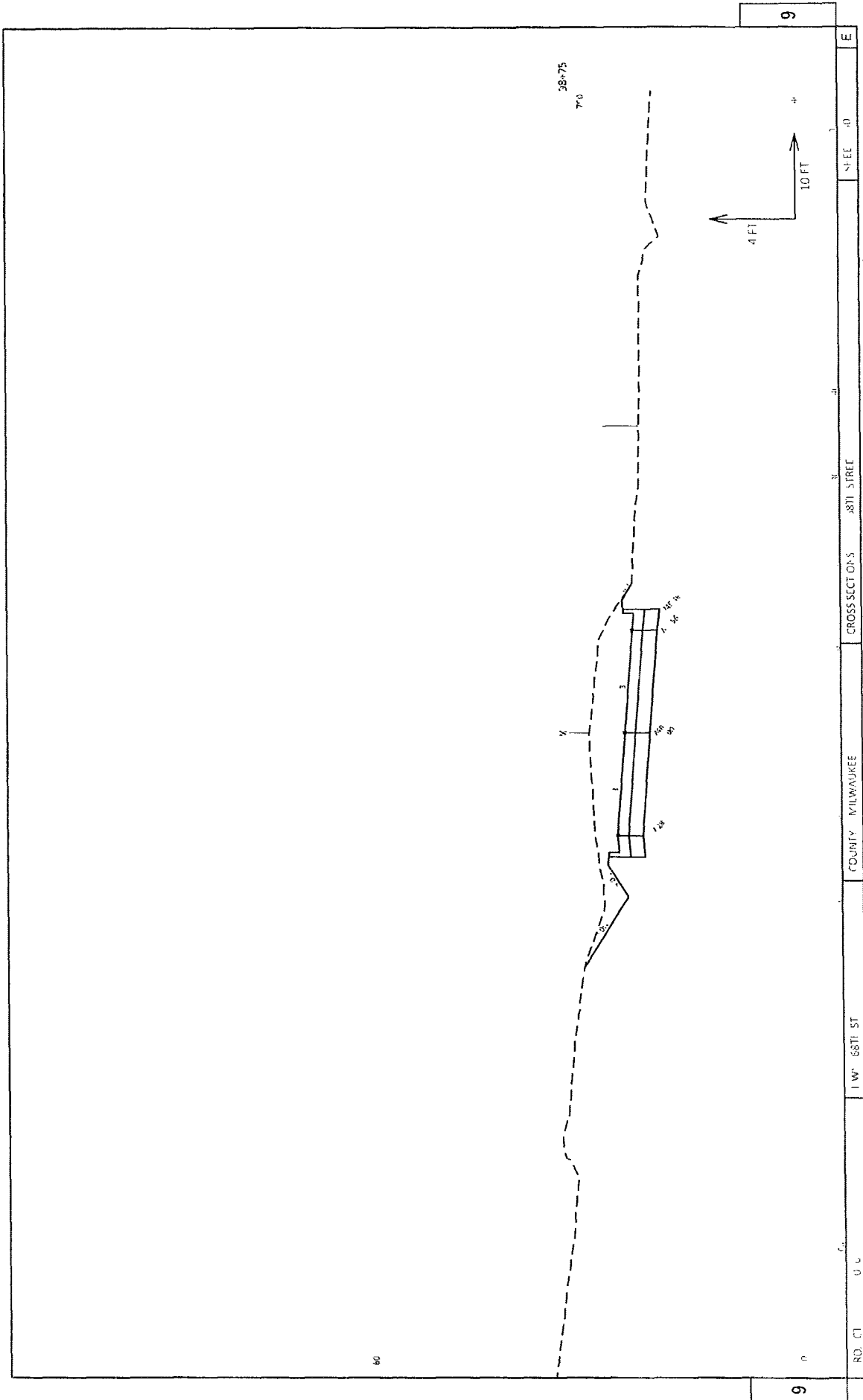


9

9

PROJECT	01	HWY 68TH ST	COUNTY OF WAUKEE	CROSS SECTIONS	58TH STREET	SHEET 49	E
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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE April 21, 2020
REPORTS AND RECOMMENDATIONS	GRANT GAS AND ELECTRIC EASEMENT TO WISCONSIN ELECTRIC POWER COMPANY FOR CITY-OWNED PARCEL AT 3548 W. COUNTY LINE ROAD AND W. DREXEL AVENUE (PARCEL 979-9999-000)	ITEM NUMBER  <i>6.12.</i>

#### **BACKGROUND**

The City is installing a sewage pumping station at the Franklin Corporate Park that will require electric and gas service. Wisconsin Electric Power Company is requesting an easement for the installation of the services.

#### **FISCAL NOTE**

There is no fiscal impact for this easement.

#### **ANALYSIS**

This is appropriate and needed for the construction of the sewage pumping station.

#### **OPTIONS**

- A. Authorize Staff to execute the enclosed easement.
- B. Refer back to Staff with further direction.

#### **COUNCIL ACTION REQUESTED**

(Options A) Direct Staff to grant gas and electric easement to Wisconsin Electric Power Company for City-owned parcel at 3548 W. County Line Road and W. Drexel Avenue (PARCEL 979-9999-000).

Engineering: GEM

## Glen Morrow

---

**From:** Mallas, Paul W <Paul.Mallas@we-energies.com>  
**Sent:** Monday, April 13, 2020 8.44 AM  
**To:** Ronnie Asuncion; Glen Morrow  
**Subject:** Work Request #'s 4491653 & 4490496 - Easement for Utility Facilities - 3548 W County Line Road - C/Franklin  
**Attachments:** PSCW Brochure Elec & Gas.pdf, Distribution Easement-4490496-4491653-C-of-Franklin-texa.pdf  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good morning Glen and Ronnie,

In order to install the requested utility facilities at **3548 W. County Line Road, City of Franklin**, we will need to obtain easement rights prior to installation. Attached please find a copy of the easement that is to be signed and notarized in black ink. I've attached the sketch, marked-up as a temporary exhibit 'A', as I await the survey-drawn exhibit. Please return the signed easement to my attention at the address below. Upon receiving the signed easement, I will have it recorded with the Office of the Register of Deeds. To expedite your service a scanned copy may be emailed in the interim.

Please note that the Public Service Commission entitles you to a minimum of five days to examine the materials provided. However, you have the option to waive the five-day review period and sign and return the easement at any time.

For your safety, we will have Diggers Hotline locate underground utilities including natural gas, electric, telephone, cable television, sewer and water. We also need your help to make sure we don't damage any of your privately maintained facilities. To avoid damage to your facilities – such as an underground sprinkler system, electric, propane, sewer and sump pump lines, well, septic system, yard lighting, etc. – please notify us of their location. It is very important that we are aware of these facilities. We Energies and/or its agents are not responsible for damage to your facilities that we are not aware of before our work begins.

If you have any questions, please call me at 414-423-5015 or email [Paul.Mallas@we-energies.com](mailto:Paul.Mallas@we-energies.com) and reference the work request below. We appreciate your prompt attention to this matter.

**Work Request: 4491653 & 4490496**

**Paul Mallas**  
Right of Way Agent  
We Energies  
4800 W. Rawson Avenue - OBSC  
Franklin, WI 53132  
office: (414)423-5015  
mobile: (414)640-2811  
email: [paul.mallas@we-energies.com](mailto:paul.mallas@we-energies.com)

**DISTRIBUTION EASEMENT  
ELECTRIC AND GAS**

Document Number

WR NO      **4490496 & 4491653**      IO NO **14069 & SN202500**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **CITY OF FRANKLIN**, a Wisconsin Municipal Corporation, hereinafter referred to as "Grantor", owner of land, hereby grants and warrants to **WISCONSIN ELECTRIC POWER COMPANY**, a Wisconsin corporation doing business as **We Energies**, hereinafter referred to as "Grantee", a permanent easement upon, within, beneath, over and across a part of Grantor's land hereinafter referred to as "easement area"

The easement area is described as strips of land varying in width being a part of the Grantor's premises, more particularly described in that certain **Warranty Deed**, as recorded in the office of the Register of Deeds for Milwaukee County on March 23<sup>rd</sup>, 2020, as **Document No. 10962543**, also being a part of the **Southwest ¼ of Section 36, Township 5 North, Range 21 East**, City of Franklin, Milwaukee County, Wisconsin

The location of the easement area with respect to Grantor's land is as shown on the attached drawing, marked Exhibit "A", and made a part of this document

RETURN TO  
We Energies  
PROPERTY RIGHTS & INFORMATION GROUP  
231 W MICHIGAN STREET, ROOM P129  
PO BOX 2046  
MILWAUKEE, WI 53201-2046

979-9999-000  
(Parcel Identification Number)

1. **Purpose:** The purpose of this easement is to construct, install, operate, maintain repair, replace and extend underground utility facilities, conduit and cables, electric pad-mounted transformers, manhole, electric pad-mounted vacuum fault interrupter, concrete slabs, power pedestals, riser equipment, terminals and markers, together with all necessary and appurtenant equipment under and above ground, as well as pipeline or pipelines with valves, tieovers, main laterals and service laterals, together with all necessary and appurtenant equipment under and above ground, including cathodic protection apparatus used for corrosion control, as deemed necessary by Grantee, for the transmission and distribution of electric energy, signals, television and telecommunications services, natural gas and all by-products thereof, or any liquids, gases, or substances which can or may be transported or distributed through a pipeline, including the customary growth and replacement thereof. Trees, bushes, branches and roots may be trimmed or removed so as not to interfere with Grantee's use of the easement area
2. **Access:** Grantee or its agents shall have the right to enter and use Grantor's land with full right of ingress and egress over and across the easement area and adjacent lands of Grantor for the purpose of exercising its rights in the easement area
3. **Buildings or Other Structures:** Grantor agrees that no structures will be erected in the easement area or in such close proximity to Grantee's facilities as to create a violation of all applicable State of Wisconsin electric and gas codes or any amendments thereto
4. **Elevation:** Grantor agrees that the elevation of the ground surface existing as of the date of the initial installation of Grantee's facilities within the easement area will not be altered by more than 4 inches without the written consent of Grantee
5. **Restoration:** Grantee agrees to restore or cause to have restored Grantor's land, as nearly as is reasonably possible, to the condition existing prior to such entry by Grantee or its agents. This restoration, however, does not apply to any trees, bushes, branches or roots which may interfere with Grantee's use of the easement area
6. **Exercise of Rights:** It is agreed that the complete exercise of the rights herein conveyed may be gradual and not fully exercised until some time in the future, and that none of the rights herein granted shall be lost by non-use
7. **Binding on Future Parties:** This grant of easement shall be binding upon and inure to the benefit of the heirs, successors and assigns of all parties hereto

8. **Easement Review** Grantor acknowledges receipt of materials which describe Grantor's rights and options in the easement negotiation process and furthermore acknowledges that Grantor has had at least 5 days to review this easement document *or* voluntarily waives the five day review period

**Grantor:**

**CITY OF FRANKLIN, a Wisconsin Municipal Corporation**

By \_\_\_\_\_

**STEPHEN R. OLSON, MAYOR**

By \_\_\_\_\_

**SANDRA L. WESOLOWSKI, CITY CLERK**

Acknowledged before me in Milwaukee County, State of Wisconsin, on \_\_\_\_\_, 2020,

By STEPHEN R. OLSON, the MAYOR, and by SANDRA L. WESOLOWSKI, the CITY CLERK, of the CITY OF

FRANKLIN, for the municipal corporation, by its authority, and pursuant to Resolution File No \_\_\_\_\_

adopted by its \_\_\_\_\_ on \_\_\_\_\_, 2020


\_\_\_\_\_  
Notary Public Signature, State of Wisconsin

\_\_\_\_\_  
Notary Public Name (Typed or Printed)

(NOTARY STAMP/SEAL)

My commission expires \_\_\_\_\_

This instrument was drafted by Paul Mallas on behalf of Wisconsin Electric Power Company, PO Box 2046, Milwaukee, Wisconsin 53201-2046


 4490436  
 11-11-10  
 12-12-10

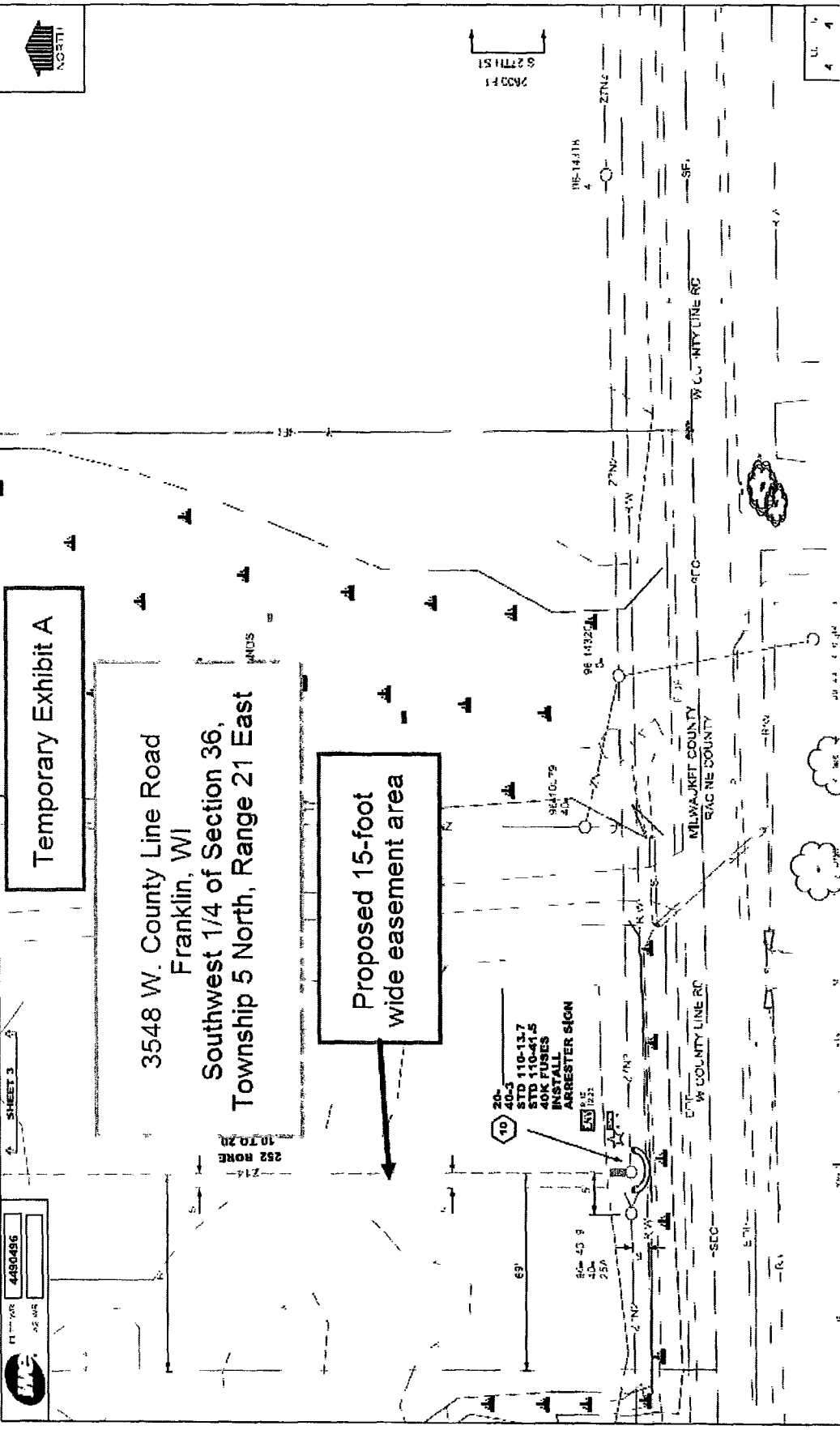
SHEET 3

Temporary Exhibit A

3548 W. County Line Road  
 Franklin, WI  
 Southwest 1/4 of Section 36,  
 Township 5 North, Range 21 East

Proposed 15-foot wide easement area

20-40-5  
 STD 110-13.7  
 STD 110-41.5  
 40K FUSES  
 INSTALLED  
 ARRESTER SIGN



15' 2.71151  
 2603.41

15' 2.71151  
 2603.41



3 of 4

Temporary Exhibit A

3548 W. County Line Road  
Franklin, WI  
Southwest 1/4 of Section  
36, Township 5 North,  
Range 21 East

WETLAND  
BY SLURRY  
CUTOFFER  
(TYP)

WETLANDS

Proposed 15-foot  
wide easement area

BUILDINGS  
TO BE  
DEMOLISHED

TRENCH 142"  
30 TO 40"

235' BORE  
20 TO 30"

ASPH

69'

20'

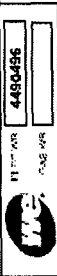
4494495



11/11/11

AS 05

SHEET 4



4480496

MANUFACTURE R:	
KVA: 150	
VOLTAG: 277480	
LOCATION ID:	
PHASE: 3PH	
FLUID TYPE:	
IN-SERIAL:	
SERIAL:	
MATERIAL #:	
WE ENERGIES EQUIPMENT ENERGIZED Y_N	
Customer EQUIPMENT ENERGIZED Y_N	
DATE SWITCHED BY:	DATE/TIME

Proposed 15-foot wide easement area for gas and electric

Temporary Exhibit A

Proposed 10-foot wide easement for gas

Proposed 12-foot wide easement for electric

3548 W. County Line Road  
Franklin, WI  
Southwest 1/4 of Section  
36, Township 5 North,  
Range 21 East

SHEET 3

2 1 4



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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE April 21, 2020
Reports & Recommendations	REQUEST TO BID DEMOLITION OF ABANDONED HOME AT 3548 W. COUNTY LINE ROAD (TAX ID 979-9999-000)	ITEM NO. <i>G. 13.</i>

### **BACKGROUND**

Tax Increment District No. 4 (TID 4) is a TID in the southeast corner of the City (area bounded by S. 27th Street, W. Oakwood Road, and W. County Line Road and west of the W. Elm Road terminus). Staff has been directed to bring TID 4 projects under contract on or before June 21, 2020.

The City has completed a partial purchase of a property 3548 W. County Line Road (Tax ID 979-9999-000). The portion that the City purchased has an abandoned home that needs demolished and staff has previously included this cost in TID4 to the Common Council.

### **ANALYSIS**

Pursuant to Municipal Code section 19.11, Common Council must authorize the solicitation of bids for public construction that exceeds \$25,000. Staff recommends that this authorization be considered and given at the earliest opportunity.

### **OPTIONS**

- A. Authorize Staff to solicit for demolition of abandoned home on W. County Line Road. Or,
- B. Refer back to Staff with further direction.

### **FISCAL NOTE**

This project is included in the project plan for TID 4 and the 2020 Budget includes an \$11 million projects appropriation which provides for this project. To be eligible for inclusion in TID 4 projects, and meet the statutory expenditure period ending June 21, 2020, the project must be contracted by that date.

### **RECOMMENDATION**

(Option A) Authorize Staff to solicit bids for the demolition of abandoned home at 3548 W. County Line Road (TAX ID 979-9999-000).

Engineering Department: GEM

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE April 21, 2020
REPORTS & RECOMMENDATIONS	NOTICE TO WAIVE LATE FEES AND MAKE OTHER CONCESSIONS FOR THE WATER AND FRANKLIN SEWER UTILITIES IN ACCORDANCE WITH WISCONSIN GOVERNOR TONY EVERS' EMERGENCY ORDER #11- "PUBLIC SERVICE COMMISSION ADMINISTRATION RULES SUSPENSIONS"	ITEM NUMBER <i>G.14.</i>

### **BACKGROUND**

The Coronavirus disease (COVID-19) Pandemic has caused disruption and altered a multitude of normal operations this year. On March 22, 2020, Wisconsin Governor Tony Evers issued Emergency Order #11- "Public Service Commission (PSC) Administration Rules Suspensions." This order suspended portions of Wisconsin Administrative Code chapters PSC 113, 134, and 185, that included:

- Authorize public utilities to waive late fees.
- Temporarily suspend disconnections, other than those needed for safety reasons.
- Enable customers who are unable to make a cash deposit to obtain residential service.
- Ensure that deferred payment agreements are available not only to residential customers but also commercial, farm, and industrial customers.
- Streamline the process for customers to apply for utility service.

### **ANALYSIS**

Executive Order #11 affected Franklin Water Utility but did not affect the Sewer Utility. Both of these items appear on one bill to Franklin customers. It would be confusing to customers if the water portion of the utility bill waived late fees yet other portions of the total bill were due as is the normal course of business. Historically, approximately 20% of the customers pay late and incur late fees and penalties. The current bill was mailed on April 7 and the bills are due May 18, 2020.

Historic practice and policy of the both utilities are to offer a Deferred Payment Arrangement (DPA) to anyone who requests assistance. A DPA as outlined in the PSC rules allows a customer to set up a mutually convenient payment schedule and no interest is incurred while the payment commitments are met. Historically, the Franklin Utility office has issued less than five DPAs per year. The COVID-19 issues could add significant cash flow issues to 2020 operations.

Note that the bills are not forgiven, just a payment schedule is allowed. To ensure automatic compliance with the Emergency Order, the billing software has set all late fees to \$0. The late and penalty water fees have totaled less than \$60,000 each of the last several years and less than \$35,000 for sanitary sewer. Even if double the customers request a DPA, the water and sewer utilities have sufficient resources to continue operations.

Staff has submitted a notice in the quarterly newsletter to help educate the public.

### **OPTIONS**

- A. No action needed.
- B. Although onerous and confusing, Staff could manually apply Emergency Order #11 to only the Water Utility and impose late fees and other penalties to the Sewer Utility.

### **FISCAL NOTE**

See above information.

### **COUNCIL ACTION REQUESTED**

No Action Needed.

Engineering: GEM



# Tony Evers

Office of the Governor | State of Wisconsin

## EMERGENCY ORDER #11

### PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES SUSPENSIONS

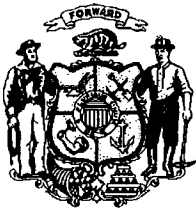
Under the authority of Wis. Stat. § 323.12(4) and the public health emergency declared in Executive Order #72, I, Governor Tony Evers, order the suspension of certain Public Service Commission (PSC) administrative rules and order companion directives as follows:

1. On March 20, 2020, Chairperson Rebecca Valcq requested the suspension of certain PSC administrative rules in order to assist with protecting public health and welfare during the public health emergency. The March 20, 2020 request is granted in its entirety and is incorporated by reference into this order.
2. PSC may use its authority under Wis. Stat. §§ 196.02(1), 196.70, Wis. Admin. § PSC 113.01(2), Wis. Admin. § PSC 134.01(2), and Wis. Admin. § PSC 185.11(4), to issue orders, give special or individual consideration to exceptional or unusual situations, or adopting requirements as to individual utilities or services necessary to respond to the public health emergency.
3. This order shall remain in effect for the duration of the public health emergency declared in Executive Order #72, or until subsequent superseding emergency orders are issued.

Tony Evers  
Governor  
State of Wisconsin

3/22/2020

Date



# Public Service Commission of Wisconsin

Rebecca Cameron Valcq, Chairperson  
Ellen Nowak, Commissioner  
Tyler Huebner, Commissioner

4822 Madison Yards Way  
P.O. Box 7854  
Madison, WI 53707-7854

March 20, 2020

*Sent via email*

Governor Tony Evers  
State Capitol  
Madison, Wisconsin 53701

Dear Governor Evers,

To assist in the State's ongoing response to the public health emergency declared in response to the COVID-19 Coronavirus, the Public Service Commission of Wisconsin (the Commission) has reviewed its administrative rules to identify provisions which, if strictly complied with during the emergency, would prevent, hinder, or delay necessary action by public utilities and customers to protect the public health and welfare.

The Commission respectfully requests that you exercise your authority under Wis. Stat. § 323.12 (4) (d) to temporarily suspend these provisions during the emergency. Suspending these provisions will protect public health and will facilitate the Commission's efforts to work with public utilities and customers, ensure the continued availability of and access to vital services, and authorize emergency action pursuant to its authority under Wis. Stat. § 196.70.

As set forth in the attachment to this letter, the Commission requests that certain provisions of Wis. Adm. Code chs. PSC 113, 134, and 185, relating to service rules for electrical, gas, and water public utilities, be suspended in order to:

- Authorize public utilities to waive late fees.
- Temporarily suspend disconnections, other than those needed for safety reasons.
- Enable customers who are unable to make a cash deposit to obtain residential service.
- Ensure that deferred payment agreements are available not only to residential customers but also commercial, farm, and industrial customers.
- Streamline the process for customers to apply for utility service.

Thank you for your efforts to protect the health and economy of the State.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca Valcq", written over a horizontal line.

Rebecca Cameron Valcq  
Chairperson

RCV ZR jac

Attachment

**Proposed Provisions of the Public Service Commission's Administrative Rules  
to be Suspended During the Public Health Emergency**

**Provisions Relating to Service Rules for Electrical Utilities**

The Commission respectfully requests that the following provisions of Wis. Adm. Code §§ PSC 113.0301(1m), 113.0302(2), 113.0402(1)(a), 113.0404(1), 113.0406(1)(i)(6), and 113.0408(3)(a), be suspended as set forth below:

**PSC 113.0301(1m)**

- **Description of Rule:** This rule authorizes electrical utilities to disconnect or refuse residential connections for certain specified reasons. Separate provisions of the administrative rules, PSC 113.0301(4) and (5), which will not be suspended, authorize an electrical utility to disconnect residential utility service where a dangerous condition exists.
- **Stakeholders Impacted:** Electric utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter electrical utility tariffs, including by suspending disconnections for reasons that are not associated with safety during a public health emergency. However, such a modification is not possible unless this provision of the administrative code is first suspended. If service is disconnected, such disconnection would hinder customers' efforts to abide by social distancing requirements by staying in their homes.
- **Provision to Suspend:** PSC 113.0301(1m): ~~(1m) Residential utility service may be disconnected or refused for any of the following reasons: (a) Failure to pay a delinquent account or failure to comply with the terms of a deferred payment, as provided in s. PSC 113.0404. (b) Violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or to the operation of non-standard equipment, if the customer has first been notified and provided with reasonable opportunity to remedy the situation. (c) Failure to comply with deposit or guarantee arrangements, as specified in s. PSC 113.0402. (d) Refusal or failure to permit authorized utility personnel to read the meter at least once every 6 months in order to determine actual usage. The 6-month period begins with the date of the last meter reading. (e) Failure to comply with Wisconsin statute, commission rule or commission order pertaining to conservation or availability of service. (f) Failure to pay costs or fees incurred by and awarded to the utility by a court of law, for pursuit of collection of bills, or failure to pay extraordinary collection charges as allowed and specified in the utility's tariffs filed with the public service commission. (g) Failure to comply with applicable requirements of this section, or of the utility's rules, or if the customer proposes to use a device that is not designed to reasonably minimize interference with communication and signal services. (h) Delinquency in payment for service received by a previous customer or occupant at the premises to be served, if an account is transferred to a new account holder or customer and the previous account holder or customer continues to be an occupant of the dwelling unit to be served. (i) Failure of an applicant for utility service to provide information or documentation required by s. PSC 113.0408. (k) Refusal or failure to provide authorized utility personnel access to utility equipment.~~

**PSC 113.0302 (2)**

- **Description of Rule:** This rule authorizes electrical utilities to disconnect or refuse commercial and farm connections for certain specified reasons. Separate provisions of the administrative rules, PSC 113.0302(4) and (5), which will not be suspended, authorize an electrical utility to disconnect commercial and farm utility service where a dangerous condition exists.
- **Stakeholders Impacted:** Electric utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter electrical utility tariffs, including by suspending disconnections for reasons that are not associated with safety during a public health emergency. However, such modification is not possible unless this provision of the administrative code is first suspended. Given the economic impacts of social distancing, commercial and farm customers may be at an increased risk of disconnection. Suspending disconnection is a necessary action to ensure that, during the emergency, products and services remain available.
- **Provision to Suspend:** PSC 113.0302(2) ~~“Commercial or farm utility service may be disconnected or refused for any of the following reasons: (a) Failure to pay a delinquent account. (b) Violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or to the operation of non-standard equipment, if the customer has first been notified and provided with reasonable opportunity to remedy the situation. (c) Failure to comply with a deposit, guarantee arrangement, or installment payment agreement, as specified in s. PSC 113.0403. (d) Refusal or failure to permit authorized utility personnel to read the meter at least once every 6 months in order to determine actual usage. The 6-month period begins with the date of the last meter reading. (e) Failure to comply with Wisconsin statute, commission rule or commission order pertaining to conservation or availability of service. (f) Failure to pay costs or fees incurred by and awarded to the utility by a court of law, for pursuit of collection of bills, or failure to pay extraordinary collection charges as allowed and specified in the utility's tariffs filed with the public service commission. (g) Failure to comply with applicable requirements of this section, or of the utility's rules, or with s. 196.16, Stats., or if the customer proposes to use a device that is not designed to reasonably minimize interference with communication and signal services. (h) Refusal or failure to provide authorized utility personnel access to utility equipment.”~~

**PSC 113.0402(1)(a)**

- **Description of Rule:** This rule authorizes an electrical utility to require certain customers with certain unpaid balances to provide a cash deposit or other guarantee before providing new residential service to those customers.
- **Stakeholders Impacted:** Electrical utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter electrical utility tariffs, including by suspending a utility's authority to require cash deposits before providing service. However, such modification is not possible unless this provision of the administrative code is first suspended. Requiring customers who have unpaid balances to provide a deposit could prevent certain customers who are adversely economically affected by the public health emergency from receiving



electrical service that is needed in order for the customer to abide by social distancing guidelines by staying in the home.

- **Provision to Suspend:** PSC 113.0402(1)(a) “A utility may not require a cash deposit or other guarantee as a condition of new residential service ~~unless a customer has an outstanding account balance with any Wisconsin electric utility or cooperative which accrued within the last 6 years and for which there is not agreement or arrangement for payment being honored by the customer and at which time the request for new service remains outstanding and not in dispute, as defined in s. PSC 113.0407. To request a deposit under this section, utilities must comply with requirements in sub. (2).~~”

**PSC 113.0404(1)**

- **Description of Rule:** This rule requires electrical utilities to offer deferred payment agreements to residential customers, and it specifies that an electrical utility can only be required to offer deferred payment agreements to residential accounts.
- **Stakeholders Impacted:** Electrical utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter electrical utility tariffs, including by requiring utilities to temporarily provide deferred payment agreements to nonresidential customers during a public health emergency. However, such a modification is not possible unless this provision of the administrative code is first suspended. Given the economic impacts of social distancing on businesses, if nonresidential customers are unable to obtain deferred payment agreements, they may be unable to afford the services needed for their continued operation, which would pose a risk to public health by impeding the availability of products and services.
- **Provision to Suspend:** PSC 113.0404(1) “The utility is required to offer deferred payment agreements ~~only~~ to residential accounts and may offer such agreements to other customers.”

**PSC 113.0406(1)(i)**

- **Description of Rule:** This rule prohibits an electrical public utility from waiving late fees.
- **Stakeholders Impacted:** Electrical utilities and their stakeholders.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter electrical utility tariffs, including by authorizing electrical utilities to waive late fees during a public health emergency. However, such modification is not possible unless this provision of the administrative code is first suspended. Allowing electrical utilities to waive late fees is necessary in order to ensure that customers are able to use the service needed to abide by social distancing guidelines by remaining in the home.
- **Provision to Suspend:** PSC 113.0406(1)(i) “If the utility is authorized to make monthly late payment charges, such charges shall comply with the following requirements....6. ~~The utility may not waive any properly applied late payment charge, except when the utility fails to obtain scheduled meter readings, the utility shall waive the late payment charge upon dispute of the estimate by the customer.~~”

**PSC 113.0408(3)(a)**

- **Description of Rule:** This rule authorizes an electrical utility to require an applicant for utility service to provide certain documents to prove identity and residency.
- **Stakeholders Impacted:** Electrical utilities and their stakeholders.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter electrical utility tariffs, including by temporarily suspending utilities' documentation requirements for applying for service, during a public health emergency. However, such modification is not possible unless this provision of the administrative code is first suspended. Temporarily suspending these provisions is necessary to ensure that all customers may obtain the service needed to abide by social distancing guidelines and remain at home.
- **Provision to Suspend:** PSC 113.0408(3)(a) ~~"A utility may require verification of the initial identification data or the residency, or both, of the person responsible for bill payment under any of the following circumstances: 1. The application is for service at a premises where a bill remains unpaid for service provided within the previous 24 months. 2. The person responsible for bill payment has an outstanding bill with the utility but claims that the bill was accrued in the person's name as a result of identity theft. 3. The applicant fails to provide the initial identification data under sub. (2) (c) 1. g. or the utility finds, with reasonable certainty, that the initial identification information is inaccurate."~~

#### **Provisions Relating to the Standards for Gas Service**

The Commission respectfully requests that the following provisions of Wis. Adm. Code §§ PSC 134.052(3)(a), 134.061(1)(a), 134.062(1), 134.0622(2), 134.063(1), and 134.13(1)(i)5., be suspended as set forth below:

#### **PSC 134.051(3)(a)**

- **Description of Rule:** This rule authorizes a gas utility to require an applicant for utility service to provide certain documents to prove identity and residency.
- **Stakeholders Impacted:** Gas utilities and their stakeholders.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter gas utility tariffs, including by temporarily suspending utilities' documentation requirements for applying for service, during a public health emergency. However, such a modification is not possible unless this provision of the administrative code is first suspended. Temporarily suspending these provisions is necessary to ensure that all customers may obtain the service needed to abide by social distancing guidelines and remain at home.
- **Provision to Suspend:** PSC 134.051(3)(a) ~~"A utility may require verification of the initial identification data or the residency, or both, of the person responsible for bill payment under any of the following circumstances: 1. The application is for service at a premises where a bill remains unpaid for service provided within the previous 24 months. 2. The person responsible for bill payment has an outstanding bill with the utility but claims that the bill was accrued in the person's name as a result of identity theft. 3. The applicant fails to provide~~

~~the initial identification data under sub. (2) (c) 1. g. or the utility finds, with reasonable certainty, that the initial identification information is inaccurate.”~~

**PSC 134.061(1)(a)**

- **Description of Rule:** This rule authorizes a gas utility to require certain customers with certain unpaid balances to provide a cash deposit or other guarantee before providing new residential service to those customers.
- **Stakeholders Impacted:** Gas utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter gas utility tariffs, including by temporarily suspending utilities’ authority to require deposits before providing service, during a public health emergency. Requiring customers who have unpaid balances to provide a deposit could prevent certain customers who are adversely economically affected by the public health emergency from receiving gas service that is needed in order for the customer to abide by social distancing guidelines by staying in the home.
- **Provision to Suspend:** PSC 134.061(1)(a) ~~“A utility shall not require a cash deposit or other guarantee as a condition of new residential service unless a customer has an outstanding account balance with any Wisconsin gas utility which accrued within the last 6 years and for which there is no agreement or arrangement for payment being honored by the customer, and which at the time of the request for new service remains outstanding and not in dispute, as defined in s. PSC 134.064.”~~

**PSC 134.062(1)**

- **Description of Rule:** This rule authorizes gas utilities to disconnect or refuse residential connection for certain specified reasons. Separate provisions of the administrative rules, PSC 134.062 (3) and (4), which will not be suspended, authorize a gas utility to disconnect residential utility service where a dangerous condition exists.
- **Stakeholders Impacted:** Gas utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter gas utility tariffs, including by suspending disconnections for reasons that are not associated with safety during a public health emergency. However, such a modification is not possible unless this provision of the administrative code is first suspended. Suspending disconnections is a necessary action because disconnection would hinder customers’ efforts to abide by social distancing requirements by staying in the home.
- **Provision to Suspend:** PSC 134.062(1) ~~“Residential utility service may be disconnected or refused for any of the following reasons: (a) Failure to pay a delinquent account or failure to comply with the terms of a deferred payment agreement, as provided in s. PSC 134.063. (b) Violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or to the operation of nonstandard equipment, if the customer has first been notified and provided with reasonable opportunity to remedy the situation. (c) Failure to comply with deposit or guarantee arrangements, as specified in s. PSC 134.061. (d) Refusal or failure to permit authorized utility personnel to read the meter at least once every 6 months in order to determine actual usage. The 6-month period begins with the date of the last meter reading. (e) Failure to comply with Wisconsin statute, commission rule or commission order pertaining to conservation or availability of service. (f) Failure to pay~~

~~costs or fees incurred by and awarded to the utility by a court of law, for pursuit of collection of bills, or failure to pay extraordinary collection charges as allowed and specified in the utility's tariffs filed with the public service commission. (g) Failure to comply with applicable requirements of this section, or of the utility's rules, or with s. 101.865, Stats. (h) Delinquency in payment for service received by a previous customer or occupant at the premises to be served, if an account is transferred to a new account holder or customer and the previous account holder or customer continues to be an occupant of the dwelling unit to be served. (i) Connecting or causing to be connected a device or use of gas considered to be a nonessential use of natural gas which is prohibited under s. PSC 136.05. (j) Connecting or having connected a natural gas outdoor lighting fixture as specified in s. PSC 136.02. (k) Failure of an applicant for utility service to provide information or documentation required by s. PSC 134.051.~~

**PSC 134.0622(2)**

- **Description of Rule:** This rule authorizes gas utilities to disconnect or refuse commercial and farm connections for certain specified reasons. Separate provisions of the administrative rules, PSC 134.0622 (3) and (4), authorize a gas utility to disconnect commercial and farm utility service where a dangerous condition exists.
- **Stakeholders Impacted:** Gas utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter gas utility tariffs, including by suspending disconnections for reasons that are not associated with safety during a public health emergency. However, such a modification is not possible unless this provision of the administrative code is first suspended. Given the economic impacts of social distancing, commercial and farm customers may be at an increased risk of disconnection. Suspending disconnection is a necessary action to ensure that, during the emergency, products and services remain available.
- **Provision to Suspend:** PSC 134.0622(2) ~~“Commercial or farm utility service may be disconnected or refused for any of the following reasons: (a) Failure to pay a delinquent account. (b) Violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or to the operation of non-standard equipment, if the customer has first been notified and provided with reasonable opportunity to remedy the situation. (c) Failure to comply with the deposit, guarantee arrangement, or installment payment agreement, as specified in s. PSC 134.0615. (d) Refusal or failure to permit authorized utility personnel to read the meter at least once every 6 months in order to determine actual usage. The 6-month period begins with the date of the last meter reading. (e) Failure to comply with Wisconsin statute, commission rule or commission order pertaining to conservation or availability of service. (f) Failure to pay costs or fees incurred by and awarded to the utility by a court of law, for pursuit of collection of bills, or failure to pay extraordinary collection charges as allowed and specified in the utility's tariffs filed with the public service commission. (g) Failure to comply with applicable requirements of this section, or of the utility's rules, or with s. 101.865, Stats. (h) Connecting or causing to be connected a device or use of gas considered to be nonessential use of natural gas, which is~~

~~prohibited under s. PSC 136.05. (i) Connecting or having connected a natural gas outdoor lighting fixture as specified in s. PSC 136.02.~~

**PSC 134.063(1)**

- **Description of Rule:** This rule requires gas utilities to offer deferred payment agreements to residential customers, and it specifies that a gas utility can only be required to offer deferred payment agreements to residential accounts.
- **Stakeholders Impacted:** Gas utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter gas utility tariffs, including by requiring utilities to temporarily provide deferred payment agreements to nonresidential customers during a public health emergency. However, such a modification is not possible unless this provision of the administrative code is first suspended. Given the economic impacts of social distancing on businesses, if nonresidential customers are unable to obtain deferred payment agreements, they may be unable to afford the services needed for their continued operation, which would pose a risk to public health by impeding the availability of products and services.
- **Provision to Suspend:** PSC 134.063(1) “A utility is required to offer deferred payment agreements ~~only~~ to residential accounts and may offer such agreements to other customers.”

**PSC 134.13(1)(i)**

- **Description of Rule:** This rule prohibits a gas public utility from waiving late fees.
- **Stakeholders Impacted:** Gas utilities and their stakeholders.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter gas utility tariffs, including by authorizing electrical utilities to waive late fees during a public health emergency. However, such a modification is not possible unless this provision of the administrative code is first suspended. Allowing electrical utilities to waive late fees is necessary to ensure that customers are able to use the service needed to abide by social distancing guidelines by remaining in the home.
- **Provision to Suspend:** PSC 134.13(1)(i) “If the utility is authorized to make a one-time late payment charge, such charge shall comply with the following requirements:… ~~5. The utility shall not waive any properly applied late payment charges.~~”

**Provisions Relating to the Standards for Water Public Utility Service**

The Commission respectfully requests that the following provisions of Wis. Adm. Code §§ PSC 185.30(3)(a), 185.33(16), 185.36(1)(a), 185.37(2), and 185.38(1), be suspended as set forth below:

**PSC 185.30(3)(a)**

- **Description of Rule:** This rule authorizes a water utility to require an applicant for utility service to provide certain documents to prove identity and residency.
- **Stakeholders Impacted:** Water utilities and their stakeholders.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter water utility tariffs, including by temporarily suspending utilities’ documentation requirements for applying for service, during a public health

emergency. However, such a modification is not possible unless this provision of the administrative code is first suspended. Temporarily suspending these provisions is necessary to ensure that all customers are able to obtain the service needed to abide by social distancing guidelines.

- **Provision to Suspend:** ~~PSC 185.30(3)(a) “A utility may require verification of the initial identification data or the residency, or both, of the person responsible for bill payment under any of the following circumstances: 1. The application is for service at a premises where a bill remains unpaid for service provided within the previous 24 months. 2. The person responsible for bill payment has an outstanding bill with the utility but claims that the bill was accrued in the person's name as a result of identity theft. 3. The applicant fails to provide the initial identification data under sub. (2) (c) 1. g. or the utility finds, with reasonable certainty, that the initial identification information is inaccurate.”~~

**PSC 185.33(16)**

- **Description of Rule:** The rule authorizes a water utility to offer a budget payment plan to its residential customers.
- **Stakeholders Impacted:** Water utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter water utility tariffs, including by requiring utilities to temporarily provide budget payment plans to residential and nonresidential customers during a public health emergency. However, such a modification is not possible unless administrative rules that could be interpreted as running contrary to such action are suspended. Given the economic impacts of social distancing on businesses, if nonresidential customers are unable to obtain budget payment plans, they may be unable to afford the services needed for their continued operation, which would pose a risk to public health by impeding the availability of products and services.
- **Provision to Suspend:** PSC 185.33(16) “A utility may offer a budget payment plan to ~~residential~~ customers. Any such plan shall conform to the guidelines set forth in pars. (a) through (g).”

**PSC 185.36(1)(a)**

- **Description of Rule:** This rule authorizes a water utility to require certain customers with certain unpaid balances to provide a cash deposit or other guarantee before providing new residential service to those customers.
- **Stakeholders Impacted:** Water utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter water utility tariffs, including by suspending a utility’s authority to require cash deposits before providing service. However, such modification is not possible unless this provision of the administrative code is first suspended. Requiring customers who have unpaid balances to provide a deposit could prevent certain customers who are adversely economically affected by the public health emergency from receiving

water service that is needed in order for the customer to abide by social distancing guidelines by staying in the home.

- **Provision to Suspend:** PSC 185.36(1)(a) “A utility shall not require a deposit or other guarantee as a condition of new residential service ~~unless a customer has an outstanding account balance with any Wisconsin gas, electric, water, or sewer utility which accrued within the last 6 years and for which there is no agreement or arrangement for payment being honored by the customer, and which at the time of the request for new service remains outstanding and not in dispute. (See s. PSC 185.39.)~~”

**PSC 185.37(2)**

- **Description of Rule:** This rule authorizes water utilities to disconnect or refuse connection for certain specified reasons. A separate provision of the administrative rules, PSC 185.37(3), which will not be suspended, authorizes a water utility to disconnect service where a dangerous condition exists.
- **Stakeholders Impacted:** Water utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter water utility tariffs, including by suspending disconnections for reasons that are not associated with safety during a public health emergency. However, such a modification is not possible unless this provision of the administrative code is first suspended. Given the economic impacts of social distancing, customers may be at an increased risk of disconnection. Suspending disconnection is a necessary action to ensure that, during the emergency, residential customers are able to abide by social distancing by staying at home and to ensure that products and services remain available.
- **Provision to Suspend:** PSC 185.37(2) ~~“Utility service may be disconnected or refused for any of the following reasons: (a) Failure to pay a delinquent account or failure to comply with the terms of a deferred payment agreement (see s. PSC 185.38); (am) Delinquency in payment for service received by a previous account holder or customer at the premises to be served, if an account is transferred to a new account holder or customer and the previous account holder or customer continues to be an occupant of the dwelling unit to be served; (b) Failure to pay for an outstanding account balance with the utility owing at a previous address and for which there is no agreement or arrangement for payment and it is not in dispute but remains outstanding; (c) Failure to comply with deposit or guarantee arrangements as specified in s. PSC 185.36 or 185.361; (d) Diversion of service around the meter; (e) Refusal or failure to permit authorized utility personnel to read the meter at least once every 4 months where the utility bills monthly or bimonthly, or at least once every 9 months where the utility bills quarterly or less frequently than quarterly. The 4- or 9-month period begins with the date of the last meter reading; (f) Refusal or failure to permit authorized utility personnel access to the base meter; (g) Violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or to the operation of nonstandard equipment, if the customer has first been notified and provided with reasonable opportunity to remedy the situation; (h) Failure to comply with Wisconsin statutes, commission rules, or commission orders pertaining to utility service; (i) Failure to pay costs or fees incurred by and awarded to the utility by a court of law, for pursuit of collection of bills, or failure to pay~~

~~extraordinary collection charges as allowed and specified in the utility's tariffs filed with the commission; (j) Failure to comply with the utility's rules or if the customer uses a device that unreasonably interferes with communications or signal services used for reading meters; (k) Failure of an applicant for utility service to provide the information or documentation required by ss. PSC 185.30 or 185.305."~~

**PSC 185.38(1)**

- **Description of Rule:** This rule requires a water utility to offer deferred payment agreements to residential accounts, and it provides that water utilities are encouraged but retain discretion to provide such agreements for nonresidential accounts.
- **Stakeholders Impacted:** Water utilities and their customers.
- **Explanation of Effect on Necessary Actions:** Wis. Stat. § 196.70 authorizes the Commission to temporarily alter water utility tariffs, including by requiring utilities to temporarily provide deferred payment agreements to nonresidential customers during a public health emergency. However, such a modification is not possible unless this provision of the administrative code is first suspended. Given the economic impacts of social distancing on businesses, if nonresidential customers are unable to obtain deferred payment agreements, they may be unable to afford the services needed for their continued operation, which would pose a risk to public health by impeding the availability of products and services.
- **Provision to Suspend:** PSC 185.38(1) "A utility is required to offer deferred payment agreements to residential accounts ~~and encouraged to offer such agreements to other customers."~~



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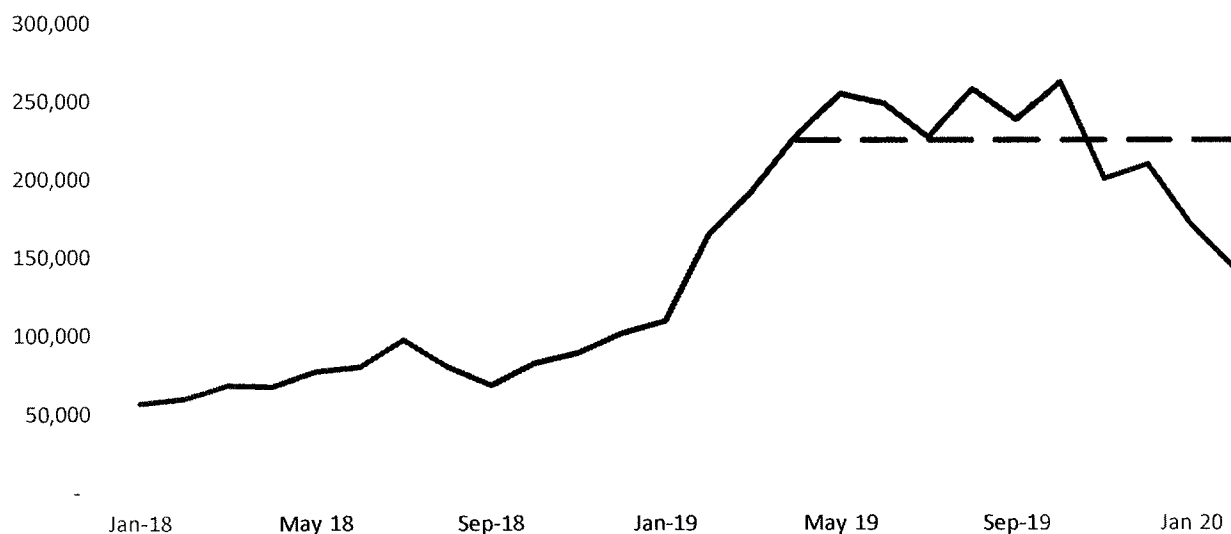
APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE April 21, 2020
REPORTS & RECOMMENDATIONS	DIRECT STAFF TO PREPARE A 2020 BUDGET AMENDMENT FOR THE GENERAL FUND, CAPITAL OUTLAY FUND, EQUIPMENT REPLACEMENT FUND, STREET IMPROVEMENT FUND AND CAPITAL IMPROVEMENT FUND TO REDUCE \$1,000,000 LANDFILL SITING RESOURCES AND REMOVE SELECTED PROJECTS FROM THE 2020 CAPITAL FUNDS OR INCREASE NOTE PROCEEDS	ITEM NUMBER <i>6,15,</i>

### Background

The 2020 Capital Fund Budgets included \$2,252,000 of Landfill siting revenues with an additional \$458,000 of Landfill Siting revenues in other funds for total expected Landfill Siting revenues of \$2,710,000.

The 2020 Budgeted revenues were projected after the increase in revenues experienced when the operator received the expansion license. Rates per ton increased 25% and volumes also increased significantly with that expansion. Operator management noted that new operating levels had been obtained, and the City received \$225,000 in average monthly revenues. See below. The dash line indicates the 2020 budget amounts. Since November, 2019, revenues have steadily declined.

Monthly Landfill Siting Revenue



It now appears that Landfill Siting revenues will be \$1 million less for the year. Recent discussions with the Operator indicate that the reduced level noted above, which began BEFORE the Health Emergency, will continue, as volumes are again being directed to their Menomonee Falls location. That location had improvements underway during 2019, that reduced its capacity to take material. Those improvements have been completed, allowing the Menomonee Falls location to again handle normal volumes.

The Operator also noted that with the Health Emergency, they are seeing further reduced volumes and would not estimate future volumes.

The 2020 Capital Budget Resources are:

	Capital Outlay	Equipment Replacement	Capital Improve	Street Improve	Total Capital
Taxes	295,700	-			295,700
<b>Landfill Siting</b>	<b>483,900</b>	<b>677,600</b>	<b>722,000</b>	<b>368,500</b>	<b>2,252,000</b>
Intergovernmental				845,000	845,000
Other	38,800	93,900	3,366,500	4,800	3,504,000
					-
Total Revenues	818,400	771,500	4,088,500	1,218,300	6,896,700

Total 2020 Budgeted Landfill Siting Resources are:

	Total Capital	General	Library	Total
Taxes	295,700		1,340,500	1,636,200
<b>Landfill Siting</b>	<b>2,252,000</b>	<b>438,000</b>	<b>20,000</b>	<b>2,710,000</b>
Intergovernmental	845,000			845,000
Other	3,504,000		55,000	3,559,000
Total Revenues	6,896,700	438,000	1,415,500	8,750,200

Landfill siting represents 32,6% of Capital Fund resources. A significant reduction in that resource puts the 2020 Capital Expenditure programs in jeopardy without some modification.

## Analysis

Staff recommends that 2020 Capital Budgets be re-evaluated anticipating a \$1 million landfill siting resource shortfall. That reduced resource will mean that some expenditures will not have supporting resources. This will need to be monitored and re-evaluated later this year.

One option, to replace that resource, would be to budget new borrowed funds replacing the lost landfill siting revenues. That new debt resource is not part of the longer-term future Debt Service Levy (noted on page 207 of the 2020 Budget Book).

Another option would be to reduce 2020 appropriations for identified project expenditures and delay them to future years.

Staff is recommended the following allocation of Landfill Siting revenues by fund for the following reasons.

- 1) Leave the Library allocation un-changed. While the **Library Fund** has a healthy surplus, tax levy growth over the years has been less than personnel cost increases coming from Common Council actions. That has placed increased pressure on their operations. The Library Fund surplus sits at 42% of 2019 expenditures. The \$20,000 represents 1.5% of expenditures.
- 2) **General Fund** – reduce the resource to \$200,000 – down \$238,000 – this will place pressure on operations for 2020, however the General Fund has other variable resources that could be called upon.
- 3) **Capital Outlay** – reduce the resource by \$8.900 to \$475,000. The fund has a projected \$68,500 2020 fund balance, thus the Capital Outlay Fund would only need to reduce 2020 programs should the resource be further reduced. Extreme caution is advised before approving any further Capital Outlay projects. Projects already approved have used most of the available resources received this year. As noted above, 59% of the Funds resource is to come from Landfill siting revenues.
- 4) **Equipment Replacement** – reduce the resource by \$277,600 to \$400,000. This fund has a projected 2020 fund balance of \$2,188,000. While the fund has been operating with a structural deficit for a number of years and has significant near term demands, the 2020 reduction would push the funding problem further down the road. The 2020 projects can be supported by available resources and fund balance.
- 5) **Street Improvement** – reduce the resource by \$18,500 to \$350,000. This fund has a projected 2020 fund balance of \$268,800. With such a small fund balance, the 2020 program (already let by contract) could remain in place. The Highway Dept is having its own issues getting some streets prepared for the contractor, so some cost may be delayed to 2021 for other reasons.
- 6) **Capital Improvement Fund** – reduce by \$542,000 to \$180,000. There is the option of borrowing the \$542,000 to provide the resources, OR a choice to delay projects not yet committed. The uncommitted projects as of this writing are:
  - a) Park land acquisition - \$550,000 -with \$302,500 supported by landfill siting revenues
  - b) Overflow parking at Kayla's playground - \$250,000 – with \$132,500 supported by landfill siting
  - c) General Trails, Bicycle routes & linkages - \$285,000 with \$95,000 supported by landfill siting
  - d) Community Development Enterprise Resource Program - \$225,000
  - e) S 50<sup>th</sup> Street improvements - \$100,000
  - f) Marquette Ave extension from 49<sup>th</sup> to 51<sup>st</sup> - \$700,000 – with \$100,000 supported by landfill siting.
  - g) Marquette Ave improvements – Pleasant View School to S 49<sup>th</sup> - \$50,000

h) Contingency - \$125,000 currently un-used.

If debt resources are preferable, then staff would recommend no changes to the General Fund landfill siting resource, and increase the debt resources to the Capital Improvement fund.

Staff recommends eliminating the following projects with reduced appropriations noted:

- halve the park land acquisition (by \$150,000),
- eliminate the Overflow parking (\$132,500),
- eliminate the trails (\$95,000),
- eliminate the 50<sup>th</sup> Street improvements (\$100,000) and
- halve the contingency (by \$65,000)

– totaling \$542,500.

OR

such other changes as the Council shall deem appropriate.

### **COUNCIL ACTION REQUESTED**

Direct staff to prepare a 2020 budget amendment for the General Fund, Capital Outlay Fund, Equipment Replacement Fund, Street Improvement Fund and Capital Improvement Fund to reduce \$1,000,000 of landfill siting resources and remove selected projects from the 2020 capital funds as directed

Or

Reduce the Landfill Siting resource as recommended and increase debt resources in the Capital Improvement Fund.

City of Franklin  
Capital Improvement Fund  
Budget 2020

	Adopted			
Project/Name	Total	Funding Source	Amount	Net City Funds
Landfill Siting Revenue	722,000			\$ 722,000
Investment Income	25,000			25,000
<b>Total Revenue</b>	<b>747,000</b>			<b>747,000</b>

Expenditures

**APPROVED PROJECTS**

<b>PARK DEVELOPMENT</b>				-
Pleasant View Park - improvements	150,000	Park Impact Fees	70,500	79,500
Park Land Acquisition - various parks	550,000	Park Impact Fees	247,500	302,500
Overflow parking @ Kayla's Playground	250,000	Park Impact Fees	117,500	132,500
Cascade Trail	65,000	Park Impact Fees	46,150	18,850
Trails, Bicycle Routes & linkages	285,000	Park Impact Fees	139,850	145,150
		Developer Grant	50,000	(50,000)
Lake Ernie aeration				-
<b>Muni Buildings</b>				-
City Hall & Police Security enhancements	500,000	Transfer from Gen Fund	500,000	-
				-
<b>Public Safety</b>				-
Community Development Enterprise Resource Program - migration	225,000			225,000
				-
<b>Public Works</b>				-
S 68th Street - hill mitigation	300,000			300,000
S 50th St Improvement	100,000			100,000
Marquette Ave Improvements - Pleasant View Sch to S 49th St	50,000			50,000
Marquette Ave Improvements - S 49th St to S 51st St	700,000	Debt Service	600,000	100,000
Ryan Creek Interceptor Sanitary Sewer Odor Control	450,000	MMSD Grant	450,000	-
Gravity Flow Sanitary Sewer to replace lift station	3,225,000	Sewer Fund	3,225,000	-
Watermain Extension - S 50th & Minnesota Ave	120,000	Utility Dev Fd	120,000	-
<b>Total Approved Projects</b>	<b>6,970,000</b>		<b>5,566,500</b>	<b>1,403,500</b>

**PROJECTS PENDING APPROVAL**

Water Projects	500,000	Water Connection Fees	500,000	-
Sewer Projects	500,000	Sewer Connection Fees	500,000	-
				-
<b>Contingency</b>	<b>175,000</b>			<b>175,000</b>

**Total Projects Pending Approval**

<b>Total Projects</b>	<b>8,145,000</b>	<b>6,566,500</b>	<b>1,578,500</b>
Net Revenue (Expenditures)			(831,500)
Projected Beginning Fund balance			1,007,836
Projected Ending Fund Balance			\$ 176,336

Park Impact	621,500
	500,000
	120,000
Sewer & Water Connection	1,000,000
total	2,241,500

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# City of Franklin, WI Landfill Siting Revenue

DESCRIPTION	2018 ACTIVITY	2019 ACTIVITY	2020 ORIGINAL BUDGET	Landfill Pct of Total Rev	Proposed
General Fund	166,269	203,912	438,000	2%	200,000
Library			20,000	1%	20,000
Capital Outlay	147,000	317,000	483,900	59%	475,000
Equipment Replacement	200,000	500,000	677,600	88%	400,000
Capital Improvement	284,102	1,229,622	722,000	58%	180,000
Street improvement	133,000	343,270	368,500	30%	350,000
Total	930,371	2,593,804	2,710,000	8%	1,625,000
Expected falloff - 40%			1,084,000		
New Rev total			1,626,000		

<b>APPROVAL</b>  <i>See</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>04/21/2020</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Authorization for Purchase of BS&amp;A's Community Development &amp; Complaints Software including execution of the Software Licenses and Services Agreement</b>	<b>ITEM NUMBER</b>  <i>G.16.</i>
<p><b>Project Notes:</b> <i>The BS&amp;A contract for the second phase of the Govern replacement project is nearly identical to the BS&amp;A Water Utility contract signed on March 13, 2020. Only the project schedules and exhibits are different.</i></p> <p><b>Executive Summary:</b> In 2002 the City of Franklin standardized all departmental land management and inspections systems under a suite of modules contained within Harris Govern. Although Harris has done a commendable job customizing an ERP system to the exact workflow and departmental requirements of Franklin, the v10.8 product lacks any ability to interface directly with the financial and accounting software. In addition to this core need, the Visual Basic 6 software does not have any ability to allow Internet based transactions to be performed, where constituents are unable to view a variety of bills and records online. Due to the history of the product being organically grown and supported within the Inspection Services department, the retirement of Fred Baumgart has required support and maintenance of the system to be performed by IT. This has brought to light many reporting and configuration issues within the systems that are extremely hard to correct, due to the longevity of the product and having one set of changes indirectly impact associated modules. Changing something as simple as a new fee or GL account is a process that can take several days and requires a significant amount of testing, due to the nature to fees being chained to one another during the calculations. In many cases, parameter data needs to be significantly simplified. Due to the aged VB6 architecture, one that does not natively support ODBC, SQL.DB, ADO, or .NET, integrating the product to other applications or enabling it for web services is extremely difficult. This requires very expensive customized code to be written for an application that has been slated for end of life by the software manufacturer.</p> <p>This project focuses on replacing the entirety of Govern to a new ERP solution, one that is in alignment with planned changes being made to Water Utility Billing, while further enabling e-commerce. This is absolutely necessary to remain competitive with other municipalities for economic development investments, but also to improve constituent service and grow governmental transparency.</p> <p><b>Explanation:</b> Govern was initially installed and implemented by Harris Systems and a third-party consulting company based out of Chicago. Govern was selected as the Community Development ERP platform due to both the reputation and size of Harris Systems, but also because the vendor allowed for free license conversions to other Harris governmental products (in the event that the City was not satisfied with the current application). A major concern at the time was migrating city-wide core operational data to a new software package, only to have the company abandon the product or be acquired by another software company. The longevity and reputation of Harris Systems lowered the risk of product abandonment.</p>		



Over the course of nearly 20 years, Govern has been ported from a Visual Basic 6 program over to the Microsoft .NET programming language. The original .NET product was called Govern 5.0 (renamed Govern Open Forms 5.0) and was their premier .NET product. The software had major issues and many initial customers were dissatisfied with both the interface and usability. Integration with the new web portal was often determined to be very kludgy with a wide variety of issues.

The problems with Govern Open Forms 5.0 was so significant that Harris decided to stop development and completely rewrite the entire product, using some of the new built in tile technology that became available with Windows 8/10. The product was completely rewritten from the ground up, continuing to use the .NET platform, and contained dramatically improved interfaces and a brand-new ecommerce portal. Today Govern Open Form 6.1.x is the current product development line, which for years was the planned migration path.

Although Harris Systems is a large organization that makes a sizable number of governmental software products, at its core there have been several key problems that have never fully been corrected:

- Extremely Long and Unpredictable Software Development Lifecycles – Govern Open Forms 6.1 has been available since 2015, but in the course of four years Harris has not completed all modules within the suite. A key module to the software suite was the Water Utility Billing, which to date still has not been completed. Conversations with the SVP of Product Development, Benoit Lauzon, this product was to be finalized Q2 of 2019. The product has once again been delayed and of Q2 of 2020 still has yet to be coded and released.
- New Customers Halting the Development Process – A new customer (municipality) that is of large or complex scope will require product developers be temporarily transferred from writing module code to working on custom code or integration modules for the new customer. Developers are only reassigned back to product development once the new customer has been fully onboarded.
- Harris Temporary Transferring Developers to Other Business Lines – Harris has seen rapid growth in their health care services line of products and has moved developers between business units to help finalize product code for other high revenue initiatives.
- CAMA – Govern significantly altered their original product release scheduled by the introduction of both CAMA (computer assisted mass appraisal) and PACS (property appraisal and GIS services) as new modules. These were in high demand for the Canadian provinces and became a core focus of new development.
- Integration with other GL & Accounting Packages – Govern had very limited support for other accounting packages (supporting only the largest of accounting suites), with a very strong push to guiding customers to purchase GL/accounting packages produced by Harris Systems. For municipalities that already had their own financial accounting packages and already absorbed migration costs, the cost of creating customized AR/GL integration modules was extremely expensive. Securing Govern development time to creating integration modules for BS&A is also another major obstacle. Building upon a BS&A platform eliminates all integration problems between the financial systems and finally fully integrates it within the ERP.

In addition to issues within the Govern product development and support, the City of Franklin implemented several customized integrations that made moving off the older Visual Basic 10.8 version of Govern difficult:

- EditApp – Because Govern (being written in a programming language from the late 1990's) did not have a built-in workflow system, EditApp was written as a piece of middleware that would provide some level of automation within land management functions. EditApp allows land management records entered in Govern to be exported and directly inserted into the GIS database. The software also created a CSV file of all newly entered/modified land management records and allowed it to be easily imported into the Assessment Department's Universe database. EditApp, being middleware, is tightly coupled to the database schema of GIS and Govern, to a point that database schema changes cannot be made in GIS or Govern without first fully testing the compatibility of EditApp.
  - Because of the tight application coupling the usage of EditApp for automation mandates that the version of ESRI's ArcGIS be of a specific level. EditApp is actively being retired, due to ERSI no longer supporting the current version of ArcGIS and requiring an upgrade. Master data is currently being fully synchronized between GIS and Govern.
- Crystal Reports – All reports and governmental records (permits, licenses, invoices, receipts) are products in Crystal Reports. Over 340 reports already exist and migrating to a different application or Govern version will require that each and every Crystal Report template be rewritten. There currently are no Crystal Reports experts on staff within the City of Franklin to assist with rewriting the templates. Crystal Reports has been bought and sold several times to a variety of companies (3 times since 2002), with the product now being owned by SAP. Migrating a report template to a different version of Crystal Reports may break the reporting functions or introduce output errors.

Phase 1 Project: For the 2019 Capital Outlay Budget the Water Utility Department has approved funding to migrate from Govern 10.8 over to BS&A Water Utility module. A critical success factor with this project is to allow online bill payment of all Water Utility bills, and allow customers to view all utility bills completely online. In order to accomplish the eCommerce goals of the project, Water Utility Billing has to be integrated and fully automated with the BS&A AR & GL. Because Water Utility Billing and financial accounting functions are performed within the same product suite, integration between the two modules and databases is very easy to accomplish.

**Phase 2 - Project Deliverables:** At the successful completion of the project the following deliverables will be achieved:

- Phase 1 – Water Utility Billing Project is fully complete and all issues are resolved. The final data exact is expected to be performed on 9/24/2020, with a go live date of 10/1/2020.
- Create a Project Plan containing a task decomposition and project timeline.
- Create business process maps of existing workflows along with associated use cases.
- Install BS&A Community Development & Citizen Call to Action modules on a dedicated application server and install module level databases on a centralized SQL server. Modules installed will be BS&A Community Development suite (building department, field inspection, business licenses, and citizen call to action.)
- BS&A Online, which has already been provisioned for utility billing, will be extended to include the new modules and features.
- Create dedicated Active Directory application security groups and assign security permissions to the group based on user role assignments.

- Assign database security permissions based upon Active Directory security groups. All application authentication will be performed using current Active Directory user accounts and passwords.
- Configure parameterized data in BS&A to match current application configuration parameters within the Govern Land Management, Inspections, Licensing, and Complaints modules.
- Convert and migrate current Govern records over to BS&A. This will be a phased approach of land management master data records being ported first, with associated inspections, licenses, permits, and complaint records be ported in successive phases.
- Integrate existing Govern AR accounts within BS&A Financials and interface them within BS&A ERP for automated data entry and workflows.
- Configure BS&A Online for public search for parcel, permit, inspection, license, and complaint records.
- Review system generated reports and permits, ensuring the current Govern generated documents align with those created in BS&A report building.
- Audit inspections, permits, and licenses 30-60 days after conversion to ensure the accuracy and formatting of all governmental records and invoices.

**Project Milestones:** It is anticipated that the project will proceed using the following major milestones:

- Project Planning & Scope Determination
- Analysis – Land Management Records & Forms
- Analysis – Permit Records & Forms
- Analysis – Inspection Records & Forms
- Analysis – Licensing Records & Forms
- Analysis – Zoning Records & Forms
- Analysis – Complaints Records & Forms
- Analysis - Business Process & Workflows & GIS Integration
- Analysis – BS&A Financial Configuration
- Implementation - Build Migration Scripts
- Implementation – Build & Configure Test System (optional)
- Implementation – Build & Configure Production System
- Implementation - Database Creation & Security Group Definitions
- Implementation – Build & Configure BS&A Online Portal
- Migration – Load Test System Data (iterative for each module)
- Migration – Load Production System Data
- Migration – Running Billing Test Cases
- Training – User & IT Support Training
- Cutover – Implement BS&A Applications on Desktops & Terminal Servers
- Cutover – Activate Online Portal & Bill Payment
- Testing – Run Test Cases
- Testing – Verify records and invoices

**Project Costs:**

Applications	\$73,285
Data Conversions	\$30,650
Customization	\$ 1,500
Project Management & Planning	\$16,500
Implementation & Training	\$39,600
Travel Expenses	<u>\$19,605</u>
<b>Total Expenses</b>	<b>\$181,140</b>

The vendor requested \$19,605 for travel expenses, but it is believed that some costs may be deferred by allowing remote VPN access during the course of the project. Due to mandatory changes in training programs due to COVID-19, video conferencing may be used instead of direct onsite instruction. Funding has been established as \$225,00 in order to provide for contingencies and cost overages, due to the complex nature of the project and iterative data conversions. Also, please note that the IT Director may require some modifications and clarification on the Scope of Work documentation prior to final execution.

**COUNCIL ACTION REQUESTED**

Motion to authorize Purchase of BS&A's Community Development and Citizen Call to Action Software including execution of the Software Licenses and Services Agreement and to authorize the Director of IT to execute the necessary documents.

## **SOFTWARE LICENSE AND SERVICES AGREEMENT**

This Software License and Services Agreement that includes attached Exhibits ("Agreement") is between Bellefeuil, Szur & Associates, Inc. ("BSA"), a Michigan corporation and the City of Franklin, Milwaukee County WI ("Customer"), effective the date of the signature of the last Party to sign the Agreement ("Effective Date") Each party to the Agreement is referred to as a "Party" and the parties, collectively, are referred to as "Parties "

This Agreement sets the terms and conditions under which BSA will furnish certain licensed software and certain services described herein to Customer

### **SECTION A – SOFTWARE LICENSE**

#### **1. License Grant.**

- 1.1.** Upon the Effective Date, subject to the terms of this Agreement and Customer's ongoing compliance therewith, BSA hereby grants to Customer a perpetual, non-exclusive, non-transferable, and non-assignable license to install and use the BSA Software Products for Customer's internal business purposes only (and not, for example, as a data center, reseller, or service bureau for third parties), only on servers owned by Customer and located at Customer's facilities, and otherwise in accordance with this Agreement "BSA Software Product(s)" means, the (i) BSA software products set forth in **Schedule 1 to Exhibit A**, (ii) related interfaces and customizations, (iii) BSA manuals, BSA official specifications, and BSA user guides provided in or with BSA software products set forth in **Schedule 1 to Exhibit A** ("Documentation"), and (iv) all modifications to the BSA software products set forth in **Schedule 1 to Exhibit A**, including, but not limited to, fixes, new versions, new releases, updates, upgrades, corrections, patches, work-arounds (collectively, "Modifications") For the avoidance of doubt, Documentation does not include advertising, other general statements about products, or statements by sales or other staff members Customer may make and keep (securely) one archival copy of each BSA Software Product solely for use as backup The source code for the purchased applications will be added to the existing Source Code Escrow Agreement between IT Right and the Customer, dated June 20<sup>th</sup>, 2013
- 1.2.** Customer will not sublicense, modify, adapt, translate, or otherwise transfer, reverse compile, disassemble or otherwise reverse engineer BSA Software Products or any portion thereof without prior written consent of the BSA Without limiting the foregoing, the BSA Software Products may not be modified by anyone other than BSA If Customer modifies the BSA Software Products without BSA's prior written consent, any BSA obligation to provide support services on, and the warranty for, the BSA Software Products will be void All rights not expressly granted are reserved

- 2. License Fees.** Customer agrees to pay BSA, and BSA agrees to accept from Customer as payment in full for the license granted herein, the software fees set forth in **Schedule 1 to Exhibit A**

#### **3. Limited Software Warranty.**

- 3.1.** BSA warrants and represents for a period of one (1) year from the installation of BSA Software Product that (i) such BSA Software Product will perform substantially in the same manner as official demonstration versions and in accordance with BSA's authorized online tutorials and videos that may have been made available as part of the sales and negotiation process leading up to this Agreement, and (ii) the BSA Software Product shall conform to the Documentation and be free of material defects in workmanship and materials Any claim under this Limited Software Warranty must be made within one (1) year from the installation of the applicable BSA Software Product Customer's exclusive remedy in the event of a breach of this warranty shall be to have BSA use reasonable efforts to repair or replace the non-conforming BSA Software Product so as to render it conforming to the warranty, or in the event that is not possible to render it conforming with reasonable efforts, to receive a refund of the amount paid for the BSA Software Product
- 3.2.** THE FOREGOING LIMITED SOFTWARE WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES RELATING IN ANY WAY TO THE BSA SOFTWARE PRODUCTS, INCLUDING, *BUT NOT LIMITED TO*, THEIR FEATURES, ATTRIBUTES, FUNCTIONALITY, AND PERFORMANCE THE FOREGOING LIMITED SOFTWARE WARRANTY IS IN LIEU OF ALL SUCH REPRESENTATIONS OR WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM THE COURSE OF

DEALING OR USAGE OF TRADE BSA DOES NOT REPRESENT OR WARRANT THAT THE BSA SOFTWARE PRODUCTS WILL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT THE OPERATION OF THE BSA SOFTWARE PRODUCTS WILL OPERATE ERROR-FREE OR UNINTERRUPTED, OR THAT ALL PROGRAMMING ERRORS IN THE BSA SOFTWARE PRODUCT(S) CAN BE FOUND IN ORDER TO BE CORRECTED

**4. Ownership of BSA Software Products/Proprietary Information.**

- 4.1.** BSA shall retain ownership of, including all intellectual property rights in and to, the BSA Software Products Customer agrees not to challenge such rights and hereby assigns any and all copyrights and other intellectual property rights in and to the BSA Software Products to BSA and agrees to execute any and all documents necessary to effect the purposes of this paragraph "Intellectual property rights" means all trademarks, copyrights, patents, trade secrets, moral rights, know-how, and all other proprietary rights

**SECTION B – PROFESSIONAL SERVICES**

- 5. Professional Services.** BSA shall provide the services ("Professional Services") set forth in **Schedule 2 to Exhibit A, and Exhibit D (Statement of Work)** for the prices indicated, provided Customer fulfills its obligations set forth in this Agreement The Parties may enter into future Statements of Work, which shall become part of this Agreement
- 6. Change Orders.** If Customer requires the performance of professional services not covered by the existing Agreement, or requires a change to the existing Professional Services, Customer shall deliver to BSA's Project Manager a written change order and specify in such change order the proposed work with sufficient detail to enable BSA to evaluate it ("Change Order") BSA may, at its discretion, prescribe the format of the Change Order BSA shall provide the Customer with an evaluation of the Change Order, which may include a written proposal containing the following (i) implementation plans, (ii) the timeframe for performance, and (iii) the estimated price for such performance Upon execution, all Change Orders shall be governed by the terms and conditions of this Agreement, unless mutually agreed upon otherwise in writing Customer acknowledges that such Change Orders may affect the implementation schedule and Go-Live Dates
- 7. License and Ownership.**
- 7.1.** All rights, including all intellectual property rights, in and to work product delivered as a result of Professional Services under this Agreement shall be owned by BSA For the avoidance of doubt, work product that constitutes a BSA Software Product or portion thereof shall be governed by Section A including Section 1.1 thereof
- 7.2.** Subject to Section 7.1 and Customer's compliance with this Agreement (including payment in full), BSA grants to Customer a perpetual, non-exclusive, non-transferable, and non-assignable license to use the work product and the intellectual property rights therein for Customer's internal business purposes only
- 8. Cancellation.** In the event Customer cancels or reschedules Professional Services, and without prejudice to BSA's other rights and remedies, Customer is liable to BSA for (i) all expenses incurred by BSA on Customer's behalf, and (ii) daily fees associated with the canceled Professional Services (in accordance with the daily fee rate), if less than thirty (30) days advance notice is given regarding the need to cancel or reschedule and BSA cannot reasonably reassign its affected human resources to other projects where comparable skills are required
- 9. Limited Professional Services Warranty.**
- 9.1.** BSA warrants that its Professional Services will be performed in a professional and workmanlike manner In the event of a breach of the foregoing warranty and a claim in accordance with the next sentence, BSA's sole obligation and Customer's exclusive remedy with respect to such claim will be to have BSA re-perform the portion of the Professional Services with respect to which the warranty has been breached, to bring it into compliance with such warranty Any claim for breach of the foregoing warranty must be made by notice to BSA within thirty (30) days of performance of the portion of the Professional Services with respect to which the claim is made, or said claim shall be deemed waived
- 9.2.** THE FOREGOING LIMITED PROFESSIONAL SERVICES WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES RELATING TO THE PROFESSIONAL SERVICES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM THE COURSE OF DEALING OR USAGE OF TRADE

## **SECTION C – MAINTENANCE AND SUPPORT**

### **10. Maintenance and Support Generally.**

- 10.1.** For a one-year period, commencing on the installation of the BSA Software Products, and subject to Customer's compliance with the Agreement, BSA will provide, at no charge to Customer, "Maintenance and Support," meaning the following (i) Modifications (such as patches, corrections, and updates) as are generally provided at no additional charge (beyond the cost of annual Maintenance and Support) by BSA to BSA customers, and (ii) technical support, as further described in Section 11, during BSA's normal business hours
- 10.2.** Commencing one (1) year from the installation of the BSA Software Products, Maintenance and Support will be provided on an annual basis, subject to compliance with the terms of the Agreement and payment of the annual Maintenance and Support fees outlined in **Exhibit B**. Maintenance and Support will be renewed annually unless either Party notifies the other at least sixty (60) days prior to the anniversary of installation of its intent to terminate
- 10.3.** BSA guarantees that the Maintenance and Support annual fee set forth in **Exhibit B** will not change for two (2) years from the date of the installation of the BSA Software Products. After that date, BSA reserves the right each year to increase the fee over the previous year by no more than an amount that is proportionate to the increase (measured from the beginning of such previous year) in the Consumer Price Index as set forth by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers – U.S. City Average (the "Annual Renewal Fee")

### **11. Support.**

- 11.1.** With respect to Errors following expiration of the Limited Software Warranty, BSA's sole obligation and Customer's sole remedy are set forth in this section 11. Subject to Customer's compliance with the terms of the Agreement and purchase of Maintenance and Support, BSA shall use commercially reasonable efforts, commensurate with the severity level, to achieve its support response and resolution targets with respect to Errors as set forth in **Exhibit C**. An "Error" means a verifiable and reproducible failure of a BSA Software Product to operate in accordance with the Documentation under conditions of normal use and where the Error is directly attributable to the BSA Software Product as updated with current Modifications. If the customer modifies the BSA Software Products without BSA's written consent, BSA's obligation to provide support services on the BSA Software Products will be void
- 11.2.** Support does not include the following: (i) installation or implementation of the BSA Software Products, (ii) onsite training/support, remote training, application design, and other consulting services, (iii) support of an operating system, hardware, or support outside of BSA's normal business hours, (iv) support or support time due to a cause external to the BSA Software Products adversely affecting their operability or serviceability, which shall include but not be limited to water, fire, wind, lightning, other natural calamities, transportation, misuse, abuse, or neglect; (v) repair of the BSA Software Products modified in any way other than modifications made by BSA or its agents, (vi) support of any other third-party vendors' software, such as operating system software, network software, database managers, word processors, etc., and (vii) support of the BSA Software Products that have not incorporated current Modifications. All such excluded Maintenance and Support Services performed by BSA at Customer's request shall be invoiced to Customer on a time and materials basis, plus reasonable expenses associated therewith
- 11.3.** Notwithstanding anything to the contrary, in order to maintain the integrity and proper operation of the Software, Customer agrees to use commercially reasonable efforts to implement, in the manner instructed by BSA, all Modifications in a timely manner. Customer's failure to implement any Modifications may limit or restrict the ability of Customer to implement future Modifications. Customer shall provide prompt notice of any Errors discovered by Customer, or otherwise brought to the attention of Customer. Proper notice may include, without limitation, prompt telephonic and written (either via e-mail or postal mail) notice to BSA of any purported Error. If requested by BSA, Customer agrees to provide written documentation of Errors to substantiate those Errors and to otherwise assist BSA in the detection and correction of said Errors. BSA will use its commercial reasonable judgment to determine if an Error exists
- 11.4.** Customer acknowledges and agrees that BSA and product vendors may require online access to the BSA's system in order for BSA to provide Maintenance and Support Services hereunder. Accordingly, Customer shall provide a connection to the Internet to facilitate BSA's remote access to BSA's system. BSA shall provide remote connection

software, which may require installation of a software component on a workstation or server computer. All remote access sessions are dynamic and shall be fully monitored by a City of Franklin employee (escorted session), and will be terminated after successful completion of all troubleshooting tasks.

## **SECTION D – GENERAL TERMS AND CONDITIONS**

- 12. Customer Assistance.** Customer acknowledges that the implementation of the BSA Software Products is a cooperative process requiring time and resources of Customer personnel. Customer shall, and shall cause Customer personnel to, use all reasonable efforts to cooperate with and assist BSA as may be reasonably required to meet the project deadlines and other milestones agreed to by the Parties for implementation. BSA shall not be liable for failure to meet such deadlines and milestones when such failure is due to force majeure (as defined in Paragraph 26 below) or to the failure by Customer personnel to provide such cooperation and assistance (either through action or omission).
- 13. BSA Proprietary Information.**
- 13.1.** Customer acknowledges that the information associated with or contained in the BSA Software Products and information used in the performance of Professional Services include trade secrets and other confidential and proprietary information of BSA (the "Proprietary Information").
- 13.2.** The Customer shall maintain in confidence and not disclose Proprietary Information, directly or indirectly, to any third party without BSA's prior written consent. Customer shall safeguard the Proprietary Information to the same extent that it safeguards its own most confidential materials or data, but in no event shall the standard implemented be less than industry standard. Proprietary Information shall be used by Customer solely to fulfill its obligations under this Agreement. Customer shall limit its dissemination of such Proprietary Information to employees within the Customer's business organization who are directly involved with the performance of this Agreement and have a need to use such Proprietary Information. Customer shall be responsible for all disclosures by any person receiving Proprietary Information, by or through it, as if Customer itself disseminated such information.
- 13.3.** Proprietary Information shall not include any information that (a) is or becomes publicly known through no wrongful act or breach of any obligation of confidentiality by Customer, (b) was lawfully known to Customer prior to the time it was disclosed to or learned by Customer in connection with this Agreement, provided that such information is not known to Customer solely because of its prior business relationship with BSA, (c) was received by Customer from a third party that is not under an obligation of confidentiality to BSA, or (d) is independently developed by Customer for a party other than BSA without the use of any Proprietary Information. The following circumstances shall not cause Proprietary Information to fall within any of exceptions (a) through (d) above: (i) a portion of such Proprietary Information is embraced by more general information said to be in the public domain or previously known to, or subsequently disclosed to, the Customer; or (ii) it is a combination derivable from separate sources of public information, none of which discloses the combination itself.
- 13.4.** If Customer is required, or anticipates that it will be required, to disclose any Confidential Information pursuant to a court order or to a government authority, Customer shall, at its earliest opportunity, provide written notice to BSA so as to give BSA a reasonable opportunity to secure a protective order or take other actions as appropriate. Customer shall at all times, cooperate with BSA so as to minimize any disclosure to the extent allowed by applicable law.
- 14. Limitation on Liability and Damages.** BSA'S ENTIRE LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES, OR LOSSES ARISING FROM THE BSA SOFTWARE PRODUCTS (INCLUDING BUT NOT LIMITED TO THEIR USE, OPERATION, AND/OR FAILURE TO OPERATE), PROFESSIONAL SERVICES, MAINTENANCE AND SUPPORT, ANY THIRD-PARTY PERFORMANCE OR LACK THEREOF, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE ABSOLUTELY LIMITED TO DIRECT DAMAGES NOT IN EXCESS OF THE PURCHASE PRICE OF BSA SOFTWARE PRODUCTS PLUS, TO THE EXTENT APPLICABLE, THE PURCHASE PRICE OF ANY PROFESSIONAL SERVICE SET FORTH IN THIS AGREEMENT THAT GIVES RISE TO THE CLAIM. NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN, BSA SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR CONTINGENT DAMAGES OR EXPENSES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS AGREEMENT, BSA SOFTWARE PRODUCTS, ANY THIRD-PARTY PERFORMANCE, OR LACK THEREOF, OR BSA'S PERFORMANCE, OR LACK THEREOF, UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LOSS OF REVENUE, PROFIT, OR



USE TO THE EXTENT THAT APPLICABLE LAW DOES NOT PERMIT THE LIMITATIONS SET FORTH HEREIN, THE LIABILITY AND DAMAGES SHALL BE LIMITED AND RESTRICTED TO THE EXTENT PERMITTED BY LAW

15. Customer is solely responsible for its data, its database, and for maintaining suitable back-ups of the data and database to prevent data loss in the event of any hardware or software malfunction. Customer covenants and agrees to undertake all necessary measures to protect and secure its data, including implementation of technical, administrative and physical protections. BSA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DATA LOSS REGARDLESS OF THE REASONS FOR SAID LOSS. To the maximum extent authorized by law, Customer agrees to defend, indemnify and hold BSA harmless for any claim by any person or entity arising out of any loss or compromise of data or data security or arising out of Customer's breach of this Agreement.
16. **Additional Disclaimer.** SUPPLIER PROVIDES NO WARRANTY FOR ANY THIRD-PARTY SOFTWARE AND/OR HARDWARE EXCEPT AS SET FORTH IN THIS AGREEMENT, SUPPLIER WILL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY SOFTWARE, THIRD-PARTY SERVICES AND/OR HARDWARE.
17. **Indemnification for Intellectual Property Infringement.** If a claim is made or an action is brought alleging that a BSA Software Product infringes on a U.S. patent, or any copyright, trademark, trade secret or other proprietary right, BSA will defend Customer against such claim and will pay resulting costs and damages finally awarded, provided that (a) Customer promptly notifies BSA in writing of the claim, (b) BSA has sole control of the defense and all related settlement negotiations, (c) Customer reasonably cooperates in such defense at no expense to BSA, and (d) Customer remains in compliance with the Agreement and has continued to purchase Maintenance and Support Services. The obligations of BSA under this Section are conditioned on Customer's agreement that if the applicable BSA Software Product, in whole or in part, or the use or operation thereof, becomes, or in the opinion of BSA is likely to become, the subject of such a claim, BSA may at its expense either procure the right for Customer to continue using the BSA Software Product or, at the option of BSA, replace or modify the same so that it becomes non-infringing (provided such replacement or modification maintains the same material functionality and does not adversely affect Customer's use of the Update as contemplated hereunder).
18. **No Intended Third-Party Beneficiaries.** This Agreement is entered into solely for the benefit of BSA and Customer. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement.
19. **Termination.** Without prejudice to other rights and remedies, and except as otherwise provided in this Agreement, either Party may terminate this Agreement for the other Party's material breach upon failure to cure such breach after thirty (30) days' written notice identifying with specificity the nature of the breach. Upon termination of this Agreement (a) Customer shall promptly pay all amounts payable to BSA for Services rendered up to the date of termination, and (b) Customer shall return or destroy, at the direction of the BSA, BSA's Proprietary Information in its possession. The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either Party existing under this Agreement at the time of termination. Sections 1.2, 4.1, 7.1, 13 through 16, 18, 20 through 29, and the provisions of this Agreement, which by their nature extend beyond the termination of this Agreement, will survive termination of the Agreement. No action arising out of this Agreement, regardless of the form of action, may be brought by Customer more than one (1) year after the date the action occurred.
20. **Payment Terms.** Customer shall pay BSA for all amounts in accordance with this Agreement and **Exhibit A**.
21. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Michigan, without regard to its choice of law rules. BSA and the Customer agree that the exclusive venue for any legal or equitable action shall be the Courts of the County of Milwaukee, State of Wisconsin, or in any court of the United States of America lying in the Eastern District of Wisconsin.
22. **Entire Agreement.** This Agreement represents the entire agreement of Customer and BSA with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Customer hereby acknowledges that in entering into this Agreement, it did not rely on any information not explicitly set forth in this Agreement.
23. **Export.** Customer will comply with all applicable laws, including applicable export control laws that prohibit export or diversion of certain products and technology to certain countries or individuals, including foreign nationals in the United States. Customer undertakes to determine any export licensing requirements and to comply with such obligations. The BSA Software Products are deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Software-Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor

regulations. Any use, modification, reproduction, release, performance, display, or disclosure of BSA's Software Products by the U.S. Government shall be solely in accordance with the terms of this Agreement.

- 24. Severability.** If any term or provision of this Agreement, or the application thereof, to any extent, is held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.
- 25. Successors and Assigns.** This Agreement shall be binding upon the successors, permitted assigns, representatives, and heirs of the Parties hereto. For avoidance of doubt, any expanded use by Customer of the Program, for example, in the event of annexation or desired shared services, shall require the consent of BSA.
- 26. Force Majeure.** "Force Majeure" is defined as an event beyond the reasonable control of a Party, including governmental action, war, riot or civil commotion, fire, natural disaster, problematic weather, lack of availability of Customer provided technology, labor disputes, restraints affecting shipping or credit, delay of carriers or any other cause that could not, with reasonable diligence, be foreseen, controlled or prevented by the Party. Neither Party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure.
- 27. Notice.** All notices, requests, demands, and determinations under the Agreement (other than routine operational communications), shall be in writing and shall be deemed duly given (i) when delivered by hand, (ii) one (1) business day after being given to a nationally recognized overnight delivery service for next-business-day delivery, all fees prepaid, (iii) when sent by confirmed facsimile with a copy sent by another means specified in this provision, or (iv) six (6) calendar days after the day of mailing, when mailed by United States mail, via registered or certified mail, return receipt requested, postage prepaid, and in each case addressed as shall be set forth below. A Party may from time-to-time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it will become effective.

If to BSA

BSA Software  
14965 Abbey Lane  
Bath, MI 48808  
Attn: Contracts Manager  
Telephone: 517-641-8900

If to Customer

City of Franklin  
9229 W. Loomis Road  
Franklin, WI 53132  
Telephone: 414-425-7500

- 28. Independent Contractor.** This is not an agreement of partnership or employment of BSA or any of BSA's employees by Customer. BSA is an independent contractor for all purposes under this Agreement.
- 29. Contract Documents and Order of Precedence.** The text of the Agreement without any Exhibits and Schedules shall control over any inconsistent text in any of the Exhibits or Schedules. This Agreement includes the following Exhibits and Schedules:
- Exhibit A – Payment Terms Generally*
    - Schedule 1 to Exhibit A – License/Interface/Customization Fees*
    - Schedule 2 to Exhibit A – Professional Services Fees*
  - Exhibit B – Maintenance and Support Fees*
  - Exhibit C – Support Call Process*
  - Exhibit D – Statement of Work*

**IN WITNESS THEREOF**, the Parties hereto have executed this Agreement as of the dates set forth below

**BSA SOFTWARE, INC.**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**CUSTOMER**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**CUSTOMER**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**CUSTOMER**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## **EXHIBIT A**

### **Payment Terms**

- 1 Customer shall pay BSA within thirty (30) days of invoice. Payments not received within fifteen (15) days of the due date shall be subject to a one and one-half percent (1.5%) per month interest charge (or, if lower, the highest amount chargeable at law) assessed against the unpaid balance from the date due until the date payment is received.
- 2 Any amount not subject to good faith dispute and not paid within fifteen (15) days of the due date of each invoice shall, without prejudice to other rights and remedies, be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. Any charges not disputed by Customer in good faith will be deemed approved and accepted by Customer. For purposes of this Agreement, a good faith dispute regarding amounts owed exists only if Customer provides in writing at least ten (10) days prior to due date of payment on the invoice, notification of such dispute, the specific portion of the invoice in dispute, and the specific grounds of the dispute (which must be asserted in good faith), and Customer pays in timely fashion such portions that are not subject to such dispute.
- 3 BSA shall invoice Customer \$47,150 upon Effective Date for BSA's Project Management/Implementation Planning Fees and Data Conversion fees as set forth in Schedule 2.
- 4 BSA shall invoice Customer \$73,285 at start of On-Site Implementation and Training. Such amount equals BSA's software license fees as set forth in Schedule 1.
- 5 BSA shall invoice Customer \$60,705 at completion of On-Site Implementation and Training. Such amount equals On-Site Implementation and Training costs, Customization and Interface costs, and travel expenses, as set forth in Schedule 2.
- 6 Customer shall be responsible for all taxes (including sales taxes) imposed as a result of any transaction associated with this Agreement, exclusive of taxes on BSA's net income.

## **Schedule 1 to Exhibit A**

### **License Fees**

#### **Applications**

---

##### **Community Development**

Building Department NET	<b>\$23,120</b>
Field Inspection NET	<b>\$9,710</b>
Business License NET	<b>\$12,945</b>
Citizen Request for Action .NET	<b>\$12,945</b>

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##### **BS&A Online**

Community Development	<b>\$14,565</b>
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Subtotal	<b>\$73,285</b>
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## **Schedule 2 to Exhibit A**

### **Professional Services Fees**

#### **Data Conversions/Database Setup**

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Convert existing Harris Govern data to BS&A format:

Building Department (Per database)	<b>\$19,650</b>
Business Licensing (Per database)	<b>\$11,000</b>

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Subtotal **\$30,650**

No conversion or database setup to be performed for:

- Field Inspection
- Citizen Request for Action

#### **Custom Import**

Import from ESRI ArcGIS to Building Department .NET	<b>\$1,500</b>
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#### **Project Management and Implementation Planning**

##### **Services include:**

- *Analyzing customer processes to ensure all critical components are addressed.*
- *Creating and managing the project schedule in accordance with the customer's existing processes and needs.*
- *Planning and scheduling training around any planned process changes included in the project plan*
- *Modifying the project schedule as needed to accommodate any changes to the scope and requirements of the project that are discovered.*
- *Providing a central contact between the customer's project leaders, developers, trainers, IT staff, conversion staff, and other resources required throughout the transition period*
- *Installing the software and providing IT consultation for network, server, and workstation configuration and requirements.*
- *Reviewing and addressing the specifications for needed customizations to meet customer needs (when applicable)*

**\$16,500**

## Implementation and Training

- \$1,100/day
- Days quoted are estimates, you are billed for actual days used

### Services include:

- Setting up users and user security rights for each application
- Performing final process and procedure review
- Configuring custom settings in each application to fit the needs of the customer
- Setting up application integration and workflow methods
- Onsite verification of converted data for balancing and auditing purposes
- Training and Go-Live

Software Setup	Days	1		<b>\$1,100</b>
Community Development Applications	Days:	35		<b>\$38,500</b>
	Total.	36	Subtotal	<b>\$39,600</b>

Travel Expenses \$19,605

## **EXHIBIT B**

### **Maintenance and Support Fees**

<b>Community Development</b>	
Building Department NET	\$4,625
Field Inspection NET	\$1,940
Business License NET	\$2,590
Citizen Request for Action NET	\$2,590
<b>BS&amp;A Online</b>	
Community Development	\$2,915
<b>Total Annual Service Fees</b>	<b>\$14,660</b>



## **EXHIBIT C**

### **Support Call Process**

BSA's standard hours for telephone support are from 8 30 a m to 6 00 p m (EST), Monday through Thursday, and 8 30 a m to 5 00 p m (EST) on Friday, excluding holidays

You can lodge a support request in three ways (i) **Contact Customer Support** option located within the Help menu of all of our applications (ii) our toll-free support line (1-855-BSA-SOFT) or via email

BSA targets less than thirty (30) minutes for initial response ("Initial Response Target")

#### **Customer service requests fall into four main categories:**

- A. Technical.** Questions or usage issues relating to IT functionality, future hardware purchases, and configuration BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible
- B. Questions/Support.** General questions regarding functionality, use, and set-up of the applications BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible
- C. Requests.** Customer requests for future enhancements to the applications Key product management personnel meet with development staff on a regular basis to discuss the desirability and priority of such requests BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible
- D. Issues/Bugs.** Errors fall into three (3) subcategories
  - i. Critical.** Cases where an Error has rendered the application or a material component unusable or not usable without substantial inconvenience causing material and detrimental consequences to business -- with no viable Customer workaround or alternative The targeted resolution time for critical issues is less than one (1) day
  - ii. Moderate.** Cases where an Error causes inconvenience and added burden, but the application is still usable by Customer The targeted resolution time for all moderate issues is within two (2) weeks, which is within our standard update cycle
  - iii. Minimal.** Cases that are mostly cosmetic in nature, and do not impede functionality in any significant way These issues are assigned a priority level at our regular meetings, and resolution times are based on the specified priority

#### **Remote Support Process**

Some support calls may require further analysis of Customer's database or set-up to diagnose a problem or to assist Customer with a question BSA's remote support tools share Customer's desktop *via* the Internet to provide Customer with virtual on-site support BSA's support team is able to quickly connect remotely to Customer's desktop and view its setup, diagnose problems, or assist Customer with screen navigation

# Statement of Work

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## City of Franklin, Milwaukee County WI

Prepared for	City of Franklin, Milwaukee County WI
Prepared by	Dan J Burns, CPA BS&A Software
Date	March 25, 2020
Version	1
Revision	
Status	Draft

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# 1. Contact List

This section provides the list of key contacts for both BS&A Software and City of Franklin, Milwaukee County WI

## BS&A Contacts

<i>Name</i>	<i>Email</i>	<i>Cell</i>
Dan J Burns, CPA	<a href="mailto:dburns@bsasoftware.com">dburns@bsasoftware.com</a>	248-345-8026
Jason Hafner	<a href="mailto:jhafner@bsasoftware.com">jhafner@bsasoftware.com</a>	

## City of Franklin, Milwaukee County WI Contacts

<i>Name</i>	<i>Email</i>	<i>Cell</i>
Name	Email	Cell
Name	Email	Cell
Name	Email	Cell

## 2. Activities and Deliverables

This section describes specific activities and deliverables that will be provided by BS&A Software to fulfill the obligations set out in the proposal. Each subsection includes the detailed requirements for Data Conversion, Process Definition, and Cutover.

### 2.1 Building Department

#### Establish BS&A Databases

- 1 Extract preliminary data with corroborating reports
- 2 Preliminary conversion development
- 3 Preliminary conversion QC and documentation
- 4 Preliminary conversion data review
- 5 Extract final data with corroborating reports
- 6 Convert final data
- 7 QC final BS&A database and documentation
- 8 Verify final BS&A database at cutover

#### Establish BS&A Process

- 1 Review current BD process
- 2 Review BS&A application functionality
- 3 Define BS&A process and training requirements
- 4 Document BS&A process
- 5 Verify final BS&A process at cutover

### 2.2 Business Licensing

#### Establish BS&A Databases

- 1 Extract preliminary data with corroborating reports
- 2 Preliminary conversion development
- 3 Preliminary conversion QC and documentation
- 4 Preliminary conversion data review
- 5 Extract final data with corroborating reports
- 6 Convert final data
- 7 QC final BS&A database and documentation
- 8 Verify final BS&A database at cutover

#### Establish BS&A Process

- 1 Review current BL process
- 2 Review BS&A application functionality
- 3 Define BS&A process and training requirements
- 4 Document BS&A process
- 5 Verify final BS&A process at cutover

### 2.3 Field Inspection

#### Establish BS&A Process

- 1 Review current process
- 2 Review BS&A application functionality
- 3 Define BS&A process and training requirements
- 4 Document BS&A process
- 5 Verify final BS&A process at cutover

## **2.4 Citizen Request for Action**

### **Establish BS&A Process**

- 1 Review current process
- 2 Review BS&A application functionality
- 3 Define BS&A process and training requirements
- 4 Document BS&A process
- 5 Verify final BS&A process at cutover

## **2.5 BS&A Online – Community Development**

### **Establish BS&A Process**

- 1 Review current process
- 2 Review BS&A application functionality
- 3 Define BS&A process and training requirements
- 4 Document BS&A process
- 5 Verify final BS&A process at cutover

### 3. Delivery Method

This section describes the method that BS&A Software will use to deliver this project to Iron County. This method is described in terms of the generalized approach and as a detailed schedule.

#### 3.1 Generalized Approach

BS&A Software will use the following four-phase approach to fulfill the needs of City of Franklin, Milwaukee County WI

**Phase 1 – Initiate**

This phase encompasses the work necessary to achieve a signed proposal. (This phase is usually completed with the signed proposal)

**Phase 2 – Plan**

This phase follows the signed proposal and produces the detailed description for the work to be undertaken and the schedule for the work, and is presented in the Statement of Work (this document)

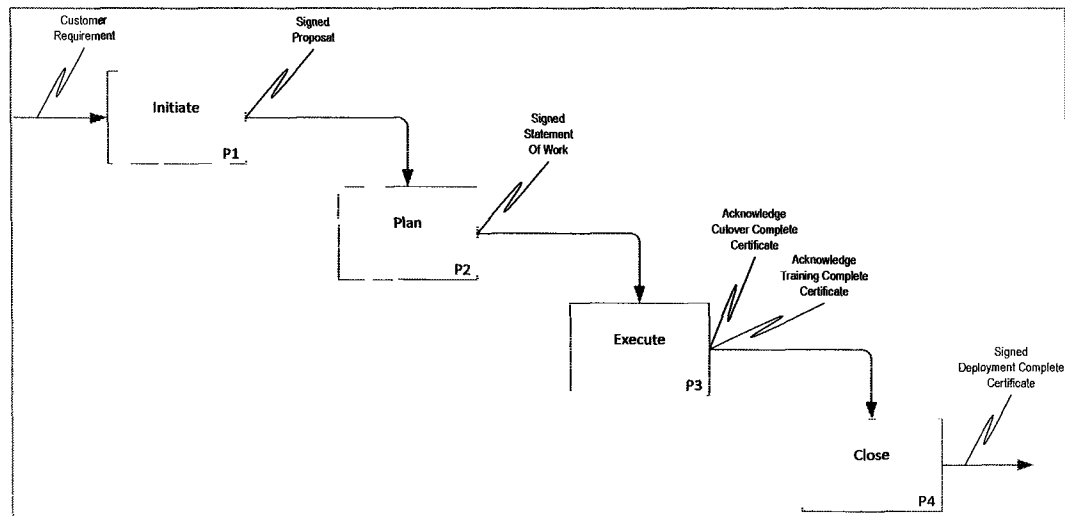
**Phase 3 – Execute**

This phase encompasses all of the activity necessary to bring into operation the applications provided by BS&A Software and the associated training

**Phase 4 – Close**

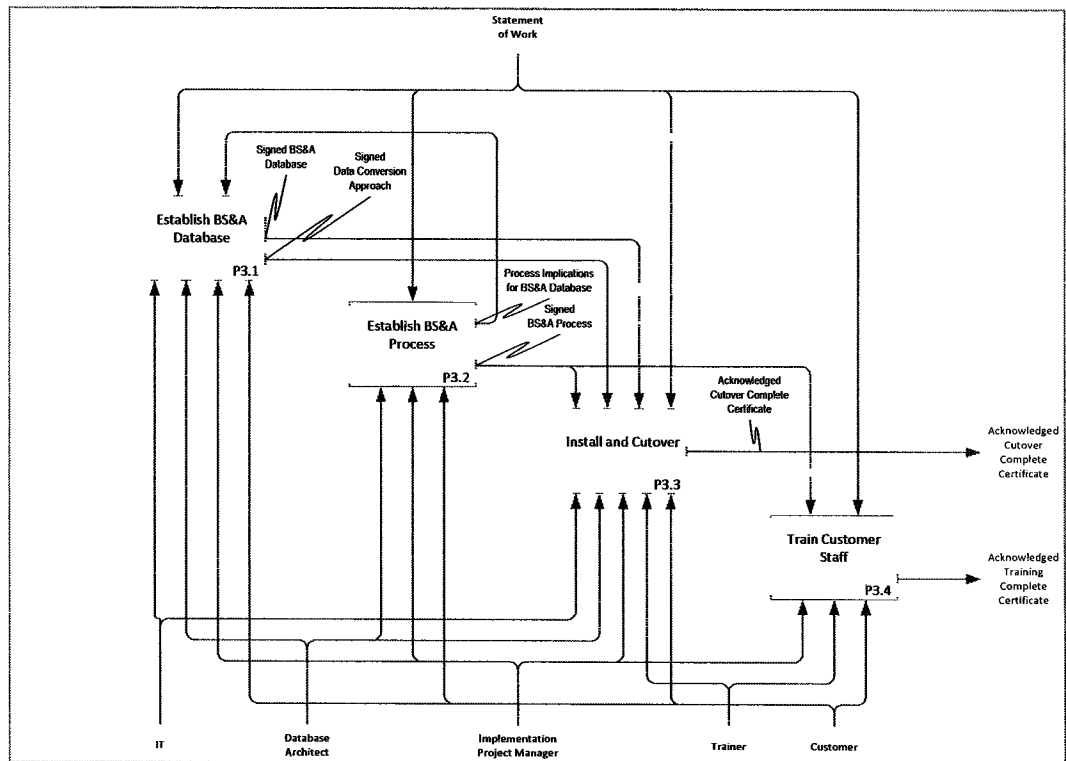
This phase provides a formal conclusion of the project and the handover to BS&A's support team

Figure 1 Delivery Process Overview



This diagram shows the general approach that BS&A Software will follow to deliver this project

Figure 2. Delivery Process - Execute Phase



This diagram shows the activities within the Execute phase of the project, which are

- ~ Establish BS&A database(s)
- ~ Establish BS&A process(s)
- ~ Install and cutover
- ~ Train customer staff

The details for each activity can be provided if required



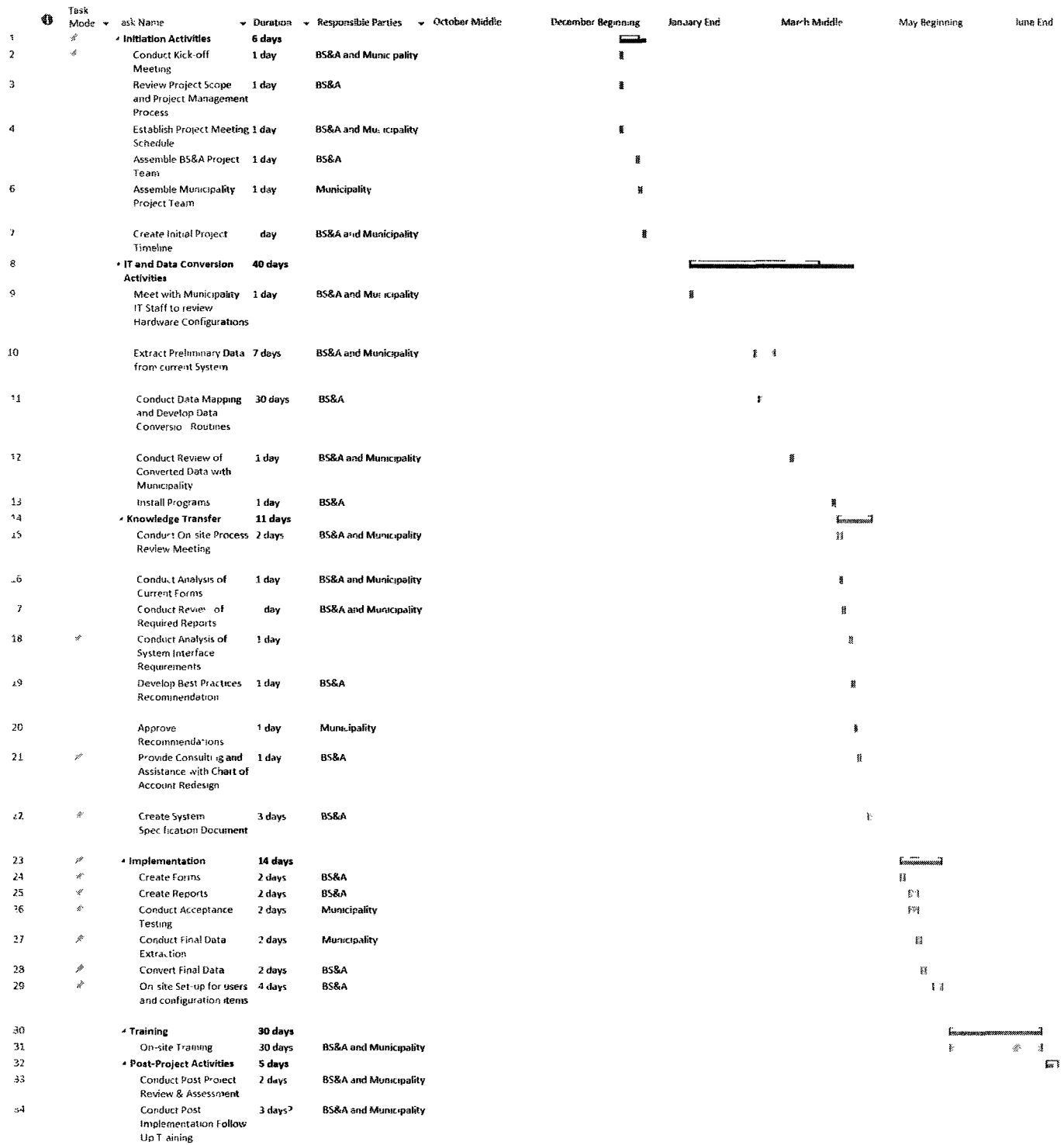
### 3.2 Detailed Schedule

Note, approximate schedule included for example purposes only. Actual schedule will be determined in collaboration between BS&A Project Manager, and Customer, following contract execution.

Task	Responsible Parties (Bold is Primary)	Start	Duration
<b>Initiation Activities</b>			
Conduct Kick-off Meeting	<b>BS&amp;A</b> and City	1 month post signing	1 day
Review Project Scope and Project Management Process	<b>BS&amp;A</b>	1 month post signing	1 day
Establish Project Meeting Schedule	<b>BS&amp;A</b> and City	1 month post signing	1 day
Assemble BS&A Project Team	<b>BS&amp;A</b>	1 5 months post signing	1 day
Assemble City Project Team	<b>City</b>	1 5 months post signing	1 day
Create Initial Project Timeline	<b>BS&amp;A &amp; City</b>	1 5 months post signing	1 day
<b>IT and Data Conversion Activities</b>			
Meet with City IT Staff to review Hardware Configurations	<b>BS&amp;A</b> and City	5 months pre go-live	1 day
Extract Preliminary Data from current System	BS&A and <b>City</b>	5 months pre go-live	1 week
Conduct Data Mapping and Develop Data Conversion Routines	<b>BS&amp;A</b>	5 months pre go-live	1 month
Conduct Review of Converted Data with City	<b>BS&amp;A</b> and City	4 months pre go-live	Approx 1 day
Install Programs	<b>BS&amp;A</b>	4 months pre go-live	1 day
<b>Knowledge Transfer</b>			
Conduct On-site Process Review Meeting	BS&A and <b>City</b>	3 months pre go-live	2 days
Conduct Analysis of Current Forms	<b>BS&amp;A</b> and City	3 months pre go-live	1 day
Conduct Review of Required Reports	<b>BS&amp;A</b> and City	3 months pre go-live	1 day
Conduct Analysis of System Interface Requirements	<b>BS&amp;A</b> and City	3 months pre go-live	1 day
Develop Best Practices Recommendation	<b>BS&amp;A</b>	3 months pre go-live	1 day
Approve Recommendations	<b>City</b>	3 months pre go-live	1 day
Provide Consulting and Assistance with Chart of Account Redesign	<b>BS&amp;A</b>	3 months pre go-live	1 day
Create System Specification Document	<b>BS&amp;A</b>	3 months pre go-live	3 days
<b>Implementation</b>			
Create Forms	<b>BS&amp;A</b>	0-2 months pre go-live	2 days
Create Reports	<b>BS&amp;A</b>	0-2 months pre go-live	2 days
Conduct Acceptance Testing	<b>City</b>	0-2 months pre go-live	2 days
Conduct Final Data Extraction	<b>City</b>	1 week pre go-live	2 days
Convert Final Data	<b>BS&amp;A</b>	1 week pre go-live	2 days
On-site Set-up for Users and Configuration Items	<b>BS&amp;A</b>	0-1 month pre go-live	4 days
<b>Training</b>			
On-site Training	<b>BS&amp;A</b> and City	0-2 months pre go-live	Varies
<b>Post-Project Activities</b>			
Conduct Post Project Review & Assessment	<b>BS&amp;A</b> and City	1 month post go-live	Varies
Conduct Post Implementation Follow Up Training	<b>BS&amp;A</b> and City	TBD	TBD

### 3.3 Gantt Chart

The following is an example timeline for your project. Dates and duration of tasks will be determined during the project kick-off meeting.



## 4. Project Management Process

This section describes the following project management procedures that will be used to support the delivery of this project

- ~ Organization
- ~ Change Control
- ~ RAID Management (Risk, Action, Issue, Decision)

### 4.1 Organization – Roles and Responsibilities

This subsection describes the organization that BS&A Software will use to support the delivery of this project

#### Project Specific Roles

BS&A Software will use the following roles during the project

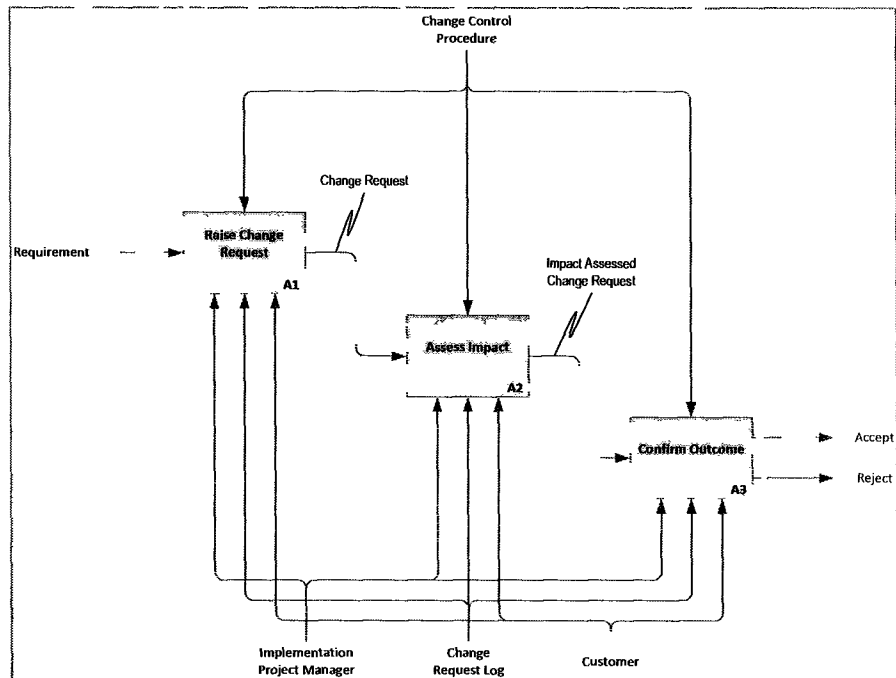
- ~ **Implementation Director**  
Has overall accountability for the project and provides a point of escalation for the customer
- ~ **Implementation Project Manager**  
Has day-to-day accountability for the project  
Manages and coordinates all activities and resources associated with the project  
Produces and maintains the Project Plan  
Responsible for and leads the work associated with the development of the customer's new processes
- ~ **Database Architect**  
Responsible for and leads the work associated with the development of the customer's new databases
- ~ **Trainer**  
Responsible for and leads the cutover and delivery of the training
- ~ **IT**  
Assists with the extraction of test and production data from the customer's existing applications  
Responsible for the installation of the BS&A applications on the customer's production environment
- ~ **Subject Matter Experts**  
May assist as required

Note there may be a number of people fulfilling each role, i.e., trainers may only train on specific applications

## 4.2 Change Control

This subsection describes the Change Control procedure that BS&A Software will use to support the delivery of projects

Figure 3 Change Control Procedure



This diagram shows the Change Control Procedure and activities as follows

- ~ Raise change request
- ~ Assess impact
- ~ Confirm outcome

The details of these activities are available in the Project Management Procedures document

## 4.3 RAID Management

This subsection provides an overview of the RAID Management (Risk, Action, Issue, and Decision) procedures that will be used to support the delivery of this project

ITEM	DEFINITION	ATTRIBUTES
Risk	Used to describe events that may occur and the impact on the project if they occur	<i>Creation</i> – can be raised at any point during the life of the project <i>Review</i> – risks will be reviewed at specific times during the project <i>Lifespan</i> – could remain open for the duration of the project
Action	Used to describe and control the specific tasks that are raised at management meetings  These tasks are outside of activities listed in the Project Plan and Statement of Work.	<i>Creation</i> – are raised at an appropriate management meeting, and can be raised at any point during the life of the project <i>Review</i> – progress towards closure will be reviewed at each subsequent instance of the management meeting at which the action was raised <i>Lifespan</i> – the expectation is that an action will be closed within two iterations of the management meeting at which they were raised
Issue	Used to describe and bring focus to a situation where a task on the project plan has not been, or cannot be, delivered according to schedule, specification, or budget	<i>Creation</i> – can be raised at any point during the life of the project <i>Review</i> – progress towards closure will be reviewed at the management meeting <i>Lifespan</i> – an issue will remain open until it has been resolved to the satisfaction of all concerned
Decision	Used to describe and record a decision made by the project, i.e., the outcome of a change request, or the approval of a milestone	<i>Creation</i> – can be raised at any point during the life of the project <i>Review</i> – decisions are presented to a management meeting that has the authority to make those decisions <i>Lifespan</i> – a decision will be open up to the point that when it is presented to the meeting, it will be either accepted or rejected (a "no decision" is equal to a rejection)

The details of the RAID Management procedure are available in the Project Management Procedures document

## 5. Review and Approval

There will be various review points during the project (see Project Schedule Dates) when a formal review of progress will be marked by the confirmation of, and agreement to, specific deliverables

You will receive a confirmation email at the completion of each of the following milestones in the implementation process. A return email will serve as your approval.

- ~ **Statement of Work.** At this point, we will ask you to acknowledge that you have received the Statement of Work and that it represents the agreed-upon scope of the project.
- ~ **BS&A Database and Conversion Approach.** At this point, we will ask you to acknowledge that you have received the BS&A Database and Conversion Approach, and that it represents an acceptable conversion plan for Cutover.
- ~ **Cutover Complete.** At this point, we will ask you to acknowledge that the Implementation Team has provided an agreed-upon BS&A Database and Conversion Approach.
- ~ **Training Complete.** At this point, we will ask you to acknowledge that the Training Team has delivered training consistent with the Statement of Work, or that some days were left unused and should not be billed.
- ~ **Deployment Complete.** At this point, we will ask you to acknowledge that BS&A has provided deliverables consistent with the Statement of Work, and that any outstanding issues from the Implementation and Training processes have been addressed or transferred to the Support Team.

## 5.1 Change Request Form

<b>TITLE</b>	
<b>Owner</b> Provide the name of the person who would like this Change Request to go forward for consideration	
<b>Date Raised</b> Provide the date that this Change Request was raised	
<b>Rationale</b> <i>[tick most appropriate]</i> What is the primary reason for raising this Change Request?	<input type="radio"/> Unknown <input type="radio"/> Resolve an issue <input type="radio"/> Terminate or treat a risk <input type="radio"/> Reduce project cost <input type="radio"/> Improve the business case <input type="radio"/> Increase capability <input type="radio"/> Align with external environment <input type="radio"/> Comply with legal or regulatory requirements
<b>Description</b> <i>[tick all appropriate]</i> What needs to change?	<input type="checkbox"/> Change scope <input type="checkbox"/> Change specification <input type="checkbox"/> Change design <input type="checkbox"/> Change strategy or approach <input type="checkbox"/> Change schedule
<b>Description notes</b> Provide a brief description of what needs to change, and include reference to the specific milestones that will be affected	
<b>Benefit</b> <i>[tick most appropriate]</i> What is the expected scale of the benefit associated with this Change Request?	<input type="radio"/> Unknown <input type="radio"/> Less than \$1,000 <input type="radio"/> Between \$1,000 and \$5,000 <input type="radio"/> Between \$5,000 and \$10,000 <input type="radio"/> More than \$10,000
<b>Impact on schedule</b> <i>[tick most appropriate]</i> What is the estimated impact on the schedule of this Change Request?	<input type="radio"/> Unknown <input type="radio"/> No impact <input type="radio"/> One month <input type="radio"/> Between one month and three months <input type="radio"/> More than three months
<b>Impact on cost</b> <i>[tick most appropriate]</i> What is the estimated direct cost of implementing this Change Request?	<input type="radio"/> Unknown <input type="radio"/> Less than \$1,000 <input type="radio"/> Between \$1,000 and \$5,000 <input type="radio"/> Between \$5 000 and \$10,000 <input type="radio"/> More than \$10,000

<b>APPROVAL</b> <i>Slw PA</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>4/21/2020</b>
<b>Bills</b>	<b>Vouchers and Payroll Approval</b>	<b>ITEM NUMBER</b> <i>H.</i>

Attached are vouchers dated April 3, 2020 through April 16, 2020 Nos. 178011 through Nos. 178174 in the amount of \$ 1,330,172.07. Also included in this listing are EFT's Nos. 4276 through Nos. 4288, Library vouchers totaling \$ 5,690.87, Water Utility vouchers totaling \$ 13,062.44 and Property Tax refunds totaling \$ 3,161.87. Voided checks in the amount of \$ (1,545.60) are separately listed.

Early release disbursements dated April 3, 2020 through April 15, 2020 in the amount of \$ 421,829.40 are provided on a separate listing and are also included in the complete disbursement listing. These ayments have been released as authorized under Resolution 2013-6920.

The net payroll dated April 10, 2020 is \$ 393,725.67 previously estimated at \$ 417,000.00. Payroll deductions dated April 10, 2020 are \$ 244,021.95 previously estimated at \$ 230,000.00.

The estimated payroll for April 24, 2020 is \$ 412,000.00 with estimated deductions and matching payments of \$441,000.00.

Approval to release mortgage draw to Knight Barry for Velo Village in the amount of \$ 2,036,736.71. This completes the \$4.5 million funding of the mortgage note.

Attached is a list of property tax disbursements EFT's Nos. 314 through Nos. 319 and 229(S) through 231(S) dated April 3, 2020 through April 16, 2020. \$8,754,588.38 were settlements on the March 31, 2020 tax collections, \$3,119.45 represents tax refunds, and \$3,900,000 represents temporary investments.

**COUNCIL ACTION REQUESTED**

Motion approving the following:

- City vouchers with an ending date of April 16, 2020 in the amount of \$ 1,330,172.07 and
- Payroll dated April 10, 2020 in the amount of \$ 393,725.67 and payments of the various payroll deductions in the amount of \$ 244,021.95 plus City matching payments and
- Estimated payroll dated April 24, 2020 in the amount of \$ 412,000.00 and payments of the various payroll deductions in the amount of \$ 441,000.00, plus City matching payments and
- The release of payment to Knight Barry in the amount of \$ 2,036,763.71.
- Property tax vouchers with an ending date of April 16, 2020 in the amount of \$ 6,790,553.67 and the use of investment funds for tax settlements of \$ 5,867,154.16 and

**ROLL CALL VOTE NEEDED**



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