

<p>APPROVAL</p> <p><i>slw</i></p>	<p>REQUEST FOR</p> <p>COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>06/16/20</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>A RESOLUTION AUTHORIZING THE INSTALLATION OF A FENCE WITHIN THE 30 FOOT LANDSCAPE PLANTING BUFFER PLAT RESTRICTION, UPON LOT 8 IN DOVER HILL SUBDIVISION</p> <p>(7244 SOUTH DOVER HILL COURT) (SCOTT A. MCELROY AND ANDREA L. MCELROY, APPLICANTS)</p>	<p>ITEM NUMBER</p> <p>G.4.</p>

On June 4, 2020, the Plan Commission *carried a motion to recommend approval of a Resolution authorizing the installation of a fence within the 30 foot landscape planting buffer plat restriction, upon Lot 8 in Dover Hill Subdivision (7244 South Dover Hill Court), and replace Condition No. 2 to make application for construction of shed paying fees per Ordinance where it is currently located within the landscape bufferyard easement and the shed is being released from the easement contingent upon obtaining a building permit.*

COUNCIL ACTION REQUESTED

A motion to adopt Resolution No. 2020-_____, authorizing the installation of a fence within the 30 foot landscape planting buffer plat restriction, upon Lot 8 in Dover Hill Subdivision (7244 South Dover Hill Court) as recommended by the Plan Commission.

RESOLUTION NO. 2020-_____

A RESOLUTION AUTHORIZING THE INSTALLATION OF A FENCE
WITHIN THE 30 FOOT LANDSCAPE PLANTING BUFFER PLAT
RESTRICTION, UPON LOT 8 IN DOVER HILL SUBDIVISION
(7244 SOUTH DOVER HILL COURT)
(SCOTT A. MCELROY AND ANDREA L. MCELROY, APPLICANTS)

WHEREAS, the Dover Hill Subdivision Plat prohibits the building of structures within the 30 foot “Landscape Planting Buffer” described thereon; and

WHEREAS, Scott A. McElroy and Andrea L. McElroy having applied for a release of the 30 foot “Landscape Planting Buffer” easement restriction upon their property to the extent necessary to install a black, aluminum, five foot tall colonial fence within the 30 Foot “Landscape Planting Buffer” located along the rear of the property line which abuts South 68th Street (the “Landscape Planting Buffer” extends approximately 866 feet along South 68th Street and overlaps 8 lots in Dover Hill Subdivision), property located at 7244 South Dover Hill Court, zoned Planned Development District No. 17 (Dover Hill Subdivision/Westminster Condominiums), bearing Tax Key No. 756-0220-000, more particularly described as follows:

Lot 8 in DOVER HILL, being a subdivision of a part of the Northeast 1/4 of the Northwest 1/4 of Section 10, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin; and

WHEREAS, the 30 foot “Landscape Planting Buffer” easement restriction upon the Final Plat for Dover Hill Subdivision and its accompanying restriction of the building of structures is a restriction which was imposed by the Franklin Common Council in its approval of the Final Plat; and

WHEREAS, Wis. Stats. § 236.293 provides in part that any restriction placed on platted land by covenant, grant of easement or in any other manner, which was required by a public body vests in the public body the right to enforce the restriction at law or in equity and that the restriction may be released or waived in writing by the public body having the right of enforcement; and

WHEREAS, the Common Council having considered the request for the release of the 30 foot “Landscape Planting Buffer” easement restriction only so as to allow for the subject fence installation, and having considered the proposed location of and type of fence to be installed upon the subject property in conjunction with existing and required landscaping on the property, and that the proposed fence will not be readily visible from the adjoining highway or create any adverse impact upon the aesthetic or buffering purposes of

the landscape bufferyard.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the installation of the proposed fence of the type and specifications as described and only upon the location as set forth within the plans accompanying the application of Scott A. McElroy and Andrea L. McElroy filed on March 23, 2020, be and the same is hereby authorized and approved and that the "Landscape Planting Buffer" easement restriction as it would otherwise apply to such installation upon the subject property only, is hereby waived and released, subject to the following conditions:

1. The subject fence shall not be constructed without first obtaining a fence permit from the Inspection Services Department.
2. The applicant shall apply for a building permit for the shed paying fees per Ordinance where it is currently located within the landscape bufferyard easement and the shed is being released from the easement contingent upon obtaining a building permit.
3. The subject fence shall not impede the stormwater drainage way.
4. This Resolution is not approving the removal of any landscaping features nor modifications to the topography within the landscape bufferyard easement area.

BE IT FURTHER RESOLVED, that the applicant shall further obtain all required permit(s) for the installation of the subject fence and that the subject fence shall be installed pursuant to such permit(s) within one year of the date hereof, or all approvals granted hereunder shall be null and void.

BE IT FINALLY RESOLVED, that the City Clerk be and the same is hereby directed to obtain the recording of this Resolution with the Office of 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.

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

RESOLUTION NO. 2020-_____

Page 3

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

RESOLUTION NO. 2020-_____

A RESOLUTION AUTHORIZING THE INSTALLATION OF A FENCE
WITHIN THE 30 FOOT LANDSCAPE PLANTING BUFFER PLAT
RESTRICTION, UPON LOT 8 IN DOVER HILL SUBDIVISION
(7244 SOUTH DOVER HILL COURT)
(SCOTT A. MCELROY AND ANDREA L. MCELROY, APPLICANTS)

WHEREAS, the Dover Hill Subdivision Plat prohibits the building of structures within the 30 foot "Landscape Planting Buffer" described thereon; and

WHEREAS, Scott A. McElroy and Andrea L. McElroy having applied for a release of the 30 foot "Landscape Planting Buffer" easement restriction upon their property to the extent necessary to install a black, aluminum, five foot tall colonial fence within the 30 Foot "Landscape Planting Buffer" located along the rear of the property line which abuts South 68th Street (the "Landscape Planting Buffer" extends approximately 866 feet along South 68th Street and overlaps 8 lots in Dover Hill Subdivision), property located at 7244 South Dover Hill Court, zoned Planned Development District No. 17 (Dover Hill Subdivision/Westminster Condominiums), bearing Tax Key No. 756-0220-000, more particularly described as follows:

Lot 8 in DOVER HILL, being a subdivision of a part of the Northeast 1/4 of the Northwest 1/4 of Section 10, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin; and

WHEREAS, the 30 foot "Landscape Planting Buffer" easement restriction upon the Final Plat for Dover Hill Subdivision and its accompanying restriction of the building of structures is a restriction which was imposed by the Franklin Common Council in its approval of the Final Plat; and

WHEREAS, Wis. Stats. § 236.293 provides in part that any restriction placed on platted land by covenant, grant of easement or in any other manner, which was required by a public body vests in the public body the right to enforce the restriction at law or in equity and that the restriction may be released or waived in writing by the public body having the right of enforcement; and

WHEREAS, the Common Council having considered the request for the release of the 30 foot "Landscape Planting Buffer" easement restriction only so as to allow for the subject fence installation, and having considered the proposed location of and type of fence to be installed upon the subject property in conjunction with existing and required landscaping on the property, and that the proposed fence will not be readily visible from the adjoining highway or create any adverse impact upon the aesthetic or buffering purposes of

the landscape bufferyard.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the installation of the proposed fence of the type and specifications as described and only upon the location as set forth within the plans accompanying the application of Scott A. McElroy and Andrea L. McElroy filed on March 23, 2020, be and the same is hereby authorized and approved and that the "Landscape Planting Buffer" easement restriction as it would otherwise apply to such installation upon the subject property only, is hereby waived and released, subject to the following conditions:

1. The subject fence shall not be constructed without first obtaining a fence permit from the Inspection Services Department.
2. The applicant shall remove or relocate the existing nonconforming shed to comply with the setbacks and easement restrictions of the Dover Hill subdivision plat and Planned Development District No. 17, prior to the issuance of a fence permit. A building permit is required for relocation of the subject shed.
3. The subject fence shall not impede the stormwater drainage way.
4. This Resolution is not approving the removal of any landscaping features nor modifications to the topography within the landscape bufferyard easement area.

BE IT FURTHER RESOLVED, that the applicant shall further obtain all required permit(s) for the installation of the subject fence and that the subject fence shall be installed pursuant to such permit(s) within one year of the date hereof, or all approvals granted hereunder shall be null and void.

BE IT FINALLY RESOLVED, that the City Clerk be and the same is hereby directed to obtain the recording of this Resolution with the Office of 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.

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

RESOLUTION NO. 2020-_____

Page 3

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

Franklin City Council and Planning

Prior to our meeting scheduled on next Thursday June 4th at 7:00PM, I would like to address the concern over the shed that is holding our fence request from being approved.

1 Shed Permit

We moved here in 1997 (over 23 years ago). Over 20 years ago we hired a carpenter to custom build the shed to be aesthetically appealing and to conform with Franklin requirements. We believed permits were pulled however failed to confirm. The shed is under 150 SQ FT (not 225 SQ FT stated in the resolution as having been estimated through aerial imagery) and it is below 15 Ft in height. Per the City of Franklin-Inspection Services "Garages and Accessory Building General Guidelines" sheds under 150 SQ FT are not required to be setback 40 FT from property line.

<https://franklinwi.gov/Files/Inspection/ACCBLDGrev2018.pdf> The area around the shed was landscaped as well

2 Shed Location

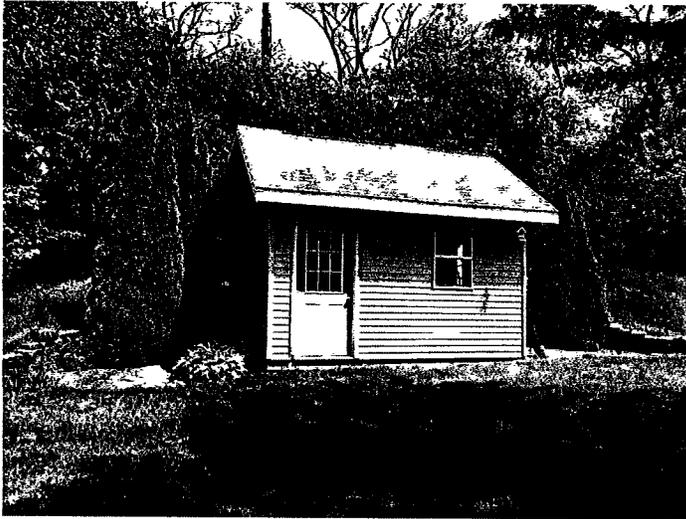
The shed was mistakenly built into the Landscaping easement a few years after we moved here. We were unaware of the easement that takes up over half our backyard. We were aware of the Home Owners Association that was in place until all lots were sold. The shed placement at that time was never a problem. Moving the shed is not an option as it would be too close to my house and affect rain flowage. It would need to be ripped down.

3 Landscaping Easement (Bufferyard)

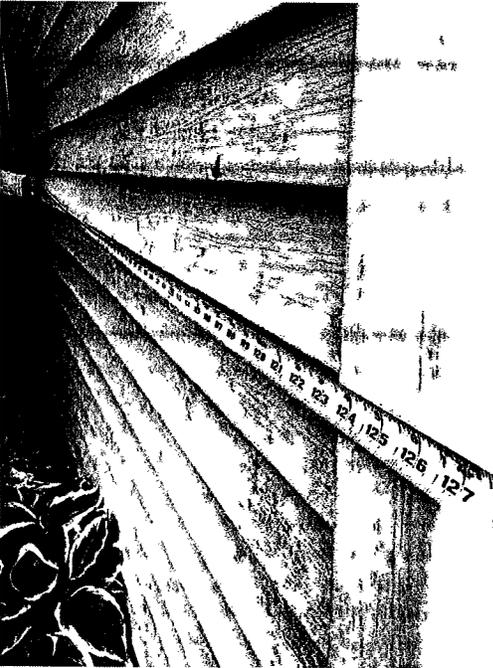
The City description of the Landscaping easement is to block noise more so for privacy for adjacent neighbors. Per definition, the intent of a "Bufferyard" is "to limit continuously the view and/or sound from the lot or site to adjacent lots or sites". We only have 68th street to the back side of the easement. I would think the easement was put in place to protect our newly developed neighborhood from street noise on 68th Street since it runs the span of all home whose property runs along that road. With the tree line going through the top of the easement our eight properties affected can barely be seen, to include my shed. With your aerial views you would be able to clearly see that we are not the only residents who have accidentally encroached this easement. I have had most of these same neighbors for 23 years and they were also unaware of the easement and are very concerned with the outcome of this decision as it may affect them as well.

Lastly, even if we pulled our request for approval of the fence you would still require us to rip the shed down. I believe that is an unfair request to ask of a long-standing tax payer of this community. We purposely chose Franklin as our community after a 20-year military career to raise our children. We are trying to do this right. At this point you have stated the fence has basically been approved, however, this is now a shed issue. We are pleading with the council to allow us to pay whatever fines you feel necessary and get a permit for the shed and release this easement for both the shed and fence.

Please see shed and measurement pictures below:



10 ft 6 inches



14 ft 4 inches



 **CITY OF FRANKLIN** 

REPORT TO THE PLAN COMMISSION

Meeting of June 4, 2020

Miscellaneous application – Fence encroachment into a landscape bufferyard easement

RECOMMENDATION: City Development Staff recommends approval of a Miscellaneous application to allow the encroachment of a fence into a landscape bufferyard easement, subject to the conditions set forth in the attached resolution.

Project Name:	McElroy, fence encroachment into a bufferyard easement.
Project Address:	7244 S. Dover Hill Ct
Property Owner:	Scott and Andrea McElroy.
Applicant:	Scott and Andrea McElroy.
Zoning:	PDD No. 17 Dover Hill – Westminster
Use of Surrounding Properties:	Residential – single family
Comprehensive Plan:	Residential
Applicant Action Requested:	Approval of Miscellaneous application

Introduction:

On March 23, 2020, Scott and Andrea McElroy submitted a Miscellaneous application to allow for the encroachment of a fence into a landscape bufferyard easement. The subject property is located in the Dover Hill subdivision, platted in 1993. Per the subdivision plat, the landscape bufferyard easement is 30-foot wide and extends approximately 866 feet along S 68th Street, the easement overlaps 8 lots of this subdivision

It is noted that this subdivision does not have a Homeowners Association (HOA) in operation.

The proposed black aluminum fence would enclose the rear yard of the property and would be 5-foot tall The fence would be setback 3 feet from the rear property line (abutting 68th Street) According to the submitted materials, the purpose of this fence is to keep the family pet(s) in the backyard.

Analysis:

The subject property is a double frontage lot, with the front located in Dover Hill Ct and the rear in 68th street The proposed fence complies with the Unified Development Ordinance (UDO) §15-3.0802.E 2.b which states as follows:

In the case of a double-frontage lot, fences may be constructed to locate property lines in the yard opposite the front of the residence, provided such fence is constructed and maintained in compliance with all other applicable provisions of § 15-3 0802E

However, the fence would encroach into a landscape bufferyard easement depicted in the Dover Hill subdivision plat Even though staff did not find a separate document for this particular easement (if

any), it is a valid easement because it is graphically delineated in the recorded plat, which is consistent with the bufferyard definition.

According to the UDO definition for bufferyard, fences may be permitted within a bufferyard:

Bufferyard

An area of land within the boundaries of a lot or site, generally adjacent to and parallel with the property line, either consisting of natural existing vegetation or using trees, shrubs, fences, and/or berms, designed to limit continuously the view and/or sound from the lot or site to adjacent lots or sites. Bufferyards are typically defined by a delineated easement graphically indicated on the face of the Site Plan, Landscape Plan, Certified Survey Map, Subdivision Plat, or Condominium Plat. [emphasis added]

In summary, staff has no objections to the fence encroachment into this landscape bufferyard easement. However, staff is concerned about the existing shed in the rear yard and is recommending its removal or relocation for the following reasons.

1. This shed does not comply with 40-foot rear setback, as required by the PDD Ordinance 92-1234, §13-19.D.3. The current location of this shed is approximately 11 feet from the rear property line, based on aerial imagery. The area of this shed is approximately 225 square feet
2. This shed is encroaching into the landscape bufferyard easement and it is not a permitted obstruction in accordance with the bufferyard definition.
3. This shed was installed without a building permit, see attached e-mail from the Department of Inspection Services

STAFF RECOMMENDATION:

City Development Staff recommends approval of a Miscellaneous application to allow the encroachment of a fence into a landscape bufferyard easement, subject to the removal or relocation of the existing nonconforming shed and other conditions set forth in the attached resolution

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

[Draft 5-28-20]

RESOLUTION NO. 2020-_____

A RESOLUTION AUTHORIZING THE INSTALLATION OF A FENCE
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RESTRICTION, UPON LOT 8 IN DOVER HILL SUBDIVISION
(7244 SOUTH DOVER HILL COURT)
(SCOTT A. MCELROY AND ANDREA L. MCELROY, APPLICANTS)

WHEREAS, the Dover Hill Subdivision Plat prohibits the building of structures within the 30 foot “Landscape Planting Buffer” described thereon; and

WHEREAS, Scott A. McElroy and Andrea L. McElroy having applied for a release of the 30 foot “Landscape Planting Buffer” easement restriction upon their property to the extent necessary to install a black, aluminum, five foot tall colonial fence within the 30 Foot “Landscape Planting Buffer” located along the rear of the property line which abuts South 68th Street (the “Landscape Planting Buffer” extends approximately 866 feet along South 68th Street and overlaps 8 lots in Dover Hill Subdivision), property located at 7244 South Dover Hill Court, zoned Planned Development District No. 17 (Dover Hill Subdivision/Westminster Condominiums), bearing Tax Key No. 756-0220-000, more particularly described as follows:

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WHEREAS, Wis. Stats. § 236.293 provides in part that any restriction placed on platted land by covenant, grant of easement or in any other manner, which was required by a public body vests in the public body the right to enforce the restriction at law or in equity and that the restriction may be released or waived in writing by the public body having the right of enforcement; and

WHEREAS, the Common Council having considered the request for the release of the 30 foot “Landscape Planting Buffer” easement restriction only so as to allow for the subject fence installation, and having considered the proposed location of and type of fence to be installed upon the subject property in conjunction with existing and required landscaping on the property, and that the proposed fence will not be readily visible from the adjoining highway or create any adverse impact upon the aesthetic or buffering purposes of

the landscape bufferyard.

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4. This Resolution is not approving the removal of any landscaping features nor modifications to the topography within the landscape bufferyard easement area.

BE IT FURTHER RESOLVED, that the applicant shall further obtain all required permit(s) for the installation of the subject fence and that the subject fence shall be installed pursuant to such permit(s) within one year of the date hereof, or all approvals granted hereunder shall be null and void.

BE IT FINALLY RESOLVED, that the City Clerk be and the same is hereby directed to obtain the recording of this Resolution with the Office of 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.

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

RESOLUTION NO. 2020-_____

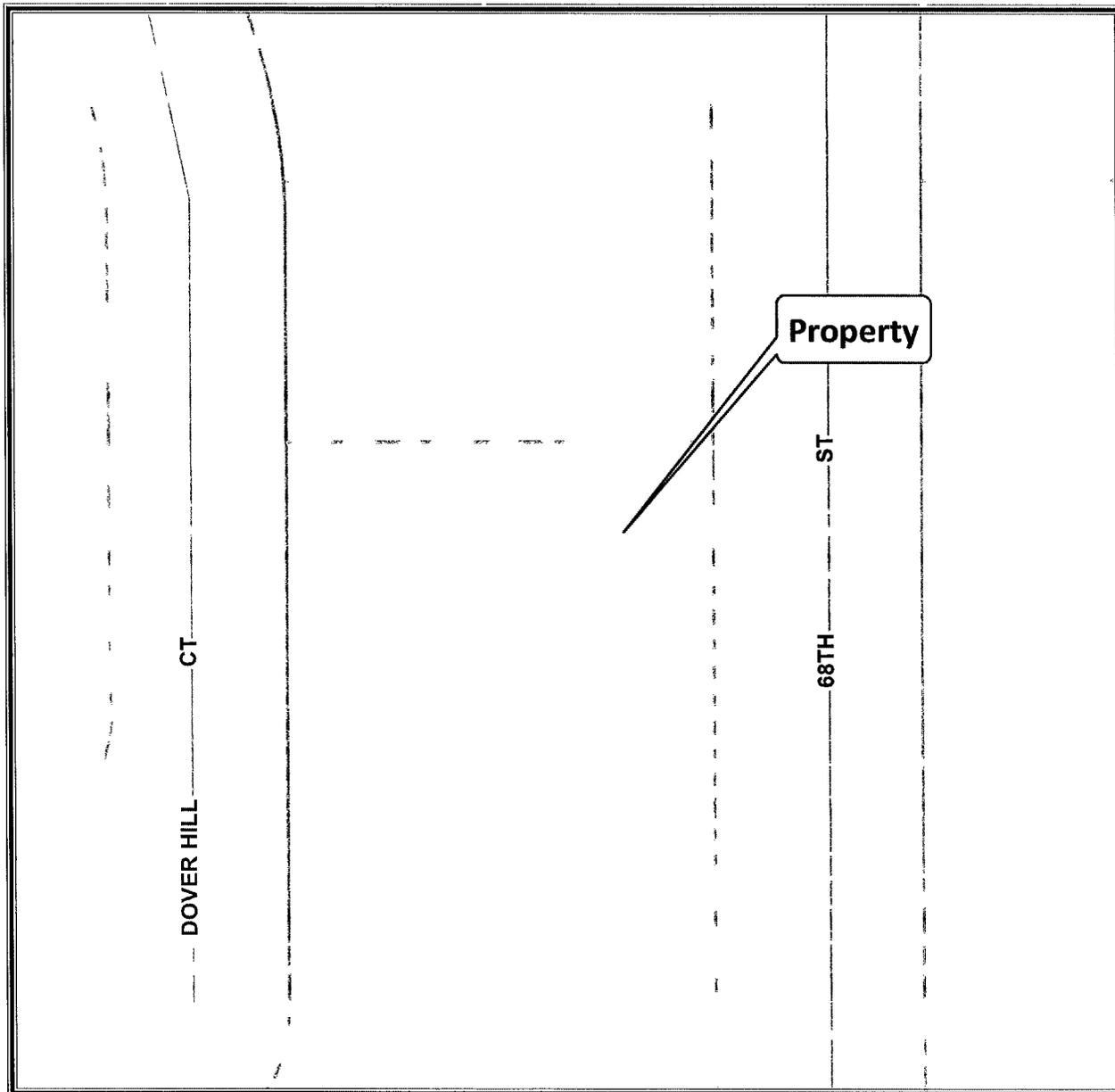
Page 3

ATTEST:

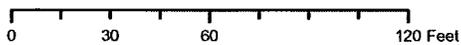
Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

7244 S Dover Hill Ct
TKN: 756 0220 000



Planning Department
(414) 425-4024

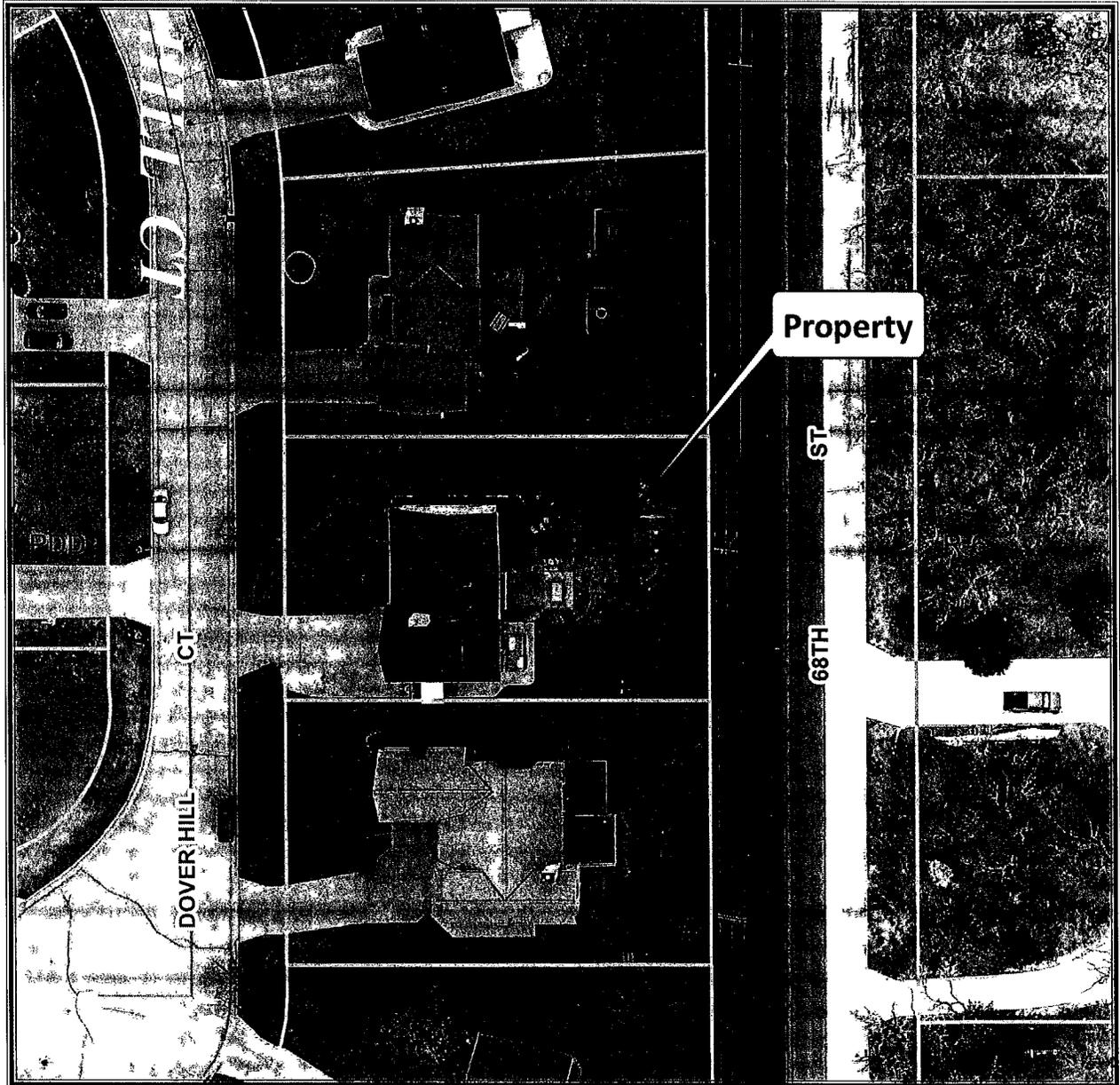


This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal engineering or surveying purposes.

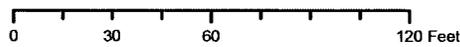




7244 S Dover Hill Ct
TKN: 756 0220 000



Planning Department
(414) 425-4024



2017 Aerial Photo

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

Regulo Martinez-Montilva

From: Dale Hochevar
Sent: Tuesday, May 5, 2020 8 10 AM
To: Regulo Martinez-Montilva
Subject: RE 7244 S Dover Hill Ct

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Regulo,

There is not a permit in the file for a shed for this address

Thanks!

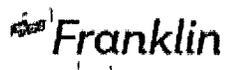
Dale

From: Regulo Martinez-Montilva
Sent: Monday, May 4, 2020 3:32 PM
To: Dale Hochevar <DHochevar@franklinwi.gov>
Subject: 7244 S Dover Hill Ct

Dale,

We are reviewing an application to allow for the encroachment of a fence into a landscape bufferyard easement I noticed a shed in the rear yard that is likely located in the easement area I did not find a permit in Govern, do you have a permit record of this shed in your files?

Thanks,
Régulo Martínez-Montilva, AICP
Associate Planner - Department of City Development
City of Franklin
9229 W Loomis Road
Franklin, WI 53132
Phone (414) 425-4024 / 427-7564
RMartinez-Montilva@franklinwi.gov



DOVER HILL

BEING A SUBDIVISION OF A PART OF THE NE 1/4 OF THE NW 1/4 OF SECTION 10, TOWN 5 NORTH, RANGE 21 EAST IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY WISCONSIN.

SURVEYOR'S CERTIFICATE

I, KENNETH E. BERKE, A REGISTERED WISCONSIN LAND SURVEYOR, DO HEREBY CERTIFY THAT I HAVE SURVEYED, DIVIDED AND MAPPED DOVER HILL, BEING A SUBDIVISION OF A PART OF THE NE 1/4 OF THE NW 1/4 OF SECTION 10, T 5 N, R 21 E, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NW 1/4 SECTION; THENCE SOUTH 00° 06' 53" EAST ALONG THE EAST LINE OF SAID 1/4 SECTION 405.00 FT TO THE POINT OF BEGINNING OF THE LANDS TO BE DESCRIBED; THENCE CONTINUING SOUTH 00° 06' 53" EAST ALONG SAID EAST LINE 917.24 FT TO A POINT;

THENCE SOUTH 89° 29' 14" WEST 785.89 FT. TO A POINT;
 THENCE NORTH 00° 21' 37" EAST 285.27 FT TO A POINT;
 THENCE NORTH 31° 31' 43" EAST 80.17 FT TO A POINT;
 THENCE NORTH 05° 44' 40" WEST 204.23 FT TO A POINT;
 THENCE NORTH 84° 15' 20" EAST 25.70 FT. TO A POINT;
 THENCE NORTHEASTERLY 18.31 FT ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE NORTHWEST, WHOSE RADIUS IS 200.00 FT. AND WHOSE CHORD BEARS NORTH 82° 27' 30" EAST 16.31 FT TO A POINT;
 THENCE NORTH 09° 20' 20" WEST 145.00 FT. TO A POINT;
 THENCE NORTH 6° 48' 28" EAST 55.00 FT TO A POINT;
 THENCE NORTH 47° 13' 49" EAST 67.48 FT TO A POINT;
 THENCE NORTH 32° 23' 32" EAST 208.15 FT TO A POINT;
 THENCE NORTH 44° 35' 26" EAST 114.34 FT. TO A POINT;
 THENCE NORTH 38° 29' 40" EAST 114.13 FT. TO A POINT;
 THENCE NORTH 78° 00' 30" EAST 131.95 FT. TO A POINT;
 THENCE SOUTH 00° 06' 53" EAST 130.00 FT. TO A POINT;
 THENCE NORTHEASTERLY 20.35 FT. ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE SOUTHWEST WHOSE RADIUS IS 340.00 FT AND WHOSE CHORD BEARS NORTH 79° 16' 03.5" EAST 20.35 FT TO A POINT;
 THENCE SOUTH 00° 06' 53" EAST 36.30 FT TO A POINT;
 THENCE NORTH 89° 29' 14" EAST 215.00 FT. TO THE POINT OF BEGINNING, EXCEPTING AND DEDICATING THEREFROM LOTS FOR PUBLIC STREET PURPOSES AS SHOWN.

THAT I HAVE MADE THIS SURVEY LAND DIVISION AND PLAT BY THE DIRECTION OF DOVER HILL, A PARTNERSHIP.

THAT SUCH PLAT IS A CORRECT REPRESENTATION OF ALL THE EXTERIOR BOUNDARIES OF THE LAND SURVEYED AND THE LAND DIVISION THEREOF MADE.

THAT I HAVE FULLY COMPLIED WITH THE PROVISIONS OF CHAPTER 236 OF THE WISCONSIN STATUTES AND THE SUBDIVISION REGULATIONS OF THE CITY OF FRANKLIN IN SURVEYING, DIVIDING AND MAPPING THE SAME.

DATED THIS 23RD DAY OF JUNE 1993
 REVISED THIS 8TH DAY OF SEPTEMBER 1993
 REVISED THIS 10TH DAY OF JANUARY 1994
 REVISED THIS _____ DAY OF _____ 1994



Kenneth E. Berke (SEAL)
 KENNETH E. BERKE
 WISCONSIN REGISTERED LAND SURVEYOR 5-107

OWNER'S CERTIFICATE

DOVER HILL, A PARTNERSHIP, AS OWNERS, DO HEREBY CERTIFY THAT THEY CAUSED THE LAND DESCRIBED IN THE FOREGOING AFFIDAVIT OF KENNETH E. BERKE, SURVEYOR, TO BE SURVEYED, DIVIDED, MAPPED AND DEDICATED AS REPRESENTED ON THIS PLAT.

DOVER HILL, A PARTNERSHIP, AS OWNERS DO FURTHER CERTIFY THAT THIS PLAT IS REQUIRED BY S.236.10 OR 236.12 TO BE SUBMITTED TO THE FOLLOWING FOR APPROVAL OR OBJECTION:

- (1) DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
- (2) MILWAUKEE COUNTY
- (3) CITY OF FRANKLIN

WITNESS THE HANDS AND SEALS OF SAID PARTNERS, THIS 23 DAY OF JUNE 1993

IN THE PRESENCE OF:

Paul J. Burbach, Jr.
 Paul J. Burbach, Jr. GENERAL PARTNER

Terrance J. Arken
 Terrance J. Arken GENERAL PARTNER

STATE OF WISCONSIN) SS
 MILWAUKEE COUNTY (

PERSONALLY CAME BEFORE ME THIS 23rd DAY OF June 1993 THE ABOVE NAMED PAUL J. BURBACH, AND TERRANCE J. ARKEN, AS PARTNERS IN DOVER HILL, A PARTNERSHIP, TO ME KNOWN TO BE THE PERSONS WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE SAME.



Carol E. Arnold
 NOTARY PUBLIC, STATE OF WISCONSIN
 MY COMMISSION EXPIRES 10/1/95
 MY COMMISSION IS PERMANENT

CONSENT OF CORPORATE MORTGAGEE

UNIVERSITY NATIONAL BANK, A CORPORATION DULY ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF WISCONSIN, MORTGAGEE OF THE ABOVE DESCRIBED LAND DOES HEREBY CONSENT TO THE SURVEYING, DIVIDING, MAPPING, RESTRICTING AND DEDICATION OF THE LAND DESCRIBED IN THE FOREGOING CERTIFICATE OF KENNETH E. BERKE, SURVEYOR AND DOES HEREBY CONSENT TO THE ABOVE CERTIFICATE OF DOVER HILL, A PARTNERSHIP.

IN WITNESS WHEREOF THE SAID UNIVERSITY NATIONAL BANK HAS CAUSED THESE PRESENTS TO BE SIGNED BY PHILIP F. HUDSON ITS PRESIDENT AND COUNTERSIGNED BY DAVID R. JOHNSON ITS Asst. Vice President AT MILWAUKEE, WISCONSIN THIS 24 DAY OF JUNE 1993.

IN THE PRESENCE OF:

Philip F. Hudson
 PHILIP F. HUDSON, PRESIDENT

David R. Johnson
 COUNTERSIGNED

STATE OF WISCONSIN) SS
 MILWAUKEE COUNTY (

PERSONALLY CAME BEFORE ME THIS 24 DAY OF JUNE 1993 PHILIP F. HUDSON AND DAVID R. JOHNSON OF THE ABOVE NAMED CORPORATION TO ME KNOWN TO BE THE PERSONS WHO EXECUTED THE FOREGOING INSTRUMENT AND TO ME KNOWN TO BE SUCH PRESIDENT AND Asst. Vice President OF THE ABOVE NAMED CORPORATION AND ACKNOWLEDGED THAT THEY EXECUTED THE FOREGOING INSTRUMENT AS SUCH OFFICERS AS THE DEED OF SUCH CORPORATION, BY ITS AUTHORITY

David R. Johnson (SEAL)
 NOTARY PUBLIC, STATE OF WISCONSIN
 MY COMMISSION EXPIRES JUNE 15, 1997
 MY COMMISSION IS PERMANENT

CERTIFICATE OF CITY TREASURER

I, James C. Payne, BEING THE DULY APPOINTED, QUALIFIED AND ACTING CITY TREASURER OF THE CITY OF FRANKLIN, DO HEREBY CERTIFY THAT COPIES OF THIS PLAT WERE FORWARDED AS MY OFFICE THERE ARE NO UNPAID TAXES OR SPECIAL ASSESSMENTS AS OF June 2, 1994 ON ANY OF THE LANDS INCLUDED IN THE PLAT OF DOVER HILL.

SUBDIVISION _____

DATE March 3, 1994

James C. Payne
 JAMES C. PAYNE, CITY TREASURER

CERTIFICATE OF CITY CLERK

I, JAMES C. PAYNE, BEING THE DULY APPOINTED, QUALIFIED AND ACTING CLERK OF THE CITY OF FRANKLIN, DO HEREBY CERTIFY THAT COPIES OF THIS PLAT WERE FORWARDED AS REQUIRED BY S.236.12(2) ON THE 22 DAY OF June 1993 AND THAT WITHIN THE TWENTY (20) DAY LIMIT, S. 236.12 (3) NO OBJECTIONS TO THE PLAT HAVE BEEN FILED, OR ALL OBJECTIONS TO THE PLAT HAVE BEEN MET.

DATE June 8, 1994

James C. Payne
 JAMES C. PAYNE, CITY CLERK

CERTIFICATE OF COUNTY TREASURER

I, THOMAS W. NEWMAN, BEING THE DULY APPOINTED COUNTY TREASURER OF THE COUNTY OF MILWAUKEE, DO HEREBY CERTIFY THAT THE RECORDS IN MY OFFICE SHOW NO UNREDEEMED TAX SALES AND NO UNPAID TAXES OR SPECIAL ASSESSMENTS AS OF June 2, 1994 AFFECTING THE LANDS INCLUDED IN THE PLAT OF DOVER HILL.

SUBDIVISION _____

DATE June 2, 1994

Thomas W. Newman
 THOMAS W. NEWMAN, COUNTY TREASURER

COMMON COUNCIL RESOLUTION

RESOLVED THAT THE PLAT OF DOVER HILL, IN THE CITY OF FRANKLIN, WISCONSIN, DOVER HILL, A PARTNERSHIP AS OWNER, IS HEREBY APPROVED CONDITIONALLY BY THE COMMON COUNCIL.

DATE March 8, 1994

APPROVED AND SIGNED: Frederick F. Klumetz, MAYOR



I HEREBY CERTIFY THAT THE FOREGOING IS A COPY OF A RESOLUTION ADOPTED BY THE COMMON COUNCIL OF THE CITY OF FRANKLIN AND THAT ALL THE CONDITIONS FOR APPROVAL HAVE BEEN MET AS OF THE 10 DAY OF June 1994.

James C. Payne
 JAMES C. PAYNE, CITY CLERK



national survey & engineering
 4125 north 124th street brookfield, wisconsin, 53005-4444
 phone 414/781-1000 fax 414/781-8466 telex 414/781-0514

MEMORANDUM

Date May 8, 2020
To. Scott and Andrea McElroy
From Department of City Development
RE: Miscellaneous application - 7244 S. Dover Hill Ct.

On March 23, 2020, Scott and Andrea McElroy submitted a Miscellaneous application to allow the encroachment of a fence into a landscape bufferyard easement, review comments are as follows:

City Development Department comments

1. Per Franklin Property Viewer aerial imagery, an existing shed is encroaching into the 30-foot landscape bufferyard easement. Staff did not find records of this encroachment in the City Development Department files. It is noted that this shed is not allowed in such easement, unless approved by the Common Council and/or Homeowners Association. Please clarify.
2. Have you contacted the Homeowners Association about this fence project? Fencing may require a separate approval from the Homeowners Association
- 3 Please note that in addition to this application, a building permit would be required prior to commencement of work For more information, call the Inspection Services Department at 414-425-0084.
- 4 Are you proposing any landscaping associated with this fence?
5. Any separation between the fence and the property line? If so, please add dimensions to the sketch plan.

Engineering Department comments

6. Landscape easement (or sound barrier, abutting South 68th Street) was created per the UDO requirement? We have no files of this easement. The City may not have the authority to approve their request They need to check the HOA documents regarding this easement
7. The proposed fence should not impede the stormwater drainage way.

Fire Department comments

8. The fire department has no comments

Police Department comments

- 9 The police Department has no objections.

May 11, 2020

To: Department of City Development

From: Scott and Andrea McElroy

RE: Miscellaneous application – 7244 S Dover Hill Ct

To Whom it May Concern:

On May 8, 2020 we were provided with “Staff Comments” regarding our Miscellaneous application submitted March 23, 2020 to allow us to place a fence on the “landscape bufferyard easement” Below is our response to the comments received

City Development Department comments

- 1 Per Franklin Property Viewer aerial imagery, an existing shed is encroaching into the 30-foot landscape bufferyard easement. Staff did not find records of this encroachment in the City Development Department files It is noted that this shed is not allowed in such easement, unless approved by the Common Council and/or Homeowners Association Please clarify.

Response

- a. *There is a shed in what we now understand is a “bufferyard easement” of 30 feet from the property line. The shed was built shortly after we moved into the house in 1997; we were unaware of an easement at that time. We added 3 arborvitaes to flank each side with a decorative pathway on each side as well. The design was created to be a similar style to the house. We were unaware of the need for special application to add a 10’ X 14’ shed on our property.*
 - b. *Other homeowners have also used the easement to place sheds, hot tubs, garden beds, etc. in their yard.*
 - c. *We respectfully suggest that the shed is immaterial to the request to use our full back yard to place a fence, the 30’ easement is ½ of the back yard and comes past where the yard begins to slope for the sound barrier to 68th St.*
2. Have you contacted the Homeowners Association about this fence project? Fencing may require a separate approval from the Homeowners Association

Response

- a. *There is no homeowner association for Dover Hill. Karek Builders and Regulo Martinez-Montilva have confirmed.*
 - b. *The builder has no record of the original covenants and restrictions that may have been in place prior to the completion of this subdivision. Their records date back only to 2003 per record retention policy. They informed me that any covenants and restrictions would have been dissolved since no formal association as created and filed with the City*
- 3 Please note that in addition to this application, a building permit would be required prior to commencement of work For more information, call the Inspection Services Department at 414-425-0084.

Response:

- a. *The City of Franklin Building Permit application has been completed and will be submitted the week of 5/11/2020.*

- 4 Are you proposing any landscaping associated with this fence?

Response:

No

- 5 Any separation between the fence and the property line? If so, please add dimensions to the sketch plan

Response:

- a. *Dimensions added*
 - i. *South side = 6" (inches)*
 - ii. *Back (East) = 3 feet*
 - iii. *North = 3 feet*

Engineering Department comments

6. Landscape easement (or sound barrier, abutting South 68th Street) was created per the UDO requirement? We have no files of this easement. **The City may not have the authority to approve their request.** They need to check the HOA documents regarding this easement

Response:

- a. *We do not know if the easement was created per the UDO requirement; respectfully we would expect the City Planning department to have that information*
 - b. *If the Engineering Department has no files of the easement we do not understand the concern about using the full length of our yard*
 - c. *If there is no authority for the City to approve as engineering suggests, then is furtherance of this process necessary?*
 - d. *There is no homeowners association and no documents – see explanation 2(a) & (b) above*
 - e. *As of Monday May 11, 2020 the bolded information above in Item 6 of the staff comments has been forwarded by Regulo Martinez-Montilva to the City Attorney for further review*
- 7 The proposed fence should not impede the stormwater drainage way

Response:

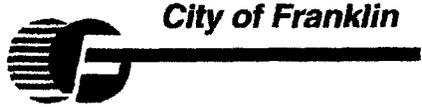
- a. *This is good to know*

Fire Department comments

- 8 The fire department has no comments

Police Department comments

- 9 The police Department has no objections



Date of Application: 3/21/2020

MISCELLANEOUS APPLICATION

Complete, accurate and specific information must be entered. Please Print.

Applicant (Full Legal Name[s]): Name: <u>Scott & Andrea McElroy</u> Company: <u>N/A</u> Mailing Address: <u>7244 Dover Hill CT</u> City / State: <u>Franklin WI</u> Zip: <u>53132</u> Phone: <u>(414) 870-4504 or (414) 313-2673</u> Email Address: <u>Scott.McElroy@casece.com or Andrea.McElroy@aurora.org</u>	Applicant is Represented by (contact person) (Full Legal Name[s]): Name: _____ Company: _____ Mailing Address: _____ City / State: _____ Zip: _____ Phone: _____ Email Address: _____
Project Property Information: Property Address: <u>7244 Dover Hill CT Franklin, WI 53132</u> Property Owner(s): <u>Scott & Andrea McElroy</u> Mailing Address: <u>7244 Dover Hill CT</u> City / State: <u>Franklin, WI</u> Zip: <u>53132</u> Email Address: <u>Scott.McElroy@casece.com or Andrea.McElroy@aurora.org</u>	Tax Key Nos: _____ Existing Zoning: _____ Existing Use: <u>Landscape Easement Release</u> Proposed Use: <u>Same as current but with a decorative fence</u> Future Land Use Identification: _____

*The 2025 Comprehensive Master Plan Future Land Use Map is available at: <http://www.franklinwi.gov/Home/Resources/Documents/Maps.htm>

Miscellaneous Application submittals for review must include and be accompanied by the following:

- This Application form accurately completed with original signature(s). Facsimiles and copies will not be accepted.
- Application Filing Fee, payable to City of Franklin: \$125
- Legal Description for the subject property (WORD.doc or compatible format).
- (1) original and six (6) copies of a written Project Narrative, including detailed description of the project.
- Other information as may be deemed appropriate for the request.

- Upon receipt of a complete submittal, staff review will be conducted within ten business days.
- Submittal of Application for review is not a guarantee of approval.
- Plan Commission, Community Development Authority and/or Common Council review and approval may be required.

The applicant and property owner(s) hereby certify that: (1) all statements and other information submitted as part of this application are true and correct to the best of applicant's and property owner(s) knowledge; (2) the applicant and property owner(s) has/have read and understand all information in this application; and (3) the applicant and property owner(s) agree that any approvals based on representations made by them in this Application and its submittal, and any subsequently issued building permits or other type of permits, may be revoked without notice if there is a breach of such representation(s) or any condition(s) of approval. By execution of this application, the property owner(s) authorize the City of Franklin and/or its agents to enter upon the subject property(ies) between the hours of 7:00 a.m. and 7:00 p.m. daily for the purpose of inspection while the application is under review. The property owner(s) grant this authorization even if the property has been posted against trespassing pursuant to Wis. Stat. §943.13.

(The applicant's signature must be from a Managing Member if the business is an LLC, or from the President or Vice President if the business is a corporation. A signed applicant's authorization letter may be provided in lieu of the applicant's signature below, and a signed property owner's authorization letter may be provided in lieu of the property owner's signature[s] below. If more than one, all of the owners of the property must sign this Application).

Scott A McElroy
 Signature - Property Owner
Scott A. McElroy
 Name & Title (PRINT)

Date: 3/23/2020

Andrea McElroy
 Signature - Property Owner
Andrea McElroy
 Name & Title (PRINT)

Date: 3/23/2020

Scott A McElroy
 Signature - Applicant
Scott A. McElroy
 Name & Title (PRINT)

Date: 3/23/2020

Andrea McElroy
 Signature - Applicant's Representative
Andrea McElroy
 Name & Title (PRINT)

Date: 3/23/2020

SCOTT A McELROY
ANDREA L McELROY
7244 DOVER HILL CT
FRANKLIN, WI 53132-9053

2-2566/710

5879

DATE 3-23-2020

PAY TO THE
ORDER OF

City of Franklin

\$125.00

One Hundred Twenty-Five and ⁰⁰/₁₀₀

DOLLARS

Security Features
Included
Details on Back.

BMO  **Harris Bank**
BMO Harris Bank N.A.
Chicago, Illinois

MEMO

Fence approval

Andrea McElroy

MP

⑆071025661⑆

~~⑆521405480⑆~~

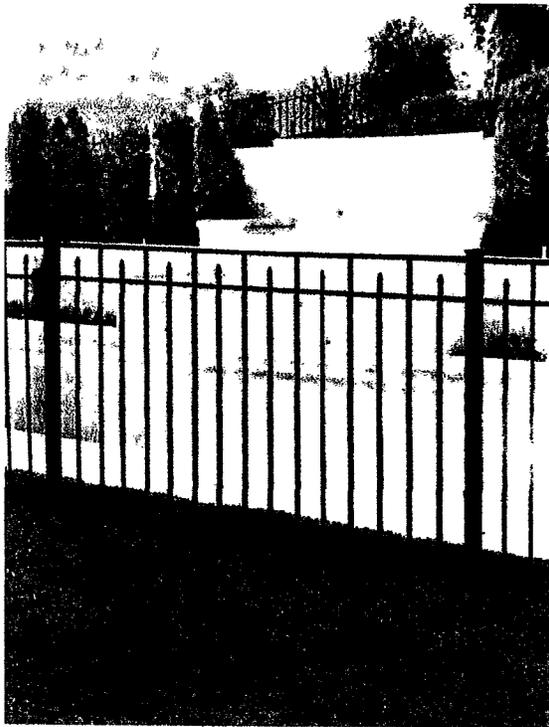
05879

REQUEST FOR RELEASE OF 30' LANDSCAPE EASEMENT

For: 7244 Dover Hill CT Franklin WI 52132

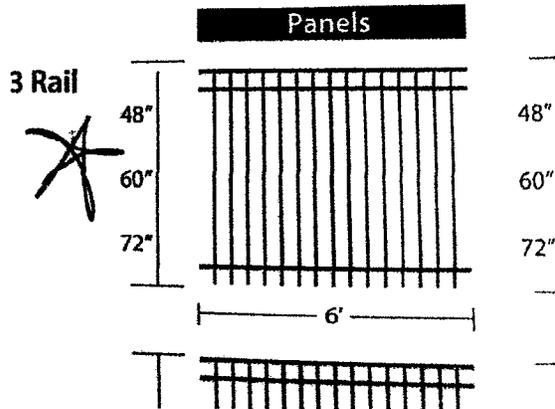
Description of project:

As 23year residents at the above address, we, Andrea and Scott McElroy are respectfully requesting the release of the 30' landscaping easement so we can have the professional company of C & M Fencing install a black 3 rail ornamental aluminum 5' colonial fence as seen below in our backyard.



Universal

1" Rails & 5/8" Pickets



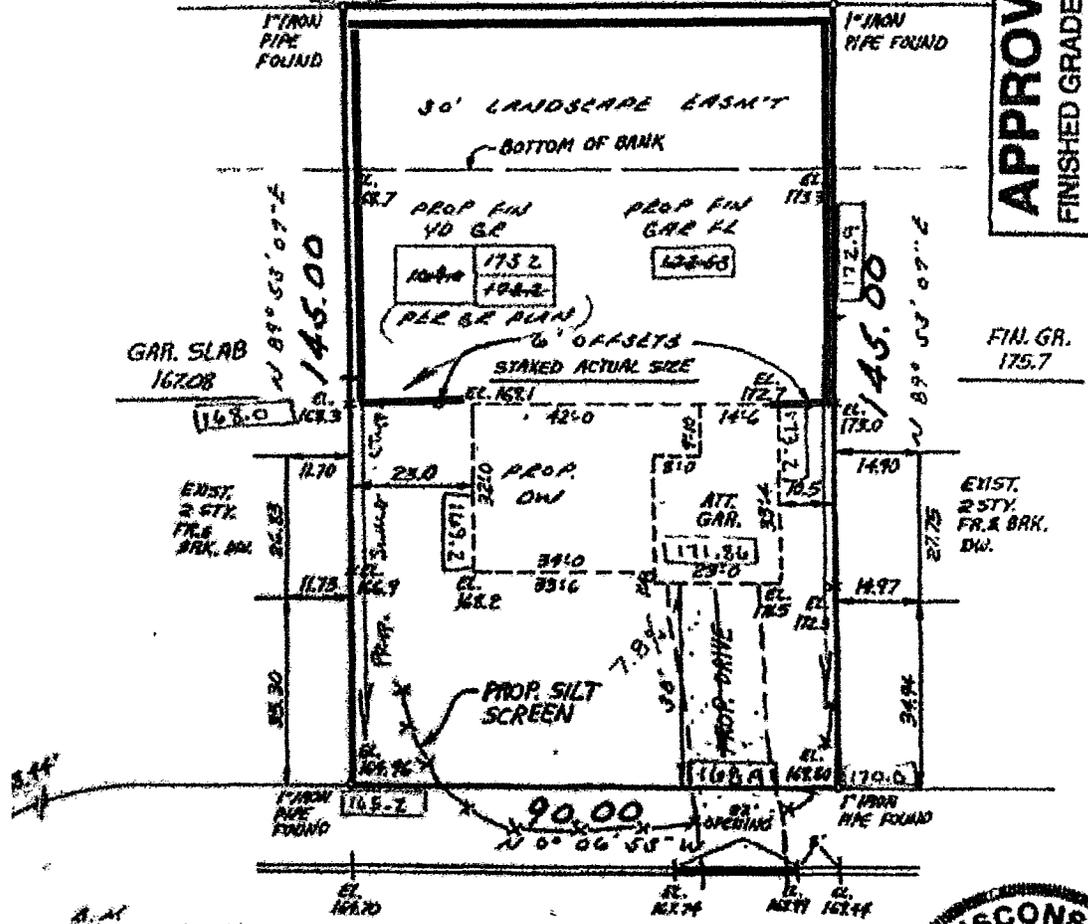
- The fence location will be below in red on the plat survey.

WING ONLY
 lding Staked 8/4/95
 lated Drawing 8/9/95

5. 68TH ST.
 75' R/W

Prop. GRADE (Top) 90.00
 N 0° 06' 55" E

APPROVED
 FINISHED GRADE ELEVATION - 171.84
 AT THE CITY OF FRANKLIN DATUM



B.M. HYD. BETWEEN
 2078 627
 NEW FLAG BOLT
 EL. 163.00

DOVER HILL CT.
 60' R/W

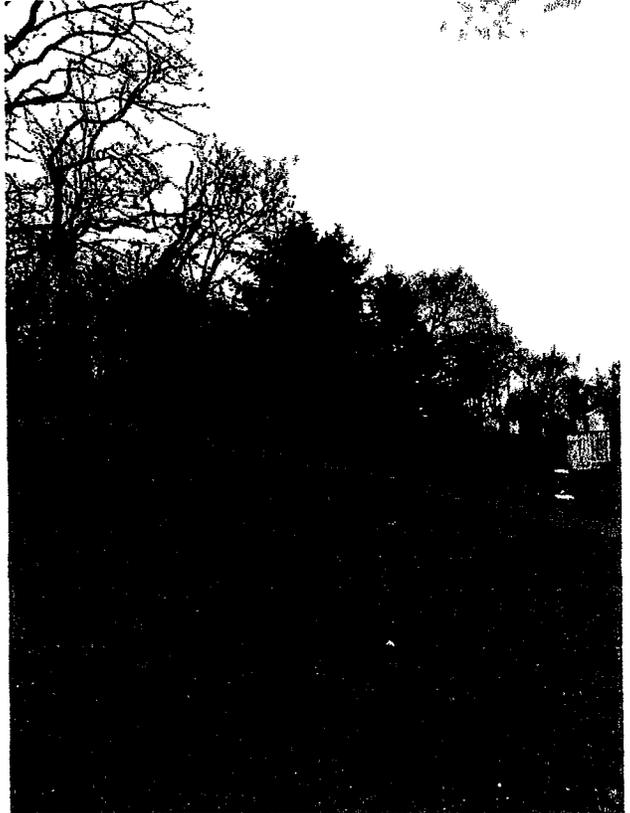
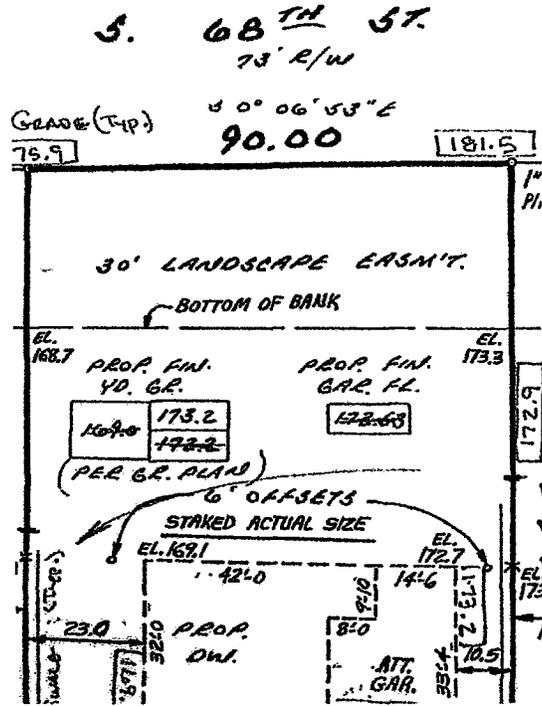


METROPOLITAN SURVEY SERVICE, INC.

I HEREBY CERTIFY THAT I HAVE SURVEYED THE ABOVE DESCRIBED PROPERTY AND THAT THE A

- RED Line showing proposed fence location

- BLUE Line represents location of 30' landscaping easement
- RED Line represents location of fence request



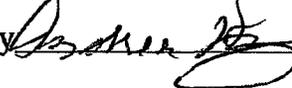
Justification and reasons for approval of release of landscaping easement:

- Wooded growth over the many years between 68th St, and the back of our property has created natural privacy and buffer from the traffic.
- The 30' landscaping easement/berm takes up nearly 50% of my backyard for which we pay significantly in taxes for.
- The aluminum ornamental fence is aesthetically pleasing and accepted by the nearby neighbors as a high dollar improvement to enclose our yard while increasing a level of privacy for the neighboring houses.
- All properties within this subdivision have been established over 20 years ago with many owners adding, utilizing, and improving their properties to include their property with in landscaping easement space with no negative impact to the neighborhood.
- The ornamental fence request is to protect our family puppy from leaving our backyard into 68th St.
- Section 15.11.0103 of the Unified Development Ordinance (UDO) defines a bufferyard as follows:

An area of land within the boundaries of a lot or site, generally adjacent to and parallel with the property line, either consisting of natural existing vegetation or using trees, shrubs, fences, and/or berms, designed to limit continuously the view and/or sound from the lot or site to adjacent lots or sites. Bufferyards are typically defined by a delineated easement graphically indicated on the face of the Site Plan, Landscape Plan, Certified Survey Map, Subdivision Plat, or Condominium Plat. Bufferyards may be required between zoning districts and/or land uses to eliminate or minimize conflicts between them as set forth in Division 15-3.0300 of this Ordinance.

Lastly, as long-standing citizens and contributors to the Franklin community we feel our request for release of the 30' landscaping and bufferyard space has no negative impact on Franklin or our neighborhood. We respectfully ask that you grant approval.

Scott A. McElroy  Date: 3/23/2020

Andrea L. McElroy  Date: 3/23/2020

**CITY OF FRANKLIN
BUILDING PERMIT APPLICATION**

9229 W LOOMIS ROAD, FRANKLIN, WI 53132
Phone (414) 425-0084 Fax (414) 425-7513

Application Forms and Handouts can be found at

Application No.
Permit No.

Project Address <u>7244 S. Dover Hill Ct</u>	Unit or Suite #	Project/Business Name (if applicable) <u>Fence</u>
Property Owner's Name <u>Scott & Andrea McElroy</u>	<input checked="" type="checkbox"/> Owner resides or will reside at job address	Email Address <u>andrea.mcelroy@qah.org</u>
Mailing Address <u>7244 Dover Hill Ct Franklin WI</u>	City <u>Franklin</u>	Zip <u>WI</u>
Contractor Name <u>C + M Fencing</u>	WI DC# / Exp Date <u>N/A</u>	WI DCQ# / Exp Date
Dwelling Contractor Qualifier Name (1 or 2 family dwellings) <u>N/A</u>	Email Address <u>Cmfencing@yahoo.com</u>	
Mailing Address <u>5039 S Loftus Ct. New Berlin WI 53151</u>	City <u>New Berlin</u>	Zip <u>WI 53151</u>
Applicant (if other than owner or contractor) <u>owner</u>		Email Address
Mailing Address	City	Zip
		Phone

Project Type 1 & 2 Family Commercial Industrial Institutional Multi Family - # of Units _____

PERMIT TYPE: *THESE ITEMS HAVE PLAN REVIEW FEES DUE WITH APPLICATION - PLEASE SEE RESPECTIVE HANDOUTS

<input type="checkbox"/> New (other than 1 & 2 family)	<input checked="" type="checkbox"/> Fence - Type and Height <u>5' - (Colonial) 3 rail</u>
<input type="checkbox"/> Addition	<input type="checkbox"/> Spa/Hot Tub <input type="checkbox"/> On Slab <input type="checkbox"/> On Deck <u>Aluminum Fence</u>
<input type="checkbox"/> Alteration	<input type="checkbox"/> Pool <input type="checkbox"/> In Ground <input type="checkbox"/> Above Ground (Ht above ground) _____
<input type="checkbox"/> Demolition	<input type="checkbox"/> Deck <input type="checkbox"/> Attached <input type="checkbox"/> Detached <input type="checkbox"/> Pool
<input type="checkbox"/> Building Damage Repair	<input type="checkbox"/> Occupancy - \$200 plus \$7 Technology Fee
<input type="checkbox"/> Building Move	<input type="checkbox"/> Accessory Bldg./Garage (> 120 sq. ft.) Size _____ on slab
<input type="checkbox"/> Foundation Repair	*(plan review fee required for > 150 sq. ft.)
<input type="checkbox"/> Fireplace	<input type="checkbox"/> Other _____
<input type="checkbox"/> Accessory Building (wood) OR <input type="checkbox"/> Prefab Storage Encl (metal, vinyl, resin) (120 sq. ft. or <) Size _____	
<input type="checkbox"/> Reroofing <input type="checkbox"/> Complete Tear Off <input type="checkbox"/> Over One Layer - Type of Material _____	
<input type="checkbox"/> Residing - Existing Material _____ Replacement Material _____	

Additional Project Description _____

Estimate "Net" Total Project Cost. \$ _____ Estimate Total Project Cost: \$ _____
("Net" excludes cost for Plumbing/Electrical/HVAC work)

Cautionary Statement To Owners Obtaining Building Permits

101.65(1r) of the Wisconsin Statutes requires municipalities that enforce the Uniform Dwelling Code to provide an owner who applies for a building permit with a statement advising the owner that if the owner hires a contractor to perform work under the building permit and the contractor is not bonded or insured as required under s 101.654 (2) (a), the following consequences might occur (a) The owner may be held liable for any bodily injury to or death of others or for any damage to the property of others that arises out of the work performed under the building permit or that is caused by any negligence by the contractor that occurs in connection with the work performed under the building permit. (b) The owner may not be able to collect from the contractor damages for any loss sustained by the owner because of a violation by the contractor of the one- and two- family dwelling code or an ordinance enacted under sub (1) (a), because of any bodily injury to or death of others or damage to the property of others that arises out of the work performed under the building permit or because of any bodily injury to or death of others or damage to the property of others that is caused by any negligence by the contractor that occurs in connection with the work performed under the building permit

CONTACT PERSON (print) Andrea McElroy PHONE 414-870-4504
APPLICANT'S SIGNATURE [Signature] DATE 5/18/2020

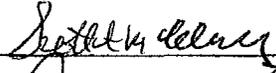
**FAILURE TO OBTAIN PERMIT PRIOR TO STARTING WORK
FIRST OFFENSE TRIPLE FEES, SUBSEQUENT OFFENSES QUADRUPLE FEES
SEPARATE PERMITS REQUIRED FOR PLUMBING, ELECTRICAL AND HVAC**

**OWNER'S ACKNOWLEDGEMENT OF CONDITIONS FOR FENCES LOCATED IN
WE ENERGIES UTILITY EASEMENTS**

Fences may be permitted in We Energies utility easements only subject to the following:

1. The fence shall not be positioned nearer than 3' to any side of a transformer if present.
2. The fence shall not be positioned nearer than 10' to the door of any transformer if present.
EXCEPTION: If a gate or easily removable section of fence is positioned directly in front of the door and measures at least as wide as the door to the transformer, the distance may be reduced to 3'.
3. We Energies will not repair or replace any portion of the fence in the utility easement if the fence needs to be removed for any utility work including clearing obstructions in the easement area.
4. The fence shall not be attached to any utility equipment.
5. "Digger's Hotline" shall be contacted prior to any excavation work.
6. This authorization only applies to We Energies utility easements.

Property Owner(s) hereby acknowledges that he/she has read and understands the above conditions:

Sign  Print Scott McElroy
Sign  Print Andrea McElroy

NOTE: The owner must sign this acknowledgement and include it with their fence permit submittal.

BLANK PAGE

<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">06/16/20</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p style="text-align: center;">RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A LANDSCAPE BUFFERYARD EASEMENT FOR AND AS PART OF THE APPROVAL OF 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)</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G. 5</i></p>

City Development staff recommends approval of a resolution authorizing certain officials to accept a landscape bufferyard easement for and as part of the approval of a 2 lot certified survey map upon property located at 5112 West Ryan Road, bearing Tax Key No. 882-9999-002, Anup K. Khullar, 5100 LLC, subject to review and approval by the Department of City Development and technical corrections by the City Attorney.

The applicant submitted a landscape bufferyard easement for Common Council approval to comply with condition No. 9 of Certified Survey Map Resolution No. 2020-7613:

The applicant shall submit a landscape bufferyard easement, for Common Council review and approval, prior to the recording of the Certified Survey Map.

It is noted that this easement allows the placement of structures as long as the location is in compliance with previously approved plans of Resolution 2020-7613.

COUNCIL ACTION REQUESTED

A motion to adopt Resolution No. 2020-_____, authorizing certain officials to accept a landscape bufferyard easement for and as part of the approval of 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).

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

[6-11-2020]

RESOLUTION NO. 2020-_____

RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A LANDSCAPE BUFFERYARD EASEMENT FOR AND AS PART OF THE APPROVAL OF 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)

WHEREAS, the Common Council having approved a Certified Survey Map upon the application of Anup K. Khullar, 5100 LLC, on April 6, 2020, and the Plan Commission having conditioned approval thereof in part upon Common Council approval of a Landscape Bufferyard Easement; and

WHEREAS, §15-5.0102 of the Unified Development Ordinance requires landscape bufferyards when a Certified Survey Map abuts arterial roadways, and said landscape bufferyard or plating strip to be protected by a landscape bufferyard easement; and

WHEREAS, the City Engineering Department and the Department of City Development having reviewed the proposed Landscape Bufferyard Easement and having recommended approval thereof to the Common Council.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Landscape Bufferyard Easement submitted by Anup K. Khullar, 5100 LLC, in the form and content as annexed hereto, be and the same is hereby approved, subject to review and approval by the Department of City Development and technical corrections by the City Attorney; and the Mayor and City Clerk are hereby authorized to execute such Easement as evidence of the consent to and acceptance of such easement by the City of Franklin.

BE IT FURTHER RESOLVED, that the City Clerk be and the same is hereby directed to obtain the recording of the Landscape Bufferyard Easement in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

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.

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A
LANDSCAPE BUFFERYARD EASEMENT

ANUP K. KHULLAR, 5100 LLC

RESOLUTION NO. 2020-_____

Page 2

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

LANDSCAPE BUFFERYARD EASEMENT
5100 LLC LANDSCAPE IMPROVEMENT PROJECT

This Landscape Bufferyard easement is made by and between the City of Franklin, a municipal corporation of the State of Wisconsin, hereinafter referred to as "Grantee," and 5100 LLC, hereinafter referred to as "Grantor," and shall become effective upon the recording of this Grant of Landscape Bufferyard Easement, together with the Acceptance following, with the Office of the Register of Deeds for Milwaukee County, pursuant to §700.40(2)(b) of the Wisconsin Statutes

WITNESSETH

WHEREAS, Grantor is the owner in fee simple of certain real property, located within the City of Franklin, Milwaukee County, Wisconsin, at 5112 West Ryan Road, described in Exhibit A attached hereto and hereby made a part hereof (protected property), and

WHEREAS, the Grantor is required by Section 15-5.0102A of the City of Franklin Unified Development Ordinance to provide a thirty (30) foot-wide planting strip adjacent to South 51st Street and West Ryan Road, and

WHEREAS, 5100 LLC was the applicant for a proposed approval of a 2 lot certified survey map for the property located at 5112 West Ryan Road as set forth in City of Franklin Plan, conditionally approving [or approving] a 2 lot certified survey map for the property located at 5112 West Ryan Road [type of application and name of the project], and the Common Council adopted Resolution No. 2020-7613, on April 6, 2020. Condition Numbers 8 and 9 of Resolution No. 2020-7613 thereof providing: "8 The Landscape Plan for the bufferyard easement areas shall be subject to review and approval by the Department of City Development, prior to the recording of the Certified Survey Map. And 9. The applicant shall submit a landscape bufferyard easement, for Common Council review and approval, prior to the recording of the Certified Survey Map.", and

WHEREAS, Grantee is a "holder", as contemplated by §700.40(1)(b)1. of the Wisconsin Statutes, whose purposes include, while exercising regulatory authority granted to it, *inter alia*, under §62.23 and §236.45 of the Wisconsin Statutes, the conservation of land, natural areas, open space, and water areas, and

WHEREAS, the Grantor and Grantee, by the conveyance to the Grantee of the Landscape Bufferyard Easement on, over, and across the protected property, desire to reserve the area for the planting of trees and shrubs and prevent the use or development of the protected property for any purpose or in any manner inconsistent with the terms of this Landscape Bufferyard Easement, and

WHEREAS, the Grantee is willing to accept this Landscape Bufferyard Easement subject to the reservations and to the covenants, terms, conditions, and restrictions set out herein and imposed hereby;

NOW, THEREFORE, the Grantor, for and in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions subsequently contained, and as an absolute and unconditional dedication, does hereby grant and convey unto the Grantee a Landscape Bufferyard Easement in perpetuity on, over, and across the protected property.

Grantee's rights hereunder shall consist solely of the following

1. To establish and ensure the continuance of an area reserved for the planting of trees and shrubs for the private use by the owners of the underlying fee simple interests, to the exclusion of all others, for the purpose of buffering the properties adjoining South 51st Street and West Ryan Road by requiring this protected property to be open space in perpetuity; the protected property shall consist of natural existing vegetation and approved landscaping of trees, shrubs, fences, and/or berms, designed to provide a screen and buffer between Grantor's property located at 5112 W. Ryan Road and the adjacent South 51st Street and West Ryan Road;
2. To enforce by proceeding at law or in equity the covenants subsequently set forth, including, and in addition to all other enforcement proceedings, proceedings to obtain all penalties and remedies set forth under Division 15-9.0500 of the Unified Development Ordinance of the City of Franklin, as amended from time to time, any violation of the covenants subsequently set forth being and constituting a violation of such Unified Development Ordinance, as amended from time to time, or such local applicable ordinance as may be later adopted or in effect to enforce such covenants or the purposes

for which they are made, it being agreed that there shall be no waiver or forfeiture of the Grantee's right to insure compliance with the covenants and conditions of this grant by reason of any prior failure to act; and

- 3 To enter the protected property at all reasonable times for the purpose of inspecting the protected property to determine if the Grantor is complying with the covenants and conditions of this grant.

And in furtherance of the foregoing affirmative rights of the Grantee, the Grantor makes the following covenants which shall run with and bind the protected property in perpetuity, namely, that, on, over, or across the protected property, the Grantor, without the prior consent of the Grantee, shall not:

- 1. Construct or place buildings or any structure, beyond those buildings and structures and improvements as identified on any engineering or construction plans approved by the City of Franklin, including, without limitation, the civil engineering plans approved on April 6, 2020 as City of Franklin Resolution No, 2020-7613, are specifically permitted and allowed within the limits of the Easement Area in compliance with this Landscape Bufferyard Easement;
- 2. Construct or make any improvements, unless, notwithstanding Covenant 1 above, the improvement is specifically and previously approved by the, by the Plan Commission of the City of Franklin, by the Common Council of the City of Franklin, upon the advice of such other persons, entities, and agencies as it may elect; such improvements as may be so approved being intended to enhance the open space buffer value of the protected property to the occupants of land adjoining or neighboring the protected property including, but not limited to fences, berms, and the like.

To have and to hold this Landscape Bufferyard Easement unto the Grantee forever. Except as expressly limited herein, the Grantor reserves all rights as owner of the protected property, including, but not limited to, the right to use the protected property for all purposes not inconsistent with this grant. Grantor shall be responsible for the payment of all general property taxes levied, assessed, or accruing against the protected property pursuant to law.

The covenants, terms, conditions, and restrictions set forth in this grant shall be binding upon the Grantor and the Grantee and their respective agents, personal representatives, heirs, successors, and assigns, and shall constitute servitudes running with the protected property in perpetuity. This grant may not be amended, except by a writing executed and delivered by Grantor and Grantee or their respective personal representatives, heirs, successors, and assigns. Notices to the parties shall be personally delivered or mailed by U.S. Mail registered mail, return receipt requested, as follows:

To Grantor
5100 LLC
8200 W. Brown Deer Road
Suite 301
Milwaukee, WI 53223

To Grantee
City of Franklin
Office of the City Clerk
9229 W. Loomis Road
Franklin, Wisconsin 53132

In witness whereof, the grantor has set its hand and seals this on this date of May 8, 2020

5100 LLC

By. [Signature]
Anup Khullar, Member

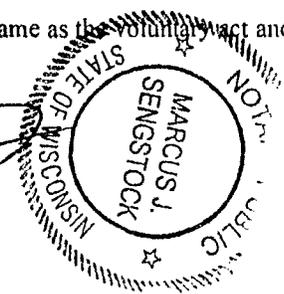
STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on the 8th day of May, A D. 2020 by

Anup Khullar as Authorized Officer and Signatory of 5100 LLC [business name]

To me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the potential grantor and deed of said 5100 LLC [business name].

[Signature]
Notary Public



My commission expires plm

Acceptance

The undersigned does hereby consent to and accepts the Landscape Bufferyard Easement granted and conveyed to it under and pursuant to the foregoing Grant of Landscape Bufferyard Easement. In consideration of the making of such Grant Of Landscape Bufferyard Easement, the undersigned agrees that this acceptance shall be binding upon the undersigned and its successors and assigns and that the restrictions imposed upon the protected property may only be released or waived in writing by the Common Council of the City of Franklin, as contemplated by §236 293 of the Wisconsin Statutes.

In witness whereof, the undersigned has executed and delivered this acceptance on the ____ day of _____, 20__.

CITY OF FRANKLIN

By: _____
Stephen R. Olson, Mayor

By: _____
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 20__, 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 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 _____, 20__.

Notary Public

My commission expires _____

This instrument was drafted by the City of Franklin.

Approved as to contents:

Joel Dietl, Planning Manager
Department of City Development

Date

Approved as to form only.

Jesse A. Wesolowski
City Attorney

Date

The following is a legal description of 5112 West Ryan Road which is the property upon which the open space buffery lands are located.

Exhibit A

Parcel I:

That part of the Southwest $\frac{1}{4}$ of Section 23, Township 5 North, Range 21 East, bounded and described as follows: Commencing at the Southeast corner of the Southwest $\frac{1}{4}$ of Section 23, Township 5 North, Range 21 East, running thence North $0^{\circ} 56' 43''$ East along the East line of said $\frac{1}{4}$ Section, said line being also the center line of South 51st Street, 60.02 feet to the point of beginning of the land herein described; thence North $0^{\circ} 56' 43''$ East along the East line of said $\frac{1}{4}$ Section, said line being also the center line of South 51st Street, 414.98 feet to a point; thence South $89^{\circ} 43' 34''$ West and parallel to the South line of said $\frac{1}{4}$ Section, 253.00 feet to a point; thence South $0^{\circ} 56' 43''$ West and parallel to the East line of said $\frac{1}{4}$ Section, 414.98 feet to a point on the North line of the Ryan Road, said point being 60.00 feet North of (measured at right angles) the center line of Ryan Road; thence North $89^{\circ} 43' 34''$ East along the North line of Ryan Road, and parallel to the South line of said $\frac{1}{4}$ Section, 253.00 feet to the point of beginning. Said land being in the City of Franklin, County of Milwaukee, State of Wisconsin.

Parcel II:

That part of the Southwest $\frac{1}{4}$ of Section 23, Township 5 North, Range 21 East, bounded and described as follows: Commencing at the Southeast corner of the Southwest $\frac{1}{4}$ of Section 23, Township 5 North, Range 21 East; running thence South $89^{\circ} 43' 34''$ West along the South line of said $\frac{1}{4}$ Section, said line being also the center line of the Ryan Road, 253 feet to a point; thence North $0^{\circ} 56' 43''$ East and parallel to the East line of said $\frac{1}{4}$ Section 60.02 feet to a point on the North line of Ryan Road, said point being also the point of beginning of the land herein described; thence North $0^{\circ} 56' 43''$ East and parallel to the East line of said $\frac{1}{4}$ Section, 414.98 feet to a point; thence South $89^{\circ} 43' 34''$ West and parallel to the South line of said $\frac{1}{4}$ Section 220 feet to a point; thence South $0^{\circ} 56' 43''$ West and parallel to the East line of said $\frac{1}{4}$ Section, 414.98 feet to a point on the North line of the Ryan Road, said point being 60 feet North of (measured at right angles) the center line of the Ryan Road; thence North $89^{\circ} 43' 34''$ East along the North line of the Ryan Road, and parallel to the South line of said $\frac{1}{4}$ Section, 220 feet to the point of beginning. Said land being in the City of Franklin, County of Milwaukee, State of Wisconsin.

EXCEPTING THEREFROM that part of the Southwest $\frac{1}{4}$ of Section 23, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, State of Wisconsin, described as follows:

Commencing at the Southeast corner of said $\frac{1}{4}$ Section; thence South $88^{\circ} 22' 14''$ West, 253 feet along the South line of said $\frac{1}{4}$ Section to the point of beginning; thence North $0^{\circ} 24' 05''$ West, 100.03 feet to a line that is 100 feet North of (as measured at right angles) and parallel with the South line of said $\frac{1}{4}$ Section; thence South $88^{\circ} 22' 14''$ West, 220 feet along said parallel line to the West line of the property of the owner; thence South $0^{\circ} 24' 05''$ East, 100.03 feet along said West line to the South line of said $\frac{1}{4}$ Section; thence North $88^{\circ} 22' 14''$ East, 220 feet along said South line to the point of beginning.

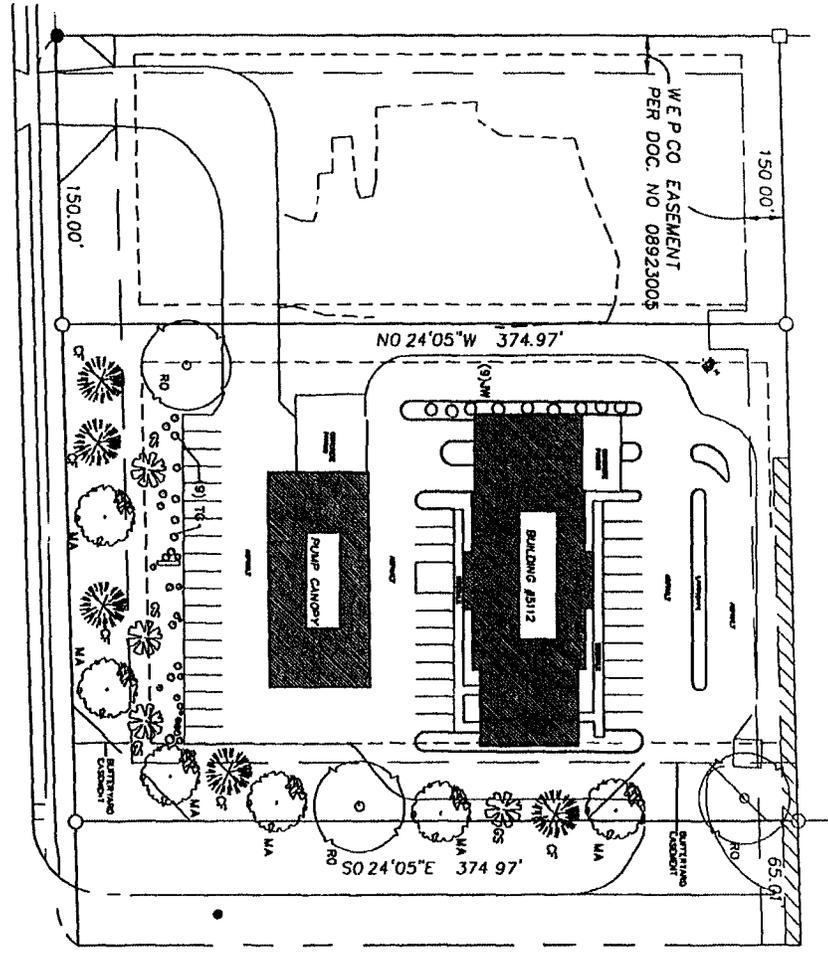
ALSO EXCEPTING THEREFROM that part of the Southwest $\frac{1}{4}$ of Section 23, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, State of Wisconsin, described as follows:

Commencing at the Southeast corner of said $\frac{1}{4}$ Section; thence South $88^{\circ} 22' 14''$ West, 253 feet along the South line of said $\frac{1}{4}$ Section to the point of beginning; thence North $0^{\circ} 24' 05''$ West, 100.03 feet to a line that is 100 feet North of (as measured at right angles) and parallel with the South line of said $\frac{1}{4}$ Section; thence North $88^{\circ} 22' 14''$ East, 253 feet along said parallel line to the East line of said $\frac{1}{4}$ Section; thence South $0^{\circ} 24' 05''$ East, 100.03 feet along said East line to the South line of said $\frac{1}{4}$ Section; thence South $88^{\circ} 22' 14''$ West, 253 feet along said South line to the point of beginning

A Map depicting the buffery easement is attached hereto as Exhibit B.

"B"

LANDSCAPE PLAN



PLANT MATERIAL SCHEDULE

QTY	SCIENTIFIC NAME	COMMON NAME	SEE PLANT REPORT	PLANT HEIGHT	SYMBOL
1	SHADE TREE				
1	WAXY JASMINE	ACORN OBTUSILA	2 1/2' OK	2'	MA
3	GRANDIS BIRCH	RED OAK	2 1/2' OK	2'	RO
1	EVERGREEN TREE	ALBERTA WILLOW	4'	6'-15'	JW
1	ORNAMENTAL TREE	ORANGE BLOSSOM	1 1/2' OK		CF
3	MAJESTIC SPANGLER	ORANGE BLOSSOM	1 1/2' OK		CS
4	MAJESTIC SPANGLER	ORANGE BLOSSOM	1 1/2' OK		CS
ORNAMENTAL SHRUB					
1	EVERGREEN SHRUB	ARBOREAL THORN GLABER	3'		TG
1	TRIAL OCCIDENTAL THORN GLABER	ARBOREAL THORN GLABER	3'		TG
GROUND COVER					

DATE: 03-29-2003
 DESIGNED BY: [blank]
 L100

ANUP KHULLAR
 CERTIFIED SURVEY MAP
 5112 W. RYAN ROAD
 FRANKLIN, WI

Architects
 Engineers
 Vision
 Tony Antonopoulos
 5362 S. 25th Street
 Milwaukee, WI 53221
 Call 414-897-4723
 tycj990c@gmail.com

NO.	DATE	REVISIONS	BY
1	4-13-03	RELEASED PLANTS	

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<p>APPROVAL</p> <p><i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>June 16, 2020</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>A Resolution Authorizing Certain Officials to Execute a Facility Use Agreement With the Franklin Public School District and to Accept and Consent to a Waiver of Conflict of Interest to Allow for von BRIESEN & ROPER, s.c. to Represent the District With Respect to the Agreement</p>	<p>ITEM NUMBER</p> <p><i>G.6.</i></p>

A copy of the Facility Use Agreement and a copy of the Request for Conflict Waiver are annexed hereto. Also annexed is a copy of the above-entitled Resolution.

COUNCIL ACTION REQUESTED

A motion to adopt A Resolution Authorizing Certain Officials to Execute a Facility Use Agreement With the Franklin Public School District and to Accept and Consent to a Waiver of Conflict of Interest to Allow for von BRIESEN & ROPER, s.c. to Represent the District With Respect to the Agreement.

June 10, 2020

Mayor Steve Olson
City of Franklin
9229 W. Loomis Road
Franklin, WI 53132

Re: Request for Conflict Waiver

Dear Mayor Olson:

As you are aware, our office represents the City of Franklin in relation to labor and employment matters. Our office also represents the Franklin Public School District with respect to labor and employment matters, as well as general school law matters. Recently, the Franklin Public School District approached us about drafting an agreement between the City of Franklin and the Franklin Public School District to memorialize the City's use of a District middle school for purposes of conducting law enforcement active shooter training. Following discussions with City Attorney Jesse Wesolowski, it was agreed that Attorney Wesolowski would represent the City in this matter and our office would represent the Franklin Public School District, thereby allowing for both parties to have competent representation. Under these circumstances, we are asking for the City's consent to von Briesen's representation of the Franklin Public School District with regard to the aforementioned agreement between the Franklin Public School District and the City of Franklin.

Our firm's ethics policies and the Model Rules of Professional Conduct governing the actions of lawyers require an affirmative disclosure to clients of all actual and potential conflicts of interest and the written consent of all parties to continue representation in these circumstances. The ethical standards which govern our conduct as lawyers prohibit us from representing any client in a matter where the interests of one client are directly adverse to another client. Further, we may not represent a client in a matter where a conflict of interest could materially limit our responsibilities as lawyers to another client.

An exception exists when clients consent in writing to the representation after consultation, and when we, as your attorneys, believe that the representation will not adversely affect the relationship with the clients. As noted above, Attorney Wesolowski has agreed to represent the City with respect to the aforementioned agreement and our office would represent the Franklin Public School District with respect to such agreement. Under these circumstances, we do not believe that our concurrent representation of the Franklin Public School District will adversely affect our ability to represent the City of Franklin with regard to labor and employment matters and that the City of Franklin's interests will not be adversely affected by this concurrent representation.

Attorneys are also prohibited from using confidential information obtained during representation of a client to the disadvantage of that client. This will confirm that our office will not use any confidential information obtained in our representation of the City of Franklin in labor and employment matters in any manner that is disadvantageous to any party.

Please let us know if you have any concerns regarding our ongoing representation of the Franklin Public School District in the aforementioned agreement in light of our concurrent representation of the City of Franklin in labor and employment matters. Otherwise, please confirm your consent by signing this correspondence where indicated below, and by emailing a PDF copy of the fully signed correspondence to my attention. I will, of course, be happy to provide further information you may require.

Very truly yours,

von BRIESEN & ROPER, s.c.

Ryan P. Heiden

Potential conflict acknowledged and waived this ____ day of June, 2020.

By: _____
Mayor Steve Olson
City of Franklin

FACILITY USE AGREEMENT

This Facility Use Agreement (“Agreement”) is made and entered into as of the ___ day of June, 2020, by and between the City of Franklin, a Wisconsin municipality existing under the laws of the State of Wisconsin (the “City”), and Franklin Public School District, a school district organized and existing under the laws of the State of Wisconsin (the “District”). The City and District are hereinafter referred to individually as a “Party” and together as the “Parties.”

RECITALS

WHEREAS, the City’s Police Department needs a facility to conduct active shooter training as part of its quarterly in-service training and in preparation for the Democratic National Convention scheduled to be held in Milwaukee, Wisconsin later this year; and

WHEREAS, the District has available space for such training sessions at Forest Park Middle School on the dates identified by the City’s Police Department; and

WHEREAS, the District would like to make Forest Park Middle School available to the City for such purposes upon the terms and conditions set forth herein; and

WHEREAS, the Parties hereto enter into this Agreement to support the City’s training needs and the mutual desire to provide high quality law enforcement services to the City’s and District’s citizens.

NOW, THEREFORE, in consideration of the mutual premises, promises, covenants and conditions contained herein, and for other good and valuable consideration, both the receipt and legal sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. *Use of District Buildings.* District shall make Forest Park Middle School available to the City’s use as a training site upon the dates and hours mutually agreed upon by the Parties until such time as this Agreement terminates or either Party, in its sole and absolute discretion, terminates this Agreement in accordance with Paragraph 5 below.

The City will be provided access to Forest Park Middle School for the dates and hours mutually agreed upon by the Parties by the Middle School’s Principal, who shall provide the Chief of Police or his designee a key or other method of access to the Middle School no later than the day prior to any agreed upon training sessions. The Chief of Police or his designee shall return any key or other methods of access, if applicable, to the Middle School Principal within a reasonable period of time following each training session covered by this Agreement.

This Agreement shall not be considered a lease of the District’s building and no rent obligation shall be implied as a result of the City’s use of the building. District is providing the City with the use of District’s building at no cost to the City. Similarly, the City understands and agrees that its use of the District’s building shall not be exclusively provided, however, the District shall use its reasonable best efforts to not interfere with City’s use of the District’s buildings during the term of this Agreement. The District shall retain the right to enter such buildings at any time,

with or without notice, provided that District complies with all applicable laws and regulations related to access.

2. Compliance with Federal, State, and Local Emergency Management Directives. Parties shall actively follow directives from federal, state, and local emergency management agencies during the term of this Agreement. The Parties agree and understand that such directives may prohibit the City's use of Forest Park Middle School or other District buildings while any such directives remain in effect.

3. City's Covenants.

3.1 The City agrees that it shall at all times supervise the use of Forest Park Middle School with appropriate personnel.

3.2 The City shall be solely responsible for the provision and layout of any equipment or furnishings at Forest Park Middle School that are needed or otherwise utilized in connection with training conducted under this Agreement. Upon termination of this Agreement, the City shall be responsible for removing all equipment and furnishings and otherwise returning Forest Park Middle School to the condition existing prior to execution of this Agreement. All costs associated with repairing the physical space for the City's operations and returning the physical space to its pre-Agreement condition shall be the City's sole responsibility.

5. Term and Termination. The term of this Agreement shall begin upon execution of this Agreement and shall remain in effect until 11:59 p.m. on December 31, 2020 unless extended pursuant to a mutual, written agreement by the Parties or unless otherwise terminated by a Party or the Parties as stated hereafter in this Paragraph 5. This Agreement may be terminated by either Party upon fifteen (15) days' written notice to the other Party for any reason or no reason at all. Upon termination of this Agreement, District will cooperate with the City to ensure the orderly transition of equipment and furnishings from District property or buildings to the City.

6. Insurance. The City shall carry Workers' Compensation coverage with statutory limits for Wisconsin.

7. Relationship of the Parties No act or failure to act by any Party shall be construed to make or render the other Party to this Agreement its partner, joint venturer, employee, employer, principal, agent or associate. The District and the City shall be solely responsible for the payment of the salaries of their respective personnel, including withholding or payment of applicable taxes and any other withholding required by law or regulation. No agent, employee or representative of a Party shall be deemed to be an agent, employee or representative of another Party. Neither Party shall have the authority to act for or on behalf of the other Party to bind the other Party without the express written approval of the other Party. Except as expressly provided herein, neither of the Parties shall have the right to exercise any control whatsoever over the activities or operations of the other Party. Each Party is independent of the other and shall not hold themselves out to be the agent, employer, or partner of the other. The only relationship is by virtue of this Agreement and no fiduciary relationship is created hereunder.

8. Indemnification.

8.1. To the extent permitted by law, the City agrees to defend, indemnify and hold harmless District and its board members, officers, employees, agents, insurers, successors and assigns from and against any and all losses, judgments, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and costs of settlement) which directly result from or arise out of any: (a) misrepresentation or breach by City of any of its representations, warranties, covenants or obligations in this Agreement; or (2) any act or omission of the City or any of the City's elected officials, appointed officials, employees, affiliates, representatives, agents, successors or assigns constituting negligent acts or omissions, strict liability or willful acts or omissions in carrying out the City's use of District's buildings under this Agreement, including, without limitation, injury to or death of persons caused by any act or failure to act of City.

8.2 To the extent permitted by law, the District agrees to agrees to defend, indemnify and hold harmless the City and its elected officials, appointed officials, employees, affiliates, representatives, and agents from and against all losses, judgments, damages, costs (including reasonable attorneys' fees), and other expenses which directly result from or arise out of any: (i) any act or omission of the District or any of the District's board members officials, employees, affiliates, representatives, agents, successors or assigns constituting grossly negligent acts or omissions, strict liability or willful acts or omissions in carrying out the District's obligations or responsibilities under this Agreement or (ii) any material breach of any of the representations, warranties or covenants contained herein by District.

9 Governing Law. This Agreement shall be interpreted according to the laws of the State of Wisconsin. Claims arising out of or requiring the interpretation of this Agreement shall be brought and litigated exclusively in the courts located within Milwaukee County, Wisconsin, or if a federal court, the court whose district includes Milwaukee County, Wisconsin.

10. Notices. All notices and other communications required or permitted under this Agreement shall be effective upon receipt or rejection. Any notice shall be delivered to the Parties as follows:

District: Franklin Public Schools
8255 West Forest Hill Avenue
Franklin, WI 53132

Attn: Dr. Judy Mueller

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

Attn: Ms. Margaret Steeno

11. Severability Clause. In the event any term or provision of this Agreement is found to be unenforceable or void, in whole in part, as drafted, such provision shall be fully severable and the unenforceability thereof shall not affect the remainder of this Agreement, and the balance of this Agreement shall remain in full force and effect and no covenant or provision shall be

deemed dependent on any other covenant or provision unless specifically expressed herein. To the extent this Agreement or any provision herein is in violation of applicable law, then the Parties consent and agree to negotiate in good faith to amend the Agreement or the provision, to the extent possible consistent with its purposes, to conform to law.

12. Amendments. Amendments may only be made to this Agreement via mutual, written agreement of the Parties.

13. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent may be withheld in the Party's sole and absolute discretion.

14. Waiver. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any such Party's rights with respect to any subsequent breach thereof.

15. Entire Agreement. This Agreement supersedes all previous contracts and constitutes the entire agreement between the Parties. Oral statements or prior written material not specifically incorporated herein shall be of no force and effect and no changes in or additions to this Agreement shall be recognized unless and until made in writing signed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set out above.

Franklin Public School District

City of Franklin

By: _____
Title: _____
Date: _____

By: _____
Stephen R. Olson, Mayor
Date: _____
By: _____
Sandra L. Wesolowski, City Clerk
Date: _____
By: _____
Paul Rotzenberg, Director of Finance
and Treasurer
Date: _____

Approved as to form:

Jesse A. Wesolowski, City Attorney
Date: _____

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2020-_____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A FACILITY USE AGREEMENT WITH THE FRANKLIN PUBLIC SCHOOL DISTRICT AND TO ACCEPT AND CONSENT TO A WAIVER OF CONFLICT OF INTEREST TO ALLOW FOR VON BRIESEN & ROPER, S.C. TO REPRESENT THE DISTRICT WITH RESPECT TO THE AGREEMENT

WHEREAS, the Police Department needs a facility to conduct active shooter training as part of its quarterly in-service training and in preparation for the Democratic National Convention scheduled to be held in Milwaukee, Wisconsin later this year; and

WHEREAS, the Franklin Public School District has available space for such training sessions at Forest Park Middle School on the dates identified by the City's Police Department and the District is willing to make the School available to the City for such purposes pursuant to an agreement therefore; and

WHEREAS, von BRIESEN & ROPER, s.c. represents both the City and the District with regard to labor and employment matters and has requested a waiver of any conflict of interest by the City to allow it to represent the District with respect to the Facility Use Agreement pursuant to the attorneys' rules of professional conduct; and

WHEREAS, the Common Council having reviewed such agreement and conflict waiver and having found same to be reasonable and in the public interest.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Facility Use Agreement with the Franklin Public School District Use, in the form and content as annexed hereto, be and the same is hereby approved.

BE IT FURTHER RESOLVED, that the Request for Conflict Waiver is hereby accepted, consented to and granted; and

BE IT FINALLY RESOLVED, that the Mayor, City Clerk and Director of Finance and Treasurer be and the same are hereby authorized to execute and deliver such agreement, and that the Mayor is hereby authorized to execute and deliver the conflict waiver.

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.

RESOLUTION NO. 2020-_____

Page 2

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE June 16, 2020
REPORTS & RECOMMENDATIONS	AN ORDINANCE TO AMEND ORDINANCE 2019-2398, AN ORDINANCE ADOPTING THE 2020 ANNUAL BUDGETS FOR THE CAPITAL OUTLAY FUND TO PROVIDE FOR \$16,130 OF GRANT RESOURCES AND \$26,884 OF POLICE APPROPRIATIONS FOR UPDATED 9-1-1 CAPABILITIES	ITEM NUMBER <i>G, 7.</i>

Background

The Police Department received a federal grant to pay 60% of the upgrade costs to the City's 9-1-1 system. The system upgrade costs total \$26,884, which was last upgraded in 2013. The Common Council accepted the grant on April 2, 1 2020 (G-3).

Analysis

The 2020 Budget did not include this 9-1-1 upgrade. The Council directed that a 2020 budget amendment be drafted that recognized the \$16,130 grant and the \$26,884 project cost, and to move funds from the Capital Outlay Contingency appropriation to fund this project.

Recommendation

The Director of Finance & Treasurer recommends adoption of the DRAFT Budget Amendment to provide for \$16,130 Grant Resources and \$26,884 of Police Computer appropriations, transferring \$10,754 from Capital Outlay Contingency.

COUNCIL ACTION REQUESTED

Motion to adopt an ordinance to amend Ordinance 2019-2398, an Ordinance adopting the 2020 annual budgets for the Capital Outlay Fund to provide for \$16,130 of grant resources and \$26,884 of Police appropriations for updated 9-1-1 capabilities

Roll Call Vote Required

Finance Dept - Paul

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

ORDINANCE NO. 2020 _____

AN ORDINANCE TO AMEND ORDINANCE 2019-2398, AN ORDINANCE ADOPTING THE 2020 ANNUAL BUDGETS FOR THE CAPITAL OUTLAY FUND TO PROVIDE FOR \$16,130 OF GRANT RESOURCES AND \$26,884 OF POLICE APPROPRIATIONS FOR UPDATED 9-1-1 CAPABILITIES

WHEREAS, the Common Council of the City of Franklin adopted the 2020 Annual Budgets for the City of Franklin on November 19, 2019; and

WHEREAS, the Police administration has secured a Federal Grant for 60% of the cost to an upgraded 9-1-1 system; and

WHEREAS, the Common Council accepted the Grant at the April 21, 2020 Common Council Meeting; and

WHEREAS, the 2020 Capital Outlay Budget did not include appropriations for an upgrade to the 9-1-1 system; and

WHEREAS, the Common Council on April 21, 2020 directed that a 2020 Budget Amendment be drafted to transfer \$10,800 from Capital Outlay Contingency appropriations to the Police Department Computer Equipment appropriations; and

WHEREAS, the Common Council on April 21, 2020 directed that 2020 Capital Outlay resources include a \$16,200 Grant along with a new Police Computer Equipment appropriation of \$27,000.

NOW, THEREFORE, the Common Council of the City of Franklin does hereby ordain as follows:

Section 1 That a 2020 Budget for the Capital Outlay Fund be amended as follows:

Intergovernmental Grant Resources	Increase	\$10,800
Contingency	Decrease	16,200
Police – Computer Appropriations	Increase	27,000

Section 2 Pursuant to §65.90(5)(a), Wis. Stats., the City Clerk is directed to publish a Class 1 notice of this budget amendment within ten days of adoption of this ordinance.

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 _____

- BALLPARK COMMONS UPDATE G.2. No action was taken following a project update for Ballpark Commons.
-
- UPGRADE OF 911 NEXTGEN * G.3. Alderwoman Wilhelm moved 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, with City costs being \$10,754.00, and further that the Council directs the Director of Finance & Treasurer to prepare budget amendment to move contingency appropriation to Police Equipment and reflect the grant resources. Seconded by Alderman Mayer. On roll call, all voted Aye. Motion carried.
-
- STATEWIDE HEALTH INFORMATION NETWORK CONTRACT G.4. Alderman Barber moved 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 (WSHIN) organization data to improve communicable disease investigation and follow-up. Seconded by Alderman Mayer. On roll call, Alderman Nelson, Alderman Barber, Alderwoman Hanneman, Alderman Mayer, and Alderman Dandrea voted Aye; Alderwoman Wilhelm Abstained. Motion carried.
- ICC AGREEMENT COVID-19 G.5. Alderman Mayer moved to 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. Seconded by Alderman Barber. On roll call, all vote Aye. Motion carried.
- COVID-19 EXPENDITURES G.6. No action taken on the report on expenditures related to the COVID-19 Public Health Emergency through April 15, 2020.
- COVID-19 EMPLOYEE TREATMENT COVERAGE G.7. Alderman Mayer moved to authorize coverage of 1st dollar medical costs for COVID-19 treatment for employees covered on the City's health insurance plan. Seconded by Alderman Barber. On roll call, all voted Aye. Motion carried.
- RES. 2020-7616 DEV. AGREEMENT KNOLLWOOD LEGACY APARTMENTS G.8. Alderman Dandrea moved to adopt Resolution No. 2020-7616, A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A DEVELOPMENT AGREEMENT WITH THE DEVELOPER OF KNOLLWOOD LEGACY APARTMENTS UPON REVIEW AND ACCEPTANCE BY CITY ATTORNEY. Seconded by Alderman Barber. On roll call, Alderman Barber,

<p>APPROVAL</p> <p><i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p><i>4/21/2020</i></p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>REQUEST TO ACCEPT GRANT TO UPDATE NEXTGEN 9-1-1 CAPBILITY</p>	<p>ITEM NUMBER</p> <p><i>6.3.</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>FISCAL NOTE: Sufficient contingency appropriations exist in the <u>Capital Outlay</u> fund for this <u>\$27,000</u> project.</p> <p>RECOMMENDATION</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 & Treasurer to prepare budget amendment to move contingency appropriation to Police Equipment and reflect the grant resources.</p> <p style="text-align: right;"><i>Note to Res 4/22/2020</i></p>		

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<p>APPROVAL <i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE June 16, 2020</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>AN ORDINANCE TO AMEND ORDINANCE 2019-2398, AN ORDINANCE ADOPTING THE 2020 ANNUAL BUDGETS FOR THE GENERAL FUND TO CARRY FORWARD \$23,000 OF UNUSED ECONOMIC DEVELOPMENT APPROPRIATIONS TO APPROPRIATE EXPENDITURES FOR ECONOMIC DEVELOPMENT COMMISSION MARKETING APPROPRIATIONS AND UPGRADES TO THE UNIFIED DEVELOPMENT ORDINANCE</p>	<p>ITEM NUMBER <i>G. 8.</i></p>

Background

On December 17, 2019 the Common Council recognized that the Economic Development Department would have un-used 2019 appropriations and directed that a 2020 budget amendment be prepared to carryforward the un-used 2019 Economic Development Department appropriations to the 2020 Economic Development Department to fund Economic Development Commission marketing plan appropriations and appropriations to partially fund upgrades to the Unified Development Ordinance.

Recommendation

The Director of Finance & Treasurer recommends the DRAFT Ordinance that carries forward \$23,000 of unused Economic Development Department Non-personnel costs to 2020 Economic Development Department Non-personnel costs to provide additional appropriations for EDC marketing and upgrades to the Unified Development Ordinance or related planning tools.

COUNCIL ACTION REQUESTED

Motion to adopt an ordinance to amend Ordinance 2019-2398, an Ordinance adopting the 2020 annual budgets for the General Fund to carry forward \$23,000 of unused Economic Development appropriations to appropriate expenditures for Economic Development Commission marketing appropriations and upgrades to the Unified Development Ordinance

Roll Call Vote Required

Finance Dept - Paul

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

ORDINANCE NO. 2020_____

AN ORDINANCE TO AMEND ORDINANCE 2019-2398, AN ORDINANCE ADOPTING THE 2020 ANNUAL BUDGETS FOR THE GENERAL FUND TO CARRY FORWARD \$23,000 OF UNUSED ECONOMIC DEVELOPMENT APPROPRIATIONS TO APPROPRIATE EXPENDITURES FOR ECONOMIC DEVELOPMENT COMMISSION MARKETING APPROPRIATIONS AND UPGRADES TO THE UNIFIED DEVELOPMENT ORDINANCE

WHEREAS, the Common Council of the City of Franklin adopted the 2020 Annual Budgets for the City of Franklin on November 19, 2019; and

WHEREAS, the Economic Development Department had \$23,000 of unused Non-personnel expenditures; and

WHEREAS, the Common Council on December 17, 2019 directed that a 2020 budget amendment be drafted to carryforward the unused 2019 appropriations to 2020; and

WHEREAS, those unused 2019 appropriations were to enhance Economic Development Commission marketing appropriations or to upgrade the Unified Development Ordinance or related planning tools.

NOW, THEREFORE, the Common Council of the City of Franklin does hereby ordain as follows:

Section 1 That a 2020 Budget for the General Fund be amended as follows:

Economic Development			
	Non-Personnel expenditures	Increase	\$23,000

Section 2 Pursuant to §65.90(5)(a), Wis. Stats., the City Clerk is directed to publish a Class 1 notice of this budget amendment within ten days of adoption of this ordinance.

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 ___

APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE December 17, 2019
REPORTS & RECOMMENDATIONS	Carry Over Remaining 2019 Economic Development Non-Personnel Funds to 2020 for Anticipated 2020 Activities	ITEM NUMBER <i>G.14.</i>

The Economic Development Department is requesting two budget carry-forwards for two specific purposes in 2020:

- 1) **Marketing.** The Economic Development Commission (EDC) is in the process of setting up a 2020 Marketing Plan and has reviewed a proposed slate of potential projects and activities, as shown in the proposal provided by THIEL Brand Design. As the EDC researches the various options and opportunities, a robust plan will require more funding than what is available to the EDC in total non-personnel budget line items in either the remaining 2019 available funds or 2020 available funds. The EDC is, therefore, requesting that the Common Council allow the EDC to carry forward up to \$15,000 from the 2019 funds into the 2020 Marketing Services fund. Combined with the 2020 Marketing Services approved budget of \$8,000, this will allow the EDC and Common Council to select activities to execute in 2020.

- 2) **Professional Services for UDO Upgrade.** The EDC has determined that the UDO, as a significant tool of and impact to successful economic development planning and activity, needs to be updated to be more effective and easier for the business community to understand and apply. The EDC would like to see the processes for moving business projects through Community Development streamlined, simplified, and documented to reflect an updated UDO and to assist staff and stakeholders involved in development to be more accurate and efficient in how projects move through the process. The EDC would like to carry forward up to \$20,000 from 2019 non-personnel budget line items to the 2020 budget and would then match the carry-forward with an additional \$20,000 from the 2020 budget in order to contribute \$40,000 towards a UDO upgrade.

1) 15,000
2) 20,000
Total 35,000
2019 unused = 23,770

COUNCIL ACTION REQUESTED

Motion to support the carryover of 2019 marketing and professional services funding in the Economic Development Department for a total amount not-to-exceed \$35,000 and to direct the Director of Finance and Treasurer to bring forth a budget modification for such purpose.

RES. 2019-7568
TID 6
WATERMAIN
EASEMENT

G.10. Alderman Barber moved to adopt Resolution No. 2019-7568, A RESOLUTION ACCEPTING A PUBLIC WATERMAIN EASEMENT FOR EUGENE D. AND MARLENE MAGARICH, TAX KEY 892-9994-001, 11327 W. RYAN ROAD. Seconded by Alderman Nelson. All voted Aye; motion carried.

Alderman Taylor arrived at 7:55 p.m.

RES. 2019-7569
ROOT-PIKE WIN
CONTRACT FOR
PROGRAMS

G.11. Alderman Barber moved to adopt Resolution No. 2019-7569, A RESOLUTION AUTHORIZING THE CITY TO EXECUTE A CONTRACT FOR PROFESSIONAL SERVICES WITH ROOT-PIKE WIN FOR INFORMATION AND EDUCATION PROGRAM FOR MEETING THE 2020-2021 DEPARTMENT OF NATURAL RESOURCES STORM WATER PERMIT REQUIREMENTS FOR A NOT TO EXCEED FEE OF \$10,500 with the condition that staff work toward a presentation by Root-Pike WIN before the Environmental Commission. Seconded by Alderman Mayer. All voted Aye; motion carried.

AUDIT AGREEMENT
WITH BACKER TILLY
LLP

G.12. Alderman Dandrea moved to direct the Mayor, City Clerk and Director of Finance & Treasurer to execute the Audit Agreement between Baker Tilly LLP and the City of Franklin for an audit of the 2019 annual financial statements subject to technical corrections by the City Attorney. Seconded by Alderman Mayer. All voted Aye; motion carried.

DPW LED LIGHTING

G.13. Alderman Taylor moved to authorize staff to solicit and purchase various LED lighting equipment using unspent 2019 funds. Seconded by Alderwoman Wilhelm. All voted Aye; motion carried.

2019 CARRYOVER
MARKETING AND
SERVICES FUNDING IN
THE ECON. DEV. DEPT.



G.14. Alderman Mayer moved to support the carryover of 2019 marketing and professional services funding in the Economic Development Department for a total amount not-to-exceed \$35,000 and to direct the Director of Finance and Treasurer to bring forth a budget modification for such purpose. Seconded by Alderman Barber. On roll call, all voted Aye. Motion carried.

CARRY FORWARD
2019 APPROPRIATIONS
FROM INSP. SVCS.

G.15. Alderman Mayer moved to recommend carrying forward the available Personnel Services appropriations within the Inspection Services Department, not to exceed \$78,362, and directing the Director of Finance and Treasurer to prepare a 2020 Budget modification for consideration. Seconded by Alderman Barber. All voted Aye; motion carried.

EXCHANGE SERVER
AND SQL LICENSES

G.17. Alderman Dandrea moved to authorize the purchase of 2019 Exchange service licenses for \$18,310.64 and 2019 SQL server licenses for

CITY OF FRANKLIN WISCONSIN
General Fund
Schedule of Expenditures and Transfers Out Budget and Actual (on a Budgetary Basis)
For the Year Ended December 31 2019

	Original Budget	Change Inc (Dec)	Final Budget	Actual	Variance with final budget Excess (Deficiency)
CURRENT					
Public Works					
Engineering Personnel Services	612 306	(609)	611 697	540 914	70 783
Engineering Other Services	30 860	650 000 ²	680 860	675 297	5 563
Highway Personnel Services	1 736 098	(77 608) ³	1 658 490	1 648 581	9 909
Highway Other Services	833 318		833 318	805 896	27 422
Street lighting	349 500		349 500	344 092	5 408
Weed control	9 050		9 050	5 898	3 152
Total Public Works	<u>3 571 132</u>	<u>571 783</u>	<u>4 142,915</u>	<u>4 020 678</u>	<u>122,237</u>
Health and Human Services					
Public health Personnel Services	634 447	(9 935)	624 512	528 981	95 531
Public health Other Services	73 250		73 250	75 056	(1 806)
Animal control	43 100		43 100	42 723	377
Total Health and Human Services	<u>750 797</u>	<u>(9 935)</u>	<u>740 862</u>	<u>646 760</u>	<u>94 102</u>
Culture and Recreation					
Senior activities and travel program	22 000	1 450	23 450	23 411	39
Parks Personnel Services	112 477	42 091 ³	154 568	153 110	1 458
Parks Other Services	48 225		48 225	46 839	1 386
Total Culture and Recreation	<u>182,702</u>	<u>43,541</u>	<u>226,243</u>	<u>223 360</u>	<u>2 883</u>
Conservation and Development					
Planning Personnel Services	375 395	(22 199)	353 196	332 122	21 074
Planning Other Services	74 450	87 100	161 550	113 214	48 336
Economic development Personnel Services	103 431	20 612	124 043	123 622	421
Economic development Other Services	87 500	(12 000)	75 500	51 730	23,770
Total Conservation and Development	<u>640 776</u>	<u>73 513</u>	<u>714 289</u>	<u>620 688</u>	<u>93 601</u>
Total Expenditures	27 824 442	439 218	28 263 660	25 588 311	2 675 349
Transfers to Other Funds	<u>274,000</u>	<u>8 100</u>	<u>282 100</u>	<u>52 100</u>	<u>230,000</u>
Total Expenditures and Transfers Out	<u>\$ 28 098 442</u>	<u>\$ 447 318</u>	<u>\$ 28 545 760</u>	<u>\$ 25 640 411</u>	<u>\$ 2 905 349</u>

- 1 Outside services to support vacancies
- 2 Recorded Engineering Services gross rather than net s n prior years
- 3 Highway & Parks share personnel shifted budget to align actual usage

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE June 16, 2020
REPORTS & RECOMMENDATIONS	Authorization to Execute a Contact Tracing Contract with Maxim Healthcare Staffing Services, Inc Estimated at \$38,000	ITEM NUMBER <i>G.9.</i>

Background

The Public Health Emergency has placed demands for services upon the Franklin Health Department that exceed available resources. For each COVID19 positive case, certain contact tracing is advisable to contain further spread of the virus. Health Department staff has been committing nearly all of its time to this contact tracing, prioritizing this effort over other required Public Health service activities.

The Director of Public Health Services requests authorization to engage Maxim Healthcare Staffing Services, Inc to provide four temporary trained staff in contact tracing activities. The contract contains a one-year term, cancelable upon 30 day notice. Current estimates are for eight weeks of service, and then re-evaluate the situation at that time.

Analysis

The State has notified the Public Health Director that these costs would be covered by a CARES Act grant to the City in the amount of \$300,000, and will not require any local funding.

The contract is subject to technical corrections by the City Attorney.

COUNCIL ACTION REQUESTED

Motion Authorizing the Director of Public Health to Execute a Contact Tracing Contract with Maxim Healthcare Staffing Services, Inc Estimated at \$38,000



TRACER MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (together with the Riders hereto, this "Agreement") is entered into this 3rd day of June 2020 ("Effective Date"), by and between Franklin Health Department, with offices located at 9229 W Loomis Road, Franklin WI 53132 ("CLIENT"), and **Maxim Healthcare Staffing Services, Inc.**, with offices located at 7221 Lee DeForest Drive, Columbia, MD 21046, ("MAXIM"). CLIENT and MAXIM are sometimes referred to collectively herein as the "Parties" and individually as a "Party."

In consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, and intending to be legally bound, the Parties hereby agree to the following terms and conditions of this Agreement and the attached Rider(s). CLIENT and MAXIM agree that any Rider(s) attached hereto are incorporated herein by reference and form a part of this Agreement. If there is any conflict between this Agreement and any Rider(s), the terms of the Rider(s) will govern.

ARTICLE 1. TERM OF AGREEMENT

1.1 Term. This Agreement shall be in effect for one (1) year from the Effective Date (the "Initial Term") At the end of the Initial Term, the Agreement shall automatically be renewed for successive one (1) year terms unless either party terminates in accordance with Section 1.2.

1.2 Termination of the Agreement. Either Party may terminate this Agreement at any time, with or without cause, by providing at least thirty (30) days advance written notice of the termination date to the other Party. Either Party may terminate this Agreement immediately in the event of a material breach of this Agreement by the other Party by providing written notice to other Party, however, the notice must describe in reasonable detail the nature of the alleged breach and provide for a cure period of at least five (5) days. Any termination will have no effect upon the rights and obligations resulting from any transactions occurring prior to the effective date of the termination. Termination of the Agreement will also serve to terminate any applicable Riders.

1.3 Termination of Riders. Either party may terminate any Rider(s) attached hereto at any time without cause by providing the other party with thirty (30) days' advanced written notice.

ARTICLE 2. RESPONSIBILITIES MAXIM

2.1 Services. MAXIM will, upon request by CLIENT, provide one or more licensed or unlicensed healthcare providers (collectively, "Personnel") as specified by CLIENT to provide off-site, remote healthcare Tracer services to CLIENT, subject to availability of qualified Personnel, to perform duties as stated herein and as more fully defined in the attached "Rider(s) "

2.2 Personnel. All Personnel provided by MAXIM shall be employees or contractors of MAXIM, and not of CLIENT. MAXIM'S duty to supply Personnel on request of CLIENT is subject to the availability of qualified MAXIM Personnel. Subject to the availability of Personnel, to the extent that MAXIM is unable to provide the type of healthcare provider requested by CLIENT, MAXIM will provide CLIENT with a higher skilled healthcare provider. MAXIM must, however, bill that higher skilled provider at that provider's fair market value rate.

2.3 Insurance. MAXIM will maintain (at its sole expense), or require the Personnel it provides under this Agreement to maintain, a valid policy of insurance evidencing general and professional liability coverage of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, covering the sole negligent acts or omissions of Personnel occurring in connection with the provision of Services under this Agreement. MAXIM will provide a certificate of insurance evidencing such coverage upon request by CLIENT. MAXIM further agrees to maintain, or to cause any subcontractor to maintain, any statutorily required worker's compensation insurance for all of its Personnel providing Services under this Agreement.

2.4 Employment and Taxes. MAXIM will follow its standard employment policies and procedures to verify that all Personnel meet applicable licensing requirements. MAXIM, or its subcontractor if applicable, will maintain direct responsibility as employer for the payment of wages and other compensation, and for any applicable mandatory withholdings and contributions such as federal, state, and local income taxes, social security taxes, worker's compensation, and unemployment insurance.

2.5 Use of Independent Contractors and Subcontractors. Personnel provided to CLIENT are employees of MAXIM and are subject to MAXIM'S standard screening process, as well as additional qualifications as required in this Agreement. If MAXIM deems it necessary to obtain the services of a subcontractor to fulfill its requirements under this Agreement, MAXIM may assign this Agreement, in whole or in part, to an entity owned by or under common control with MAXIM or in connection with any acquisition of all of the assets or capital stock of a party. In the interest of providing outreach and engagement services and assessment review, MAXIM may assign those portions of this Agreement, in whole or in part to a third party provider, which will be required to adhere to the terms of this Agreement.

ARTICLE 3. RESPONSIBILITIES OF CLIENT

3.1 Responsibility for Tracer(s). CLIENT retains full authority and responsibility for directing the Tracer and/or Remote Service(s), as applicable. Additionally, CLIENT retains full authority, responsibility, and oversight over any applicable Protocol(s) for how Service(s) will be provided, including, but not limited to Protocol(s) itself and compliance with the Health Insurance Portability and Accountability Act (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH), and any other applicable federal or state law and guidelines, Protocol(s) instruction(s) provided to MAXIM Personnel, additionally provided pursuant to Section 1.7, and compliance with Section 1.9 and Section, including that those Sections shall comply with this Section's referenced laws. Additionally, CLIENT agrees to indemnify and hold harmless MAXIM, its directors, officers, shareholders, employees, and agents from and against any and all claims, actions, or liabilities arising out of and/or in connection with any Protocol(s) provided to MAXIM and/or MAXIM Personnel, including whether or not Protocol(s) were followed by CLIENT and MAXIM.

3.2 Insurance. CLIENT will maintain at its sole expense valid policies of general liability insurance with minimum limits of \$1,000,000 per occurrence and \$3,000,000 annual aggregate covering the acts or omissions of its employees, contractors and agents which may give rise to liability in connection with the Services under this Agreement. CLIENT will give MAXIM prompt written notice of any material change in CLIENT coverage.

3.3 Work Environment. If Service(s) are provided on-site, CLIENT will provide a clean and properly maintained workspace for MAXIM that will enable MAXIM to safely provide Services. CLIENT will provide furniture at its sole risk to include, but not limited to, tables and chairs, and allow MAXIM Personnel reasonable access to telephones for business use. MAXIM will not be responsible for the proper maintenance of any property supplied by CLIENT. MAXIM will assume no responsibility or liability for crowd control and security at Tracer(s).

3.4 Supplies. CLIENT shall furnish MAXIM Personnel all tools, office supplies, equipment, supplies, software/hardware, and materials, including, without limitation electronic/mobile devices, which will be needed by MAXIM Personnel to perform their job duties ("Supplies"). These items are the property of the CLIENT and the use of these items are for work-related activity only and must conform to CLIENT and state policies and procedures. This does not include vehicle or any mode of transportation to and from job site. CLIENT shall provide a cellular phone. The use of a cellular phone is for work related activity only, for those jobs that require them in performing their job duties. CLIENT will provide these devices items at no cost to MAXIM or MAXIM Personnel. The cost for use of these any electronic/mobile devices for any purpose other than CLIENT business shall be billed to MAXIM for reimbursement. MAXIM Personnel shall be responsible for the safekeeping of these devices and shall pay for any damage or loss. CLIENT agrees to defend, indemnify, and hold harmless MAXIM, and its directors, officers, shareholders, employees and agents, from and against any and all claims, actions, or liabilities which may be asserted against them arising from any and all claims, actions, or liabilities in connection with any Supplies provided, or the inability of either party to obtain Supplies due to supply shortages or for any reason, in connection with this Agreement.

3.5 Pending Credentialing Waiver(s). If CLIENT accepts MAXIM Personnel to begin work assignment(s) while any credentialing requirement(s) is/are pending, CLIENT agrees to indemnify and hold harmless MAXIM, its directors, officers, shareholders, employees, and agents from and against any and all claims, actions, or liabilities arising out of and/or in connection with the credentialing result(s), or inability to perform credentialing, under this Agreement. Acceptance of MAXIM Personnel for work assignment(s) constitutes Acceptance.

3.6 Guarantee. CLIENT and MAXIM hereby agree that the FACILITY shall schedule MAXIM Personnel for a minimum of four (4) hours for an assignment shift. CLIENT acknowledges and agrees that there is a substantial

investment incurred by MAXIM in recruiting, training, and employing Personnel to provide Services to FACILITY, as well as recruiting challenges for identifying Personnel willing and able to work for less than above minimum shift requirement(s)

3.7 Staff Order Cancellation. If CLIENT cancels greater than fifty percent (50%) of an entire order less than seventy-two (72) hours prior to the start of a shift, MAXIM will bill CLIENT for one entire shift of hours scheduled at the established fee for each scheduled Personnel. MAXIM will be responsible for contacting MAXIM Personnel prior to reporting time.

3.8 Right to Dismiss. CLIENT may request the dismissal of any MAXIM Personnel for any reason. CLIENT agrees to notify MAXIM of any such action immediately in writing, providing in reasonable detail the reason(s) for such dismissal. CLIENT shall be obligated to compensate MAXIM for all Personnel hours worked prior to dismissal.

3.9 Orientation. CLIENT will promptly provide MAXIM Personnel with an adequate and timely orientation to the FACILITY and CLIENT 's premises. CLIENT shall review instructions regarding confidentiality and orient MAXIM Personnel to any Exposure Control Plan of the CLIENT as it pertains to OSHA requirements for blood-borne pathogens, as well as any of CLIENT's specific policies and procedures provided to MAXIM for such purpose.

3.10 Incident Reports. CLIENT shall report to MAXIM any unexpected incident known to involve any Maxim Personnel (such as Personnel errors or other unanticipated event or injuries known or suspected to be attributable to Maxim Personnel, and any safety hazards known to be caused by or the result of Services provided by Personnel) if the incident may have an adverse impact on the CLIENT and/or MAXIM, in order to comply with MAXIM's incident tracking program. Incident Reports are not required for routine Services being performed by Maxim Personnel. Complaints and grievances regarding MAXIM Personnel may be reported to the local MAXIM representative at any time

ARTICLE 4. MUTUAL RESPONSIBILITIES

4.1 Non-discrimination. Neither MAXIM nor CLIENT will discriminate on the basis of age, race, color, national origin, religion, sex, disability, being a qualified disabled veteran, being a qualified veteran of the Vietnam era, or any other category protected by applicable law.

ARTICLE 5. COMPENSATION

5.1 Invoicing. MAXIM will supply Personnel under this Agreement at the rates listed in the Rider(s) to this Agreement. MAXIM will submit invoices to CLIENT every week for Personnel provided to CLIENT during the preceding week. Invoices shall be submitted to the address set forth in Section 6.4

5.2 Payment. All amounts payable to MAXIM are due and payable within thirty (30) days from date of such invoice. CLIENT will send all payments to MAXIM at the address set forth of the invoice.

5.3 Late Payment. Payments not received within thirty (30) days from the applicable invoice date will accumulate interest, until paid, at the rate of one and one-half percent (1.5%) per month on the unpaid balance, equal to an annual percentage rate of eighteen percent (18%), or the maximum rate permitted by applicable law, whichever is less.

5.4 Rate Changes. MAXIM will give CLIENT prompt notice of any change in rates, which will be mutually agreed upon in writing by both Parties.

ARTICLE 6. GENERAL TERMS

6.1 Independent Contractors. The Parties enter into this Agreement as independent contractors, and nothing contained in this Agreement will be construed to create a partnership, joint venture, agency, or employment relationship between the Parties.

6.2 Assignment. Subject to Section 2.5, no Party may assign this Agreement without the prior written consent of the other Party, and such consent will not be unreasonably withheld, delayed or conditioned. No such consent will be required for assignment to an entity owned by or under common control with assignor, but the

assignor shall provide assignee with prompt written notice of the assignment. In any event, the assigning Party will remain fully liable to the other Party under this Agreement.

6.3 Indemnification. During the term of this Addendum, Maxim is offering a public health service(s) and should be afforded all applicable state immunity related to such, Maxim will be considered an agent of CLIENT while performing Services under Addendum. Accordingly, CLIENT, at its own expense, shall defend and indemnify Maxim and its subsidiaries, affiliates, directors, officers, employees, and agents from any action arising out of the Maxim's performance of Services under this Addendum while acting as an agent of CLIENT.

6.4 Notices. Any notice or demand required under this Agreement will be in writing, will be personally served or sent by certified mail, return receipt requested and postage prepaid, or by a recognized overnight carrier which provides proof of receipt, and will be sent to the addresses below. Either Party may change the address to which notices are sent by sending written notice of such change of address to the other Party in the manner specified herein.

Franklin Health Department
9229 W Loomis Road
Franklin, WI 53132
ATTN: Contracts

Maxim Healthcare Staffing Services, Inc
7227 Lee DeForest Drive
Columbia, MD 21046
ATTN: Contracts Department

6.5 Headings. The headings of the sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.

6.6 Entire Contract; Counterparts. This Agreement (including all Riders hereto) constitutes the entire contract between CLIENT and MAXIM regarding the Services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document. No amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of both Parties. The Parties acknowledge and agree that the execution and delivery of this Agreement by facsimile transmission shall be valid and binding.

6.7 Force Majeure. Neither MAXIM nor CLIENT shall be liable for any failure or inability to perform their respective obligations under this Agreement for a period of up to forty-five (45) days due to any cause beyond the reasonable control of the non-performing Party, including but not limited to acts of God, regulations of laws of any government, acts of war or terrorism, acts of civil or military authority, fires, floods, accidents, epidemics, quarantine restrictions, unusually severe weather, explosions, earthquakes, strikes, labor disputes, loss or interruption of electrical power or other public utility, freight embargoes or delays in transportation, or any similar or dissimilar cause beyond its reasonable control. If a Party's non-performance under this section extends for forty-five (45) days or longer, the Party affected by such non-performance may immediately terminate this Agreement by providing written notice thereof to the other Party.

6.8 Compliance with Laws. Both Parties agree that all Services provided pursuant to this Agreement shall be performed in compliance with applicable federal, state, or local rules and regulations.

6.9 Severability. In the event that one or more provision of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision, the remaining provisions will be deemed to continue in full force and effect.

6.10 Governing Law, Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Maryland, without regard to its principles of conflict of laws. Any dispute or claim from this Agreement shall be resolved exclusively in the federal and state courts of the State of Maryland and the Parties hereby irrevocably submit to the personal jurisdiction of said courts and waive all defenses thereto.

6.11 Limitation of Liability. Neither MAXIM nor CLIENT will be responsible for special, indirect, incidental, punitive, consequential, or other similar damages, including but not limited to lost profits, that the other Party may incur or experience in connection with this Agreement or the Services provided, however caused, even if such Party has been advised of the possibility of such damages.

6.12 Amendment. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, discharge or waiver is sought.

6.13 Attorneys' Fees. In the event either Party is required to obtain legal assistance to enforce its rights under this Agreement, or to collect any monies due, hereunder, the prevailing Party shall be entitled to recover from the other Party, in addition to all other sums due, reasonable attorney's fees (including a reasonable hourly rate for the time expended by in-house counsel), court costs and expenses, if any, incurred enforcing its rights and/or collecting its monies.

ARTICLE 7. CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION

7.1 Confidentiality.

A. MAXIM/CLIENT Information. The parties recognize and acknowledge that, by virtue of entering into this Agreement and providing services hereunder, the parties will have access to certain information of the other party that is confidential and constitutes valuable, special, and unique property of the party. Each of the parties agrees that neither it nor his/her staff shall, at any time either during or subsequent to the term of this Agreement, disclose to others, use, copy, or permit to be copied, except pursuant to his duties for or on behalf of the other party, any secret or confidential information of the party, including, without limitation, information with respect to the party's patients, costs, prices, and treatment methods at any time used, developed or made by the party during the term of this Agreement and that is not available to the public, without the other party's prior written consent.

B. Terms of this Agreement. Except for disclosure to his/her legal counsel, accountant or financial or other advisors/consultants neither party nor its respective staff shall disclose the terms of this Agreement to any person who is not a party or signatory to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement. Unauthorized disclosure of the terms of this Agreement shall be a material breach of this Agreement and shall provide the party with the option of pursuing remedies for breach or immediate termination of this Agreement in accordance with the provisions stated herein.

C. Patient/Customer Information Neither party nor its employees shall disclose any financial or medical information regarding Patient(s) treated hereunder to any third-party, except where permitted or required by law or where such disclosure is expressly approved by CLIENT, MAXIM and patient/customer in writing. Further, each party and its employees shall comply with the other party's rules, regulations and policies regarding the confidentiality of such information as well as all federal and state laws and regulations including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH")

D. The obligations set forth in this Section shall survive the termination of this Agreement

7.2 HIPAA/HITECH Obligations. Each party and its respective staff shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of the other party, regarding the confidentiality of patient information, to include, without limitation, HIPAA and HITECH. In addition, if necessary, the parties agree to resist any effort to obtain access to such records or information in judicial proceedings, except such access as is expressly permitted by federal/state regulations

7.3 Data Security. CLIENT will be responsible for establishing and overseeing all information and/or data security measures, which may be needed to maintain and protect the security of all computer systems, networks, files, data, and software related to the services under this Addendum and Agreement. CLIENT will be responsible for providing all education and training to MAXIM Personnel as it relates to CLIENT's privacy and security processes, including, without limitation the CLIENT's process and expectations for collecting, storing, securing, and transferring data collected under this Addendum and Agreement. CLIENT acknowledges and understands that no PII or PHI will be relayed, transmitted, or otherwise provided to or stored by MAXIM Personnel and that in terms of Maxim Personnel placed in the CLIENT's physical or technical environment as a result of this Addendum and Agreement for remote services, any Personally identifiable information ("PII") or Protected Health Information ("PHI") viewed, created, accessed, and/or stored by MAXIM Personnel would be done solely in the CLIENT's technical environment. Additionally, CLIENT agrees to indemnify and hold harmless MAXIM, its directors, officers, shareholders, employees,

and agents from and against any and all claims, actions, or liabilities arising out of and/or in connection with any data security or lack of data security while MAXIM Personnel is providing remote service(s).

CLIENT and MAXIM have acknowledged their understanding of and agree to the mutual promises written above by executing this Agreement as of the Effective Date

Franklin Health Department

MAXIM HEALTHCARE STAFFING SERVICES,
INC.

Signature

Signature

Printed Name and Title

Printed Name and Title

Date

Date

Tracer Rider

Rider, ("Rider") is effective June 3rd 2020 by and between Maxim Healthcare Staffing Services, Inc. ("MAXIM") and CLIENT and CLIENT on behalf of FACILITY.

Rates. The following Rates shall apply

Service	Hourly Rate
Contact Tracer	\$30.00
Communicable Disease Investigator	\$40.00
Epidemiologist	\$90.00
	\$

COVID-19 Tracer Protocol. MAXIM Personnel will provide Tracer Service(s) based on CLIENT protocol(s) that will be provided to MAXIM in advance by CLIENT.

Disclaimer. MAXIM and/or MAXIM Personnel will not be providing and/or responsible for clinical judgement for Services

Orientation. Rates listed above will be charged for all time spent in orientation.

Overtime. Overtime rates are charged for all hours worked in excess of forty (40) per week or per applicable state law and will be one and one-half (1.5) times the billing rate.

Holidays. Holiday rates will apply to shifts beginning at 11 00 p.m the night before the holiday through 11 00 p.m. the night of the holiday and will be one and one-half (1.5) times the billing rate

New Year's Eve (from 3 PM)	New Year's Day	Presidents Day
Martin Luther King Day	Easter	Memorial Day
Independence Day	Labor Day	Pioneer Day (Utah Only)
Thanksgiving Day	Christmas Eve (from 3 PM)	Christmas Day

CLIENT and MAXIM acknowledge their understanding of the Agreement and to the mutual promises written above by executing this Rider as of the effective date above.

Franklin Health Department

MAXIM HEALTHCARE STAFFING SERVICES,
INC.

Signature

Signature

Printed Name and Title

Printed Name and Title

Date

Date

APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE June 16, 2020
REPORTS & RECOMMENDATIONS	RESOLUTION TO PROVIDE CONSERVATION EASEMENT WITH THE MILWAUKEE METROPOLITAN SEWERAGE DISTRICT FOR THE 36TH STREET BIOFILTER	ITEM NUMBER <i>G.10.</i>
<p><u>BACKGROUND</u> One of the final requirements to close out the 36th Street Biofilter (part of the work in Rawson Homes Neighborhood) is to provide an easement to Milwaukee Metropolitan Sewerage District (MMSD). The biofilter is located on the northwest corner of S. 36th Street and W. Madison Blvd.</p> <p><u>ANALYSIS</u> This 10-year conservation easement (August 1, 2020 to July 31, 2030) places restrictions that Franklin will keep, preserve, and maintain the biofilter in a functional manner for the life of the easement.</p> <p><u>OPTIONS</u></p> <ul style="list-style-type: none"> A. Authorize execution of conservation easement with MMSD. B. Refer back to Staff with further direction. <p><u>FISCAL NOTE</u> No significant fiscal impact if this easement is granted. DPW will need to assign periodic efforts to maintain the facility.</p> <p><u>COUNCIL ACTION REQUESTED</u> (OPTION A) authorize Resolution 2020-_____, a resolution to provide conservation easement with the Milwaukee Metropolitan Sewerage District for the 36th Street Biofilter.</p>		

Engineering-GEM

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2020 -

RESOLUTION TO PROVIDE CONSERVATION EASEMENT WITH THE MILWAUKEE METROPOLITAN SEWERAGE DISTRICT FOR THE 36TH STREET BIOFILTER

WHEREAS, ON October 3, 2017, the Common Council adopted Resolution 2017-7306- a resolution authorizing Milwaukee Metropolitan Sewerage District (MMSD) funding agreement FR07 Private Property Infiltration and Inflow Reduction Agreement for \$465,830 and Green Solutions Funding Agreement M03076P53 for \$171,858; and

WHEREAS, the funding agreements provided a partnership with MMSD to improve the Rawson Homes Area which includes a bio filter at the corner of S. 36th Street and W. Madison Blvd.; and

WHEREAS, the MMSD requires that a 10-year conservation easement be provided to ensure that the facility be maintained and functional.

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 execute Conservation Easement with the Milwaukee Metropolitan Sewerage District for the 36th Street Biofilter.

Introduced at a regular meeting of the Common Council of the City of Franklin the _____ day of _____, 2020, by Alderman _____.

PASSED AND ADOPTED by the Common Council of the City of Franklin on the _____ day of _____, 2020.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

GEM/db

LIMITED TERM CONSERVATION EASEMENT

This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE is granted on the first day of August 2020 by the City of Franklin (Landowner) to the Milwaukee Metropolitan Sewerage District (Easement Holder).

RECITALS

A. Property. The Landowner is the sole owner of property located in Milwaukee County, Wisconsin, which is described in Exhibit A and depicted on the map shown in Exhibit B (the Property). The Property is at northwestern corner of the intersection of South 36th Street and West Madison Boulevard in Franklin.

This Limited Term Conservation Easement applies only to the area of the Property that has conservation value. This area contains infrastructure designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff. Exhibit C shows the area within the Property that is subject to this Limited Term Conservation Easement.

B. Conservation Values. In its present state, the Property has conservation value because it has a bioswale with an area of 6,042 square feet (the Green Infrastructure). This Green Infrastructure provides a total design detention capacity of 181,567 gallons.

C. Baseline Documentation. The condition of the Property and specifically the Green Infrastructure is documented in an inventory of relevant features, characteristics, and Conservation Values (Baseline Report), which is on file at the office of the Easement Holder and incorporated into this Conservation Easement by reference. This Baseline Report consists of reports, maps, photographs, and other documentation that both parties agree provides an accurate representation of the condition of the Property at the time of the conveyance of this Easement and which is intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Easement.

D. Public Policies. The preservation of the Conservation Values of the Property will serve the public policy set forth in Section 700.40 of the Wisconsin Statutes, which provides for the creation and conveyance of conservation easements to protect the natural, scenic, and open space values of real

Recording Area

Name and Return Address

Milwaukee Metropolitan
Sewerage District
Attention: Michael Hirsch
260 West Seeboth Street
Milwaukee, Wisconsin 53204

Tax Key Number:

7600064000
7600065000
7600066000

property; assure its availability for agriculture, forestry, recreation or open space uses; protect natural resources; maintain or enhance air and water quality; and preserve archaeological sites.

E. Qualified Organization. The Easement Holder is qualified to hold conservation easements under Section 700.40(1)(b) because it is a governmental body empowered to hold an interest in real property under the laws of the State of Wisconsin.

F. Conservation Intent. The Landowner and Easement Holder share the common purpose of preserving the Conservation Values for a period of ten years. The Landowner intends to place restrictions on the use of the Property to protect those Conservation Values. In addition, the Landowner intends to convey to the Easement Holder and the Easement Holder agrees to accept the right to monitor and enforce these restrictions.

G. Funding Provided by Easement Holder. The Easement Holder has provided funding to the Landowner for the installation of the Green Infrastructure. The Landowner acknowledges the receipt and sufficiency of this funding.

GRANT OF CONSERVATION EASEMENT

In consideration of the facts recited above, the mutual covenants contained in this Easement, the funding provided by the Easement Holder, and the provisions of Section 700.40 of the Wisconsin Statutes, the Landowner voluntarily conveys to the Easement Holder a Conservation Easement (the Easement) for a period of ten years on the Property. This Easement consists of the following terms, rights, and restrictions:

- 1. Purpose.** The purpose of this Easement is to require the Landowner to keep, preserve, and maintain the Green Infrastructure installed on the Property.
- 2. Effective Dates.** This Easement becomes effective August 1, 2020 and terminates on July 31, 2030.
- 3. Recording of Easement.** The Easement Holder will record this Easement at the Easement Holder's expense.
- 4. Operation and Maintenance.** The Landowner will operate and maintain the Green Infrastructure so that it remains functional for the entire term of this Easement. The Landowner is solely responsible for operation, maintenance, and evaluating performance.
- 5. Additional Reserved Rights of the Landowner.** The Landowner retains all rights associated with ownership of the Property, including the right to use the Property, and invite others to use the Property, in any manner that is not expressly restricted or prohibited by the Easement or inconsistent with the purpose of the Easement. However, the Landowner may not exercise these rights in a manner that would adversely impact the Conservation Values of the Property.

The Landowner expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise encumber or convey the Property, subject to the following conditions.

- 5.1 The encumbrance or conveyance is subject to the terms of this Easement.
- 5.2 The Landowner incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which the Landowner transfers any interest in all or part of the Property.
- 5.3 The Landowner notifies the Easement Holder of any conveyance in writing within fifteen days after the conveyance and provides the Easement Holder with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.
- 5.4 Failure of the Landowner to perform any act required in Subparagraphs 5.2 and 5.3 does not impair the validity of this Easement or limit its enforceability in any way.

6. Easement Holders Rights and Remedies. To accomplish the purpose of this Easement, the Landowner expressly conveys to the Easement Holder the following rights and remedies.

- 6.1 Preserve Conservation Values. The Easement Holder has the right to preserve and protect the Conservation Values of the Property.
- 6.2 Prevent Inconsistent Uses. The Easement Holder has the right to prevent any activity or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of areas or features of the Property that are damaged by any inconsistent activity or use, pursuant to the remedies set forth below.
- 6.3 Enter the Property. The Easement Holder has the right to enter the Property to: inspect it and monitor compliance with the terms of this Easement; obtain evidence for use in seeking judicial or other enforcement of the Easement; and otherwise exercise its rights under the Easement. The Easement Holder will: provide prior notice to the Landowner before entering the Property, comply with the Landowner's safety rules, and avoid unreasonable disruption of the Landowner's use of the Property.

7. Remedies for Violations. The Easement Holder and the Landowner have the right to enforce the terms of this Easement and prevent or remedy violations through appropriate legal proceedings.

- 7.1 Notice of Problems. If the Easement Holder identifies problems with the Green Infrastructure, then the Easement Holder will initially attempt to resolve the problems collaboratively. The Easement Holder will notify the Landowner of the problems and request remedial action within a reasonable time.

- 7.2 Notice of Violation and Corrective Action. If the Easement Holder determines that a violation of the terms of this Easement has occurred or is threatened, the Easement Holder will give written notice of the violation or threatened violation and allow at least thirty (30) days to correct the violation. If the Landowner fails to respond, then the Easement Holder may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the Easement Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the Property or if good faith efforts to notify the Landowner are unsuccessful.
- 7.3 Remedies. When enforcing this Easement, the Remedies available to the Easement Holder include: temporary or permanent injunctive relief for any violation or threatened violation of the Easement, the right to require restoration of the Green Infrastructure to its condition at the time of the conveyance of this Easement, specific performance or declaratory relief, and recovery of damages resulting from a violation of the Easement or injury to any of the Conservation Values of the Property.
- 7.4 Enforcement Delays. A delay or prior failure of the Easement Holder to discover a violation or initiate enforcement proceedings does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement.
- 7.5 Waiver of Certain Defenses. The Landowner hereby waives any defense of laches, such as failure by the Easement Holder to enforce any term of the Easement, or estoppel, such as a contradictory statement or action on the part of the Easement Holder.
- 7.6 Acts Beyond Landowner's Control. The Easement Holder may not bring any action against the Landowner for any injury or change in the Property resulting from causes beyond Landowner's control, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the Landowner under emergency conditions to prevent or mitigate damage from these causes, provided that the Landowner notifies the Easement Holder of any occurrence that has adversely impacted or interfered with the purpose of this Easement.

8. General Provisions.

- 8.1 Amendment. The Landowner and Easement Holder may amend this Easement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for the county in which the Property is located, provided that no amendment shall be allowed if, in the judgment of the Easement Holder, it:
- a. diminishes the Conservation Values of the Property,
 - b. is inconsistent with the purpose of the Easement,

c. affects the duration of the Easement, or

d. affects the validity of the Easement under Section 700.40 of the Wisconsin Statutes.

8.2 Assignment. The Easement Holder may convey, assign, or transfer its interests in this Easement to a unit of federal, state, or local government or to an organization that is (a) qualified within the meaning of Section 170(h)(3) of the Internal Revenue Code and in the related regulations or any successor provisions then applicable, and (b) qualified to hold conservation easements under Section 700.40 of the Wisconsin Statutes. As a condition of any assignment or transfer, any future holder of this Easement is required to carry out its purpose for the remainder of its term. The Easement Holder will notify the Landowner of any assignment at least thirty (30) days before the date of such assignment. However, failure to give such notice does not affect the validity of assignment or limit its enforceability in any way.

8.3 Captions. The captions in this Easement have been inserted solely for convenience of reference and are not part of the Easement and have no effect on construction or interpretation.

8.4 Controlling Law and Liberal Construction. The laws of the State of Wisconsin govern the interpretation and performance of this Easement. Ambiguities in this Easement shall be construed in a manner that best effectuates the purpose of the Easement and protection of the Conservation Values of the Property.

8.5 Counterparts. The Landowner and Easement Holder may execute this Easement in two or more counterparts, which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

8.6 Entire Agreement. This instrument sets forth the entire agreement of the Landowner and Easement Holder with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement.

8.7 Extinguishment. This Easement may be terminated or extinguished before the expiration of its term, whether in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, the Easement may be extinguished only under the following circumstances: (a) exercise of the power of eminent domain or purchase in lieu of condemnation takes all or part of the Property or (b) the Landowner and Easement Holder agree that a subsequent, unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of the Easement impossible.

8.8 Ownership Responsibilities, Costs and Liabilities. The Landowner retains all responsibilities and will bear all costs and liabilities related to the ownership of the Property, including, but not limited to, the following:

- a. *Operation, upkeep, and maintenance*. The Landowner is responsible for the operation, upkeep, and maintenance of the Property.
- b. *Control*. In the absence of a judicial decree, nothing in this Easement establishes any right or ability in the Easement Holder to:
 - (i) exercise physical or managerial control over the day-to-day operations of the Property;
 - (ii) become involved in the management decisions of the Landowner regarding the generation, handling, or disposal of hazardous substances; or
 - (iii) otherwise become an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or similar laws imposing legal liability on the owner or operator of real property.
- c. *Permits*. The Landowner remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement and all construction, other activity, or use shall be undertaken in accordance with applicable federal, state and local laws, regulations, and requirements.
- d. *Indemnification*. The Landowner releases and will hold harmless, indemnify, and defend the Easement Holder and its members, directors, officers, employees, agents, contractors, and the heirs, personal representatives, successors and assigns of each of them (collectively “Indemnified Parties”) from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with:
 - (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
 - (ii) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, including without limitation, CERCLA, by any person other than the Indemnified Parties, in any way affecting, involving, or related to the Property;

(iii) the presence or release in, on, from, or about the Property, at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

e. *Taxes.* Before delinquency, the Landowner shall pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any taxes imposed upon or incurred in response to this Easement, and shall furnish the Easement Holder with satisfactory evidence of payment upon request.

8.9 Recording. The Easement Holder shall record this Easement in the Office of the Register of Deeds for the county in which the Property is located and may re-record it or any other document necessary to protect its rights under this Easement.

8.10 Severability. If any provision or specific application of this Easement is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Easement shall remain valid and binding.

8.11 Successors. This Easement is binding upon and inures to the benefit of the Landowner and Easement Holder and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running with the Property for the term of the Easement.

8.12 Terms. The terms "Landowner" and "Easement Holder," wherever used in this Easement, and any pronouns used in their place, mean either masculine or feminine, singular or plural, and include Landowner's and Easement Holder's respective personal representatives, heirs, successors, and assigns.

8.13 Warranties and Representations. The Landowner warrants and represents that:

- a. The Landowner and the Property comply with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- b. No civil or criminal proceedings or investigations are pending or threatened that would in any way affect, involve, or relate to the Property. No facts or circumstances exist that the Landowner might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands or orders; and
- c. The person signing this Easement has authority to grant this Conservation Easement to the Easement Holder.

GRANT OF INTEREST TO EASEMENT HOLDER

As Mayor of the City of Franklin, I execute the foregoing Limited Term Conservation Easement and acknowledge the same on this _____ day of _____, 2020.

By: _____
Stephen R. Olson
Mayor

STATE OF WISCONSIN
MILWAUKEE COUNTY

On this _____ day of _____, 2020, the person known as Stephen R. Olson came before me and executed the foregoing instrument and acknowledged the same.

Signature of Notary Public
Notary Public, State of _____
My Commission expires _____.

BY: _____
Sandra L. Wesolowski, City Clerk

DATE: _____

APPROVED AS TO FORM:

BY: _____
Jesse A. Wesolowski, City Attorney

DATE: _____

ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

The Milwaukee Metropolitan Sewerage District accepts the foregoing Limited Term

Conservation Easement on this _____ day of _____, 2020.

By: _____

Kevin L. Shafer, P.E.
Executive Director

STATE OF WISCONSIN
MILWAUKEE COUNTY

On this _____ day of _____, 2020, the person known as Kevin L. Shafer
came before me and executed the foregoing instrument and acknowledged the same.

Signature of Notary Public

Notary Public, State of _____

My Commission expires _____.

Approved as to Form: _____

Attorney for the District

Thomas A. Nowicki, Staff Attorney, Milwaukee Metropolitan Sewerage District, drafted this
conservation easement.

ATTACHMENTS

- EXHIBIT A Description of the Property
- EXHIBIT B Map Showing the Location of the Property
- EXHIBIT C Map Showing the Bioswale Subject to this Easement

EXHIBIT A
DESCRIPTION OF THE PROPERTY

Address: None
Tax Key: 7600066000
Legal Description: RAWSON HOMES ADDN NO 1 LOT 17 BLK 7

Address: 7367 South 36th Street
Tax Key: 7600065000
Legal Description: RAWSON HOMES ADDN NO 1 LOT 16 BLK 7

Address: 7355 South 36th Street
Tax Key: 7600064000
Legal Description: RAWSON HOMES ADDN NO 1 LOT 15 BLK 7

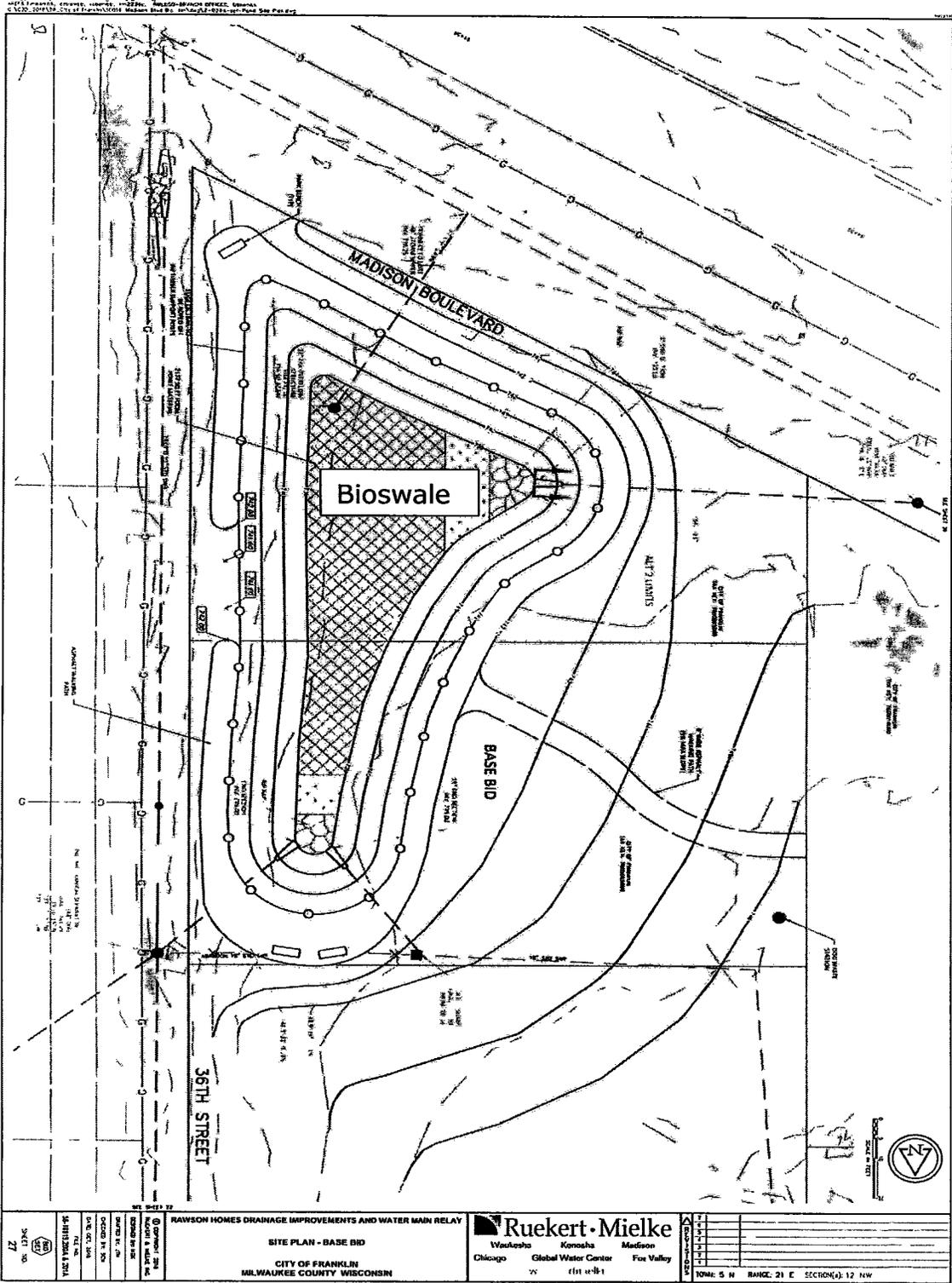
EXHIBIT B
MAP SHOWING THE LOCATION OF THE PROPERTY

Franklin, WI
36th Street Biofilter
Project Site



EXHIBIT C

MAP SHOWING THE BIOSWALE SUBJECT TO THIS EASEMENT



<p>APPROVAL <i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE June 16, 2020</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>AN ORDINANCE TO AMEND ORDINANCE 2019-2398, AN ORDINANCE ADOPTING THE 2020 ANNUAL BUDGETS FOR TID5 AND TID6 TO CARRYFORWARD UNUSED 2019 APPROPRIATIONS AND DETAIL 2020 CONSTRUCTION APPROPRIATIONS IN TID4 AND PROVIDE ADDITIONAL MUNICIPAL REVENUE OBLIGATION APPROPRIATIONS IN TID 3</p>	<p>ITEM NUMBER <i>G.11.</i></p>

Background

In TID3, 2020 resources increased such that the Municipal Revenue Obligation payment was increased from \$711,005 to \$760,005. As TID resources are restricted for use by the TID, to hold the added resources served no purpose. The extra \$49,000 2020 payment reduced future interest costs to the TID.

Several 2020 TID budgets require budget amendments to carryforward 2019 projects that were not completed in 2019.

In TID4, the 2020 Budget includes \$11,000,000 for infrastructure costs. In January 2020, the Common Council awarded several contracts for the work, that was detailed out into smaller project descriptions. Staff is recommending that the \$11 million appropriation be split into smaller parts with future actual payments aligned with those detailed component parts. This will provide greater accountability for the project work. The amendment does NOT change the total amount appropriated.

In TID5, a \$4 million refunding of the 2018 Note Anticipation Note was initiated in December 2019, with the note payment delayed until March 1, 2020 (by terms of the original 2018 note issuance). The \$4 million note payment was included in the 2019 budget, but actually occurred in 2020, carrying forward the appropriation to 2020.

In TID6, the 2019 budget was established for the infrastructure construction project which was anticipated to be completed in 2019. Only the water main project was worked upon in 2019. The infrastructure project continues. The 2019 budget included \$9 million of City commitments on the infrastructure. Bear Development completed \$1 million related to water in 2019, and continues working on the project. The attached Budget Amendment will carryforward the \$8 million appropriation into 2020 as Bear Development continues the project. Current Developer estimates has the project continuing into 2021.

Recommendation

The Director of Finance & Treasurer recommends adoption of the DRAFT Budget Amendment that updates the various 2020 TID budgets.

COUNCIL ACTION REQUESTED

Motion adopting an ordinance to amend Ordinance 2019-2398, an Ordinance adopting the 2020 annual budgets for TID5 and TID 6 to carryforward unused 2019 appropriations and detail 2020 construction appropriations in TID4 and provide additional municipal revenue obligation appropriations in TID 3

Roll Call Vote Required

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

ORDINANCE NO. 2020 _____

AN ORDINANCE TO AMEND ORDINANCE 2019-2398, AN ORDINANCE ADOPTING THE 2020 ANNUAL BUDGETS FOR TID5 AND TID6 TO CARRYFORWARD UNUSED 2019 APPROPRIATIONS AND DETAIL 2020 CONSTRUCTION APPROPRIATIONS IN TID4 AND PROVIDE ADDITIONAL MUNICIPAL REVENUE OBLIGATION APPROPRIATIONS IN TID 3

WHEREAS, the Common Council of the City of Franklin adopted the 2020 Annual Budgets for the TID Funds of the City of Franklin on November 19, 2019; and

WHEREAS, TID3 has a Municipal Revenue Obligation payment that offers prepayment when funds are available such that the City made a \$49,000 payment in excess of the 2020 budget appropriation saving future interest costs; and

WHEREAS, the 2020 TID4 budget contains an \$11,000,000 appropriation for infrastructure projects that were detailed in a January 21, 2020 Common Council contract award by more detailed projects; and

WHEREAS, modifying the 2020 TID 4 \$11,000,000 infrastructure appropriation into smaller individual projects will provide for more accountability without changing the total appropriation; and.

WHEREAS, TID5 initiated a \$4,000,000 refunding of the 2018 Note Anticipation Note in December 2019 with the principal payment on March 1, 2020 such that the \$4 million principal payment was not included in the adopted 2020 Budget; and

WHEREAS, the TID6 2019 infrastructure construction was not complete in 2019 carrying over to 2020 such that the 2020 Budget now needs to reflect the remaining \$8 million appropriation.

NOW, THEREFORE, the Common Council of the City of Franklin does hereby ordain as follows:

Section 1 That a 2020 Budget for TID3 be amended as follows:

Econ Dev	Developer Incentives	Increase	\$49,000
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Section 2 That a 2020 Budget for TID4 be amended as follows:

Highway	Sanitary Sewer	Decrease	\$10,824,000
Engineering	Profession Fees – Corp Pk	Increase	609,000
Engineering	Professional Fees – Hickory	Increase	460,000
Engineering	Professional Fees – Elm Rd	Increase	350,000
Highway	Storm Sewer	Increase	200,000
Highway	Land Purch Hickory ROW	Increase	610,000
Highway	Tree mitigation	Increase	25,000

Highway	Land Purch – Elm Rd ROW	Increase	530,000
Water	Water Main – Elm Rd	Increase	1,200,000
Water	Water Main – Hickory	Increase	2,250,000
Sewer	Pump Station	Increase	950,000
Sewer	Sanitary Sewer – Hickory	Increase	2,250,000
Sewer	Pump/Lift Station	Increase	190,000
Sewer	Sanitary Sewer – Elm Rd	Increase	1,200,000

Section 3 That a 2020 Budget for TID5 be amended as follows:

Debt Service	Principal Payment	Increase	\$4,000,000
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Section 4 That a 2020 Budget for TID6 be amended as follows:

Highway	Street Construction	Increase	\$3,000,000
Water	Water Main	Increase	\$1,500,000
Sewer	Sanitary Sewer Main	Increase	\$1,500,000

Section 5 Pursuant to §65.90(5)(a), Wis. Stats., the City Clerk is directed to publish a Class 1 notice of this budget amendment within ten days of adoption of this ordinance.

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 ___

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<p>APPROVAL <i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE <i>JUNE 16, 2020</i></p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>AN ORDINANCE TO REPEAL AND RECREATE SECTIONS 13-1 THROUGH 13-3 OF THE FRANKLIN MUNICIPAL CODE, CHAPTER 13, "BUDGET", IN ORDER TO AMEND THE BUDGET PROCESS, INCLUDING DELEGATING TO THE FINANCE COMMITTEE THE RESPONSIBILITY FOR THE INITIAL REVIEW OF THE MAYOR'S RECOMMENDED ANNUAL BUDGET</p>	<p>ITEM NUMBER <i>G.12.</i></p>

Background

Prior to July 2012, the Mayor's Recommended Budget was referred to the Finance Committee for initial review and any recommended changes. In July, 2012, the Budget Ordinance was amended to have the Committee of the Whole replace the Finance Committee.

The Ordinance was also amended to have a Budget Time table set by March 1 each year.

The Ordinance also established the Mayor's Recommended Budget as the Proposed Budget for the Public Hearing notice should no action be taken by the Committee of the Whole.

At the May 26, 2020 Finance Committee meeting, the Finance Committee expressed interest in having the opportunity to review the Mayor's Recommended Budget.

The proposed Ordinance amendment would assign the initial review of the Mayor's Recommended Budget to the Finance Committee. The Finance Committee's review would result in recommended changes to the Mayor's Recommended Budget, however amending the Mayor's Recommended Budget would remain with the Common Council.

The Mayor's Recommended Budget would become the Proposed Budget, unless the Common Council amends it prior to the Public Hearing Notice as currently directed by section 13-4 of the Ordinances.

Recommendation

The DRAFT Ordinance would move setting the time table for the Budget process to the first Tuesday in May. This would provide a newly constituted Common Council to establish the time table for the following budget cycle.

The DRAFT Ordinance would permit the Finance Committee to review and make recommended changes to the Mayor's Recommended Budget, but leave the responsibility for actually changing the Recommended Budget with the Common Council.

COUNCIL ACTION REQUESTED

Motion adopting an ordinance to repeal and recreate sections 13-1 through 13-3 of the Franklin Municipal Code, Chapter 13, "Budget", in order to amend the budget process, including delegating to the Finance Committee the responsibility for the initial review of the Mayor's Recommended Annual Budget

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

ORDINANCE NO. 2020 _____

AN ORDINANCE TO REPEAL AND RECREATE SECTION 13-1 THROUGH 13-3 OF THE FRANKLIN MUNICIPAL CODE, CHAPTER 13, "BUDGET", IN ORDER TO AMEND THE BUDGET PROCESS, INCLUDING DELEGATING TO THE FINANCE COMMITTEE THE RESPONSIBILITY FOR THE INITIAL REVIEW OF THE MAYOR'S RECOMMENDED ANNUAL BUDGET

WHEREAS, the Franklin Common Council believes Finance Committee's role in the budget development process should be restored; and

WHEREAS, the time table for the annual budget process is more appropriately established by any newly constituted Common Council following the April elections; and

WHEREAS, in order to effectuate the desired change, it is necessary to amend portions of Chapter 13, "Budget", of the Franklin Municipal Code.

NOW, THEREFORE, the Franklin Common Council does hereby ordain as follows:

Section 1 § 13-1. through § 13-3. of the Franklin Municipal Code is hereby repealed and recreated as follows:

§ 13-1. Departmental Estimates

The Mayor shall file with the Clerk an itemized statement of disbursements made to carry out the powers and duties of each officer, department or committee during the preceding fiscal year and a detailed statement of the receipts and disbursements on account of any special fund under the supervision of such officer, department or committee during such year, and of the conditions and management of such fund; also detailed estimates of the same matters for the current fiscal year and for the ensuing fiscal year. Such statements shall be presented in the form prescribed by the Mayor and shall be designated as "departmental estimates" and shall be as nearly uniform as possible for the main division of all departments.

§ 13-2. Preparation of budget; information included; copies

A. Budget to include. Each year, the Mayor shall present a budget timetable to the Common Council no later than the first Tuesday in May, for the review and approval of the Common Council. The Mayor, with the assistance of the Director of Administration, all other department heads, and other staff as the Mayor shall determine is appropriate, shall be responsible for the preparation of the City's proposed annual budget, presenting a financial plan for conducting the affairs of the City for the ensuing calendar year, and shall submit same to the Finance Committee for its review. The Finance Committee shall review the Recommended Budget and submit its recommended changes to the Common Council. The Budget shall include the following information:

(1) The expense of conducting each department and activity of the City for the ensuing fiscal year and corresponding items for the current year and last

preceding fiscal year, with reasons for increase and decrease recommended as compared with appropriations for the current year

(2) An itemization of all anticipated income of the City from sources other than general property taxes and bond issue(s), with a comparative statement of the amounts received by the City from each of the same or similar sources for the last preceding and current fiscal year.

(3) An itemization of the amount of money to be raised from general property taxes, which, with income from other sources, will be necessary to meet the proposed expenditures.

(4) Such other information as may be required by the Council and state law.

B. The Council shall provide a reasonable number of copies of the budget thus prepared for distribution or availability to citizens.

§ 13-3. Public Hearing

The Council shall hold a public hearing on the budget as required by law. Unless otherwise amended by the Common Council, the Mayor's Recommended Budget shall be the Proposed Budget for the public Hearing.

Section 2 The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

Section 3 All ordinance and parts of ordinances in contravention to this ordinance are hereby repealed.

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

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 ___

13-1 Departmental Estimates

[Amended 7-10-2012 by Ord. No. 2012-2082]

~~When requested by the Common Council each year, T~~he Mayor shall file with the Clerk an itemized statement of disbursements made to carry out the powers and duties of each officer, department or committee during the preceding fiscal year and a detailed statement of the receipts and disbursements on account of any special fund under the supervision of such officer, department or committee during such year, and of the conditions and management of such fund; also detailed estimates of the same matters for the current fiscal year and for the ensuing fiscal year. Such statements shall be presented in the form prescribed by the Mayor and shall be designated as "departmental estimates," and shall be as nearly uniform as possible for the main division of all departments.

§ 13-2 Preparation of budget; information included; copies.

[Amended 1-23-2001 by Ord. No. 2001-1635; 7-10-2012 by Ord. No. 2012-2082]

A. Budget to include. Each year, the Mayor shall present a budget timetable to the Common Council no later than ~~March~~ the first Tuesday in May⁴, for the review and approval of the Common Council. ~~Each year, T~~he Mayor, with the assistance of the Director of Administration, all other department heads, and other staff as the Mayor shall determine is appropriate, shall be responsible for the preparation of the City's proposed annual budget, presenting a financial plan for conducting the affairs of the City for the ensuing calendar year, and shall submit same to the ~~Committee of the Whole~~ Finance Committee for its review, ~~and recommendation. Upon its review of the proposed budget, the Committee of the Whole shall submit same, together with the Committee of the Whole's recommendations thereon, to the Common Council for its review and approval. The Finance Committee shall review the Recommended Budget and submit its recommended changes to the Common Council.~~ The budget shall include the following information:

(1) The expense of conducting each department and activity of the City for the ensuing fiscal year and corresponding items for the current year and last preceding fiscal year, with reasons for increase and decrease recommended as compared with appropriations for the current year.

(2) An itemization of all anticipated income of the City from sources other than general property taxes and bond issued(s), with a comparative statement of the amounts received by the City from each of the same or similar sources for the last preceding and current fiscal year.

(3) An itemization of the amount of money to be raised from general property taxes, which, with income from other sources, will be necessary to meet the proposed expenditures.

(4) Such other information as may be required by the Council and state law.

B. The Council shall provide a reasonable number of copies of the budget thus prepared for distribution or availability to citizens.

§ 13-3 **Public hearing.**

[Amended 7-10-2012 by Ord. No. 2012-2082]

The Council shall hold a public hearing on the budget as required by law. Unless otherwise ~~directed—amended~~ by the Common Council, the Mayor's ~~proposed recommended~~ annual budget, ~~as amended by action or actions of the Committee of the Whole~~, shall be the ~~budget proposal~~ Proposed Budget for the public hearing.

§ 13-4 **Changes in budget; public notice.**

[Amended 12-15-1998 by Ord. No. 98-1526]

The amount of the tax to be levied or certified, the amounts of the various appropriations and the purposes thereof shall not be changed after approval of the budget except by a two-thirds vote of the entire membership of the City Council. Notice of such transfer shall be given by publication within 10 days thereafter in the Official City Newspaper.

§ 13-5 **Appropriation of funds.**

No money shall be drawn from the treasury of the city nor shall any obligation for the expenditure of money be incurred except in pursuance of the annual appropriation in the adopted budget or when changed as authorized by § 13-4 this chapter. At the close of each fiscal year, any unencumbered balance of an appropriation shall revert to the general fund and shall be subject to re-appropriation; but appropriations may be made by the Council, to be paid out of the income of the current year, in furtherance of improvements or other objects or works which will not be completed within such year, and any such appropriations shall continue in force until the purpose for which it was made shall have been accomplished or abandoned.

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE June 16, 2020
REPORTS & RECOMMENDATIONS	Report on Expenditures related to the COVID-19 Public Health Emergency thru June 11, 2020	ITEM NUMBER <i>G.13.</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 June 11, 2020, the City has spent \$131,955 (up from \$129,453 two weeks earlier) of Labor funds, \$46,557 (up from \$38,559 two weeks earlier) in operating costs (principally \$10,000 in extra postage for absentee ballots), and \$11,587 on equipment (with an additional \$5,596 on order). Details of the expenditures are:

	May 27	June 11
Elections	13,878	13,878
Info Systems	846	3,678
Admin – postage	10,000	10,000
Finance	128	128
Muni Buildings	647	1,793
Police	2,652	2,652
Fire	2,513	6,532
Highway	5,645	5,645
Parks	2,251	2,251
Total	38,559	46,557

Total expenditures and encumbrances are \$185,195 (up from \$185,195 on May 27).

The FEMA grant will potentially cover overtime costs, which total \$74,473 currently (up from \$72,979 last report). Very little else of these funds are recoverable under the COVID-19 FEMA grant, as they don't meet the requirements of the grant.

The State has notified the Health Department of an additional \$300,000 Grant for health related expenditures. Another agenda item will consider a temporary help contract for contact tracing, which would be funded by this grant.

In addition, it appears that certain city resources are going to be negatively impacted, specifically, ambulance revenues are down \$72,000 from a year ago at the end of April, hotel tax receipts will be down, as the major hotels have been effectively shut down, Fines/Forfeitures are down \$37,506 from 2019 thru April 30, investment income on reduced interest rates (estimated to reduce annual revenues by \$80,000), the school liaison officer – approximately \$22,000 (with the school closed – the officer was not needed), and landfill siting revenues. These amounts total \$211,000 so far. It is too early to understand the total revenue shortfalls, but clearly there will be some sizable amounts.

COUNCIL ACTION REQUESTED

Information Only – no action requested.

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<p>APPROVAL</p> <p><i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>06/16/2020</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>Recommendation from the Fair Commission regarding the 2020 St. Martins Labor Day Fair</p>	<p>ITEM NUMBER</p> <p><i>G.14.</i></p>

At the Fair Commission meeting scheduled for 5:00 p.m. on Tuesday, June 16, 2020, the Commission will be discussing the 2020 St. Martins Labor Day Fair. The recommendation to continue or cancel the event will be brought forward to the Common Council for action.

COUNCIL ACTION REQUESTED

Motion to (cancel or continue) the 2020 St. Martins Labor Day Fair.

Or

As directed.

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE June 16, 2020
REPORTS AND RECOMMENDATIONS	<p>Potential property acquisitions for the development of West Elm Road widening and public utilities public improvements for the Tax Incremental District No. 4 Franklin Corporate Park: 10627 South 27th Street, Tax Key Nos. 951-9996-002 (potential acquisition of approximately 5,969 square feet) and 951-9999-001 (potential acquisition of approximately 5,234 square feet); 3001 West Elm Road, Tax Key No. 978-9996-006 (potential acquisition of approximately 15,977 square feet); and 10613 South 27th Street, Tax Key No. 951-9996-009 (potential acquisition of approximately 24,008 square feet). The Common Council may enter closed session pursuant to Wis. Stat. § 19.85(1)(e), for market competition and bargaining reasons, to deliberate and consider terms relating to potential property acquisitions for the development of West Elm Road widening and public utilities public improvements for the Tax Incremental District No. 4 Franklin Corporate Park: 10627 South 27th Street, Tax Key Nos. 951-9996-002 (potential acquisition of approximately 5,969 square feet) and 951-9999-001 (potential acquisition of approximately 5,234 square feet); 3001 West Elm Road, Tax Key No. 978-9996-006 (potential acquisition of approximately 15,977 square feet); and 10613 South 27th Street, Tax Key No. 951-9996-009 (potential acquisition of approximately 24,008 square feet); and the investing of public funds and governmental actions in relation thereto and to effect such acquisitions, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate</p>	ITEM NUMBER <i>6.15.</i>

COUNCIL ACTION REQUESTED

A motion to enter closed session pursuant to Wis. Stat. § 19.85(1)(e), for market competition and bargaining reasons, to deliberate and consider terms relating to potential property acquisitions for the development of West Elm Road widening and public utilities public improvements for the Tax Incremental District No. 4 Franklin Corporate Park: 10627 South 27th Street, Tax Key Nos. 951-9996-002 (potential acquisition of approximately 5,969 square feet) and 951-9999-001 (potential acquisition of approximately 5,234 square feet); 3001 West Elm Road, Tax Key No. 978-9996-006 (potential acquisition of approximately 15,977 square feet); and 10613 South 27th Street, Tax Key No. 951-9996-009 (potential acquisition of approximately 24,008 square feet); and the investing of public funds and governmental actions in relation thereto and to effect such acquisitions, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

<p style="text-align: center;">APPROVAL</p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE June 16, 2020</p>
<p style="text-align: center;">REPORTS AND RECOMMENDATIONS</p>	<p>Standards, Findings and Decision of the City of Franklin Common Council Upon the Application of Mills Hotel Wyoming, LLC, Applicant, for a Special Exception to Certain Natural Resource Provisions of the City of Franklin Unified Development Ordinance; A Resolution Conditionally Approving a 2 Lot Certified Survey Map, Being All of Lot 84 in Ryan Meadows, Located in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4 of the Southwest 1/4 and the Northeast 1/4 and the Southeast 1/4 of the Northwest 1/4 all in Section 30, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin (Mills Hotel Wyoming, LLC, Applicant) (Generally on the East Side of Monarch Drive, South of Chicory Street, Area Commonly Known as Area G); and Site Plan application by Copart of Connecticut, Inc. to allow for construction of a 7,200 square foot building and vehicle storage yard for Copart, Inc. (on approximately 44-acres upon or adjacent to the afore described properties), approved at the May 7, 2020 Plan Commission meeting, conditioned in part on the approval of a concurrent rezoning application (Mills Hotel Wyoming, LLC, Applicant) (for a portion of the afore described properties), which was denied by the Common Council on May 19, 2020 (all related to properties within the Bear Development Ryan Meadows Development). The Common Council may enter closed session pursuant to Wis. Stat. § 19.85(1)(g), to confer with legal counsel for the Common Council who is rendering oral or written advice concerning strategy to be adopted by the body with respect to potential litigation with regard to the Special Exception to Certain Natural Resource Provisions, Certified Survey Map and Site Plan applications by Mills Hotel Wyoming, LLC and Copart of Connecticut, Inc., respectively, in which it is likely to become involved, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;">G.16.</p>
<p>Attached is a legal opinion letter regarding the above from Attorney Paul Kent, Counsel for Bear Development.</p>		

COUNCIL ACTION REQUESTED

A motion to enter closed session pursuant to Wis. Stat. § 19.85(1)(g), to confer with legal counsel for the Common Council who is rendering oral or written advice concerning strategy to be adopted by the body with respect to potential litigation with regard to the Special Exception to Certain Natural Resource Provisions, Certified Survey Map and Site Plan applications (all related to properties within the Bear Development Ryan Meadows Development) by Mills Hotel Wyoming, LLC and Copart of Connecticut, Inc., respectively, in which it is likely to become involved, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

To City of Franklin Common Council and City Attorney
From Paul Kent, Counsel for Bear Development
Date June 11, 2020
Re Ryan Meadows Development

As you know, Bear Development (“Bear”) proposes to develop roughly 44 acres of land within the City of Franklin (“City”) for use by Copart for its operations. The City has already approved the site plan for the project. In addition, Bear has applied for and received a certified survey map (“CSM”) approval for a 33 acre parcel along with a zoning change on December 17, 2019, subject to either recording a conservation easement for a wetland on the parcel or obtaining a natural resources special exception (“NRSE”) for the project.

Two approvals are now scheduled for the June 16, 2020 City Council meeting. The first relates to the approval of a CSM that divides an additional 24 acre parcel and conveys 10 acres to Copart. City staff and the Plan Commission recommended City approval of the CSM. This would provide Copart with a 43 acre parcel that is consistent with the site plan approval.

The second action concerns the reconsideration of the denial of the NRSE. A low grade wetland is located on the development property that requires filling, which the NRSE would allow. The U.S. Army Corps of Engineers (“Corps”) and the Wisconsin Department of Natural Resources (“DNR”) have granted permits to fill the wetland. City Staff, the Environmental Commission, and Plan Commission all recommended approval of the NRSE. Nevertheless, the NRSE was denied several weeks ago.

We understand that the City has concerns with the second CSM based on various land use considerations which the City Attorney outlined in his memo on June 2nd. In addition, we understand that there are residual concerns about the approval of the NRSE which is now up for reconsideration. Our memo of June 2nd outlined our concerns with respect to the denial of the NRSE. This memo primarily outlines Bear’s position regarding the second CSM, but also offers some additional comments on the NRSE.

1. Land Use is a Prohibited CSM Consideration.

The City cannot withhold approval of the second CSM based on an applicant's intended land use. While a land division ordinance *could* impose a land use approval criteria in an ordinance (*See Wood v. City of Madison*, 2003 WI 24, 260 Wis. 2d 71, 659 N.W.2d 31), the City has not done so.

The City's unified development ordinance ("UDO") only allows use consideration if the applicant intends to construct a *residential* development.

No land shall be subdivided for *residential use* which is determined to be unsuitable for such use by the Plan Commission for reason of flooding, inadequate drainage, adverse soil or rock formation, unfavorable topography, or any other feature likely to be harmful to the health, safety, or welfare of either current City residents or the future residents of the proposed Subdivision, Certified Survey Map, Condominium, or of the City.

UDO § 15-2.0304 (emphasis added). This language clearly limits land suitability determinations to only residential land divisions. No other CSM approval criteria mention land use. The City Attorney has cited general purpose or intent statements that mention land use, but those are not ordinance standards or requirements. Thus, they cannot form the basis for a denial.

Cities can only apply statutory or ordinance requirements to a land division. Since the City has not explicitly made intended land use an approval criteria, it would be beyond the scope of the City's legal authority to deny a CSM based upon Copart's planned land use. Should the City deny the CSM based on the proposed land use, we believe it could be successfully challenged.

2. The Plan Commission Exceeded its Authority by Conditioning Site Plan Approval upon Obtaining a Rezone and CSM.

Even apart from the fact that a CSM cannot be conditioned on land use when the ordinance does not provide for such a determination, there is no basis for the City to condition the site plan upon obtaining a rezoning and CSM under the facts of this case.

The City's Plan Commission imposed a condition upon the site plan approval that Bear rezone Lot 84 to M2. However, any condition imposed upon the approval must be reasonable and based upon substantial evidence. The Plan Commission satisfied neither element.

Act 67 applies to the site plan approval. Wis. Stat. § 62.23(7)(de)1.a. broadly defines a conditional use as “a use allowed under a conditional use permit, special exception, *or other special zoning permission issued by a city*, but does not include a variance.” (emphasis added). The expansive statutory definition of conditional use encompasses more than the traditional conditional use permit. This broad language clearly includes site plan approval because it is a type of zoning permission needed prior to development.

The rezoning condition was unreasonable because the underlying zoning district does not prohibit Copart’s proposed use. Copart’s use is allowed under two of the City’s Standard Industrial Classification (“SIC”) codes. The use can either be SIC 5012 (automobile and other vehicles) or SIC 5015 (motor vehicle parts, used). SIC 5012 is a permitted use within a M2 zone while SIC 5015 is a permitted use within a M1 zone. Alternatively, SIC 5015 is a special use within an M2 zone.

Since Copart’s intended use is allowed within the zoning code, the Plan Commission had no legal basis to impose rezoning as a condition of approval. Indeed, the UDO provides that the Plan Commission must approve a site plan if “[t]he proposed use(s) conform(s) to the uses permitted as either a ‘Permitted Use’ or ‘Special Use’ (whichever is applicable) in the zoning district.” UDO § 15-7.0102A. This development was either a permitted use or a special use, mandating Plan Commission approval, not conditional approval.

Even if the Plan Commission could impose such a condition, the condition must be supported by substantial evidence. Wis. Stat. § 62.23(7)(de)2.a. The Plan Commission cited no evidence supporting imposition of such a condition. Therefore it is inoperable.

Additionally, the Plan Commission lacked legal authority to condition approval of the site plan upon City approval of a CSM. Wis. Stat. § 66.10015(4) states “no political subdivision may enact or enforce an ordinance or take any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.” The site plan approval clearly violated this restriction because the approval forces Bear/Copart to merge adjacent lots. Thus, this condition is also invalid.

3. Development Can Proceed Regardless of the City’s Decision on the CSM and Rezoning.

Bear can develop the subject properties even if the City does not approve the second CSM. First, Bear could sell all of lot 84 to Copart. This would allow Bear to develop the project as planned without any additional City approvals. As already explained, Copart’s use falls within SIC 5012 and 5015, meaning it is a permitted use under M1 and M2 zoning. There would be no dual zoning of a single parcel because the development would occur on distinct parcels. No UDO provisions prohibit a single development on two lots with

different zoning codes. Consequently, Bear and Copart could develop the properties without the City approving a CSM.

Second, Bear could convey the needed acreage of lot 84 to Copart via lot line adjustment. This type of transfer is executed pursuant to Wis. Stat. § 236.45(2)(am)3., which exempts “the sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes” from local land division approval. The UDO also codified this exemption. *See* UDO § 15-2.0102B.3. This means Bear could convey the 10 acres and create a single parcel without any input from the City.

This type of conveyance also extends the zoning district with it. The zoning code establishes that lot lines are used to determine zoning boundaries. UDO § 15-3.0103A.2. On December 17, 2019, the City rezoned the entirety of lot 1 of Bear’s first CSM to M2. By expanding lot 1 via a lot line adjustment, the zoning boundary necessarily extends with it by the express terms of the rezoning legislation and UDO. This means the development would occur on a single lot entirely within a M2 district.

Even if the City took the position that its rezoning approval did not apply to the entirety of lot 1, the development would be in compliance with City requirements. The City prohibits dual zoning of a *newly created* lot. UDO § 15-3.0103A.3. A lot line adjustment does not create a new lot. It only expands an existing lot. This would allow Bear to develop the lot under dual zoning because the use would be permitted under both M1 and M2.

The bottom line is that this development can occur even if the City denies the CSM.

4. Act 67 Precludes Denial of the NRSE.

We have previously expressed why we believe that the City does not have a reasonable basis to deny the requested NRSE under Act 67, and why when reconsidered, the NRSE should be granted.

Bear met the Act 67 criteria under the ordinance. Bear submitted a voluminous application that detailed how the application satisfied every single criteria in the special exception ordinance by providing facts, such as state and federal permits, and engineering designs. The Environmental Commission prepared a detailed report on March 25, 2020 concluding that Bear satisfied the 16 criteria in the ordinance. The City staff agreed in the Environmental Commission’s recommendations on April 9, 2020, and the Plan Commission recommended approval on May 7, 2020. The statute’s language is unambiguous: “[i]f an applicant for a [special exception] permit meets or agrees to meet all of the requirements and conditions...*the city shall grant* the [special exception] permit.” Wis. Stat. § 62.23(7)(de)2.a. (emphasis added).

For the City to deny the request or impose conditions it must do so based on substantial evidence. Act 67 defines substantial evidence as “facts and information, *other than merely personal preferences or speculation*, directly pertaining to the requirements and conditions an applicant must meet to obtain a...[special exception] and that reasonable persons would accept in support of a conclusion.” Wis. Stat. § 62.23(7)(de)1.b. Mere assertions, without facts and information to support them, cannot justify a special exception denial.

There is no evidence in the record that would support a NRSE denial. City staff, the Environmental Commission, and the Plan Commission all concluded that Bear satisfied the NRSE approval criteria. With no evidence to the contrary, the City must approve the NRSE.

5. Denying the CSM and NRSE would be Arbitrary and Capricious.

Bear was entitled to a fair and impartial review of its CSM and NRSE. *Marris v. City of Cedarburg* establishes that

zoning decisions are especially vulnerable to problems of bias and conflicts of interest because of the localized nature of the decisions.... Since biases may distort judgment, impartial decision-makers are needed to ensure both sound fact-finding and rational decision-making as well as to ensure public confidence in the decision-making process.

176 Wis. 2d 14, 25-26, 498 N.W.2d 842, 847 (1993). An applicant’s rights to an impartial decision-maker are violated when there is bias, unfairness in fact, or when the risk of bias is impermissibly high. *Marris*, 176 Wis. 2d. at 25.

Marris establishes the low threshold for finding impermissible bias. The court held that the chairperson of a zoning committee merely referring to the applicant’s position as a “loophole in need of closing”, and stating the committee “get” the applicant on a rule applied to someone convicted of fraud, constituted an impartial or biased decision-making process. *Id.* at 29-30.

Denying the CSM and NRSE would be an arbitrary and capricious decision prohibited by *Marris*. At the May 19, 2020 common council meeting, the City denied the NRSE without providing any evidence to support that decision. Realizing that error, the City again discussed the NRSE and CSM at the June 2, 2020 meeting. Despite having an additional two weeks to evaluate the proposal, the City could not provide a legal or factual basis to deny the applications. Instead, the City tabled the CSM and NRSE items. During the tabling discussion, council members made clear their intent “obviously is to deny this.” To further that goal, the City ordered staff to reverse itself and “prepare the appropriate documents

for denial” without providing any evidence or legal justification for that conclusion. This amounts to the Council directing staff to find reasons for denial, rather than judging the applications upon their merits. That is contrary to sound fact-finding and rational decision-making. It demonstrates that the City intends to thwart the project, despite recommendations to approve by staff, the Environmental Commission, and Plan Commission, and is grasping at straws to justify its decision after the fact. Denying the CSM and NRSE now would be exactly the type of action that courts have consistently ruled impermissible.

6. Requested Action

Bear and Copart want to work with the City to make the development a success. Both have complied with every City demand and demonstrated compliance with all UDO requirements. Denying the CSM and NRSE would be contrary to the facts in the record and law. Even if the City did deny both items, Bear and Copart could still proceed with development. However, Bear and Copart believe it is in the best interests for all parties if the City proceeds down the less contentious path and approves the CSM and NRSE.

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 6/16/20
LICENSES AND PERMITS	MISCELLANEOUS LICENSES	ITEM NUMBER H.

See attached listing from meeting of June 16, 2020.

COUNCIL ACTION REQUESTED



414-425-7500

**License Committee
Agenda*
Aldermen's Room
June 16, 2020 – 4:00 p.m.**

1.	Call to Order & Roll Call	Time:
2.	Applicant Interviews & Decisions	
License Applications Reviewed		Recommendations

Type/ Time	Applicant Information	Approve	Hold	Deny
Operator 2020-2021 New 4:10 p.m.	Gallagher, Sandy Y 1923 Grange Ave Racine, WI 53403 On the Border			
Operator 2020-2021 New 4:15 p.m.	Robinson, Paul J 4201 S Taylor Ave Milwaukee, WI 53207 Tuckaway Country Club			
Operator 2020-2021 New 4:20 p.m.	Waulters, Melissa K 6605 W Howard Ave Milwaukee, WI 53220 Wegner's St Martins Inn			
Operator 2020-2021 Renew 4:25 p.m.	Corona, Kayla M 315 E Fieldstone Cir Apt #3 Oak Creek, WI 53154 Chili's Grill & Bar			
Extraordinary Entertainment & Special Event 4:30 p.m.	Federation of Croatian Societies-Croatian Park Croatian Festival Person in Charge: Thomas Krenz Location: Croatian Park, 9100 S. 76 th St Date/Time of Event: Friday 7/17 & Saturday 7/18 - 10 am to 11 pm; Sunday 7/19 - 10 am to 11 pm			
Operator 2020-2021 New 4:50 p.m.	Schwulst, Anaka C 2134 W 7 Mile Rd Franksville, WI 53126 Iron Mike's			
Operator 2019-2020 New	Church, Mason D 17321 W Horizon Dr New Berlin, WI 53146 Root River Center			
Operator 2020-2021 New	Bartels, Daniel P 8489 S Golden Lake Ct. Franklin, WI 53132 Point After Pub & Grille			
Operator 2020-2021 New	Cantwell, Terrance M 800 E Henry Clay St #104 Whitefish Bay, WI 53217 Sam's Club #8167			
Operator 2020-2021 New	Castellon, Crystal 4322 S 20 th St Milwaukee, WI 53221 Hampton Inn & Suites			

Type/ Time	Applicant Information	Approve	Hold	Deny
Operator 2020-2021 New	Charnon, Owen A S72W12501 Tess Corners Dr Muskego, WI 53150 The Rock Sports Complex			
Operator 2020-2021 New	Connolly, Amanda 2926 River Valley Rd Waukesha, WI 53189 Hampton Inn & Suites			
Operator 2020-2021 New	Geske, Jennifer B 460 Raynor Ave Franksville, WI 53126 Irish Cottage			
Operator 2020-2021 New	Hansen, Lisa M 14000 60 th St Bristol, WI 53104 7-Eleven			
Operator 2020-2021 New	Pengelly IV, William R 1808 W Meyer Ln Apt 5106 Oak Creek, WI 53154 Sam's Club #8167			
Operator 2020-2021 New	Peterson, Tyler T 8800 Greenhill Ln Greendale, WI 53129 Pick 'n Save #6431			
Operator 2020-2021 New	Radaj, Amy L 1819 S 12 th St Milwaukee, WI 53204 Root River Center			
Operator 2020-2021 New	Rinelli, Angela M 2100 W Henry Ave Milwaukee, WI 53221 The Rock Sports Complex			
Operator 2020-2021 New	Rosin Carrie J 3159 S 39 th St Milwaukee, WI 53215 Milwaukee Burger Company			
Operator 2020-2021 New	Rozek, Jessica L 3222 S 38 th St Milwaukee, WI 53215 Crossroads II Pizza & Subs			
Operator 2020-2021 New	Walker, Tamika C 1124 White Rock Ave Waukesha, WI 53186 Sam's Club #8167			
Operator 2019-2020 New	Baird, Mikayla K 3560 N Oakland Ave Shorewood, WI 53211 Rawson Pub			
Operator 2020-2021 Renewal	Baird, Mikayla K 3560 N Oakland Ave Shorewood, WI 53211 Rawson Pub			

Type/ Time	Applicant Information	Approve	Hold	Deny
Operator 2019-2020 New	Bryant, Sara A 3925 W Denis Ave Greenfield, WI 53221 Root River Center			
Operator 2020-2021 Renewal	Bryant, Sara A 3925 W Denis Ave Greenfield, WI 53221 Root River Center			
Operator 2019-2020 New	Chatfield, Anthony M 10224 W Forest Home Ave #319 Hales Corners, WI 53130 Croatian Park			
Operator 2020-2021 Renewal	Chatfield, Anthony M 10224 W Forest Home Ave #319 Hales Corners, WI 53130 Croatian Park			
Operator 2019-2020 New	Huettl, Jacquelyn M 5970 S 32 nd St Greenfield, WI 53221 Root River Center			
Operator 2020-2021 Renewal	Huettl, Jacquelyn M 5970 S 32 nd St Greenfield, WI 53221 Root River Center			
Operator 2019-2020 New	Pfeifer, Emma K 5695 S Meadow Park Dr Hales Corners, WI 53130 The Rock Sports Complex			
Operator 2020-2021 Renewal	Pfeifer, Emma K 5695 S Meadow Park Dr Hales Corners, WI 53130 The Rock Sports Complex			
Operator 2019-2020 New	Potis, Christina 18600 W National Ave New Berlin, WI 53146 Irish Cottage			
Operator 2020-2021 Renewal	Potis, Christina 18600 W National Ave New Berlin, WI 53146 Irish Cottage			
Operator 2019-2020 New	Salem, Faten S 1785 W Meyer Ln Apt 16203 Oak Creek, WI 53154 Andy's On Ryan Rd			
Operator 2020-2021 Renewal	Salem, Faten S 1785 W Meyer Ln Apt 16203 Oak Creek, WI 53154 Andy's On Ryan Rd			
Operator 2020-2021 Renewal	Adamczyk, Lauren E 3911 W Jerelin Dr Franklin, WI 53132 Michaelangelo's Pizza			

Type/ Time	Applicant Information	Approve	Hold	Deny
Operator 2020-2021 Renewal	Applin, Qyinn M 4521 W Ramsey Ave, #65 Greendale, WI 53129 Country Lanes			
Operator 2020-2021 Renewal	Baker, Nicole E 7554 S 75 th St Franklin, WI 53132 CVS Pharmacy #5390			
Operator 2020-2021 Renewal	Bearder, Leesa R 9644 S 31 st St Franklin, WI 53132 Hampton Inn & Suites			
Operator 2020-2021 Renewal	Calimlim, Jefferson M 9125 Sura Ln #222 Greenfield, WI 53228 Hampton Inn & Suites			
Operator 2020-2021 Renewal	Cauley, Joseph A 1813 S 70 th St West Allis, WI 53214 Rawson Pub			
Operator 2020-2021 Renewal	Cieslak, Tadeusz A 4226 Tumblewood Ln Greendale, WI 53129 Polonia Sport Club			
Operator 2020-2021 Renewal	Djurina, Milan 2326 W Clayton Crest Milwaukee, WI 53221 Croatian Park			
Operator 2020-2021 Renewal	DuCharme, Christine L 7811 S Scepter Dr Apt 4 Franklin, WI 53132 Pick 'n Save #6431			
Operator 2020-2021 Renewal	Gernhauser, Madeline A 1124 Sundance Lane Racine, WI 53402 Milwaukee Burger Company			
Operator 2020-2021 Renewal	Gilbert, Shelby L 947 Perkins Ave Waukesha, WI 53186 Sam's Club #8167			
Operator 2020-2021 Renewal	Greer, Patricia A 1702 E Eden Pl St. Francis, WI 53235 CVS Pharmacy #5390			
Operator 2020-2021 Renewal	Haase, Jody L 2431 W Carroll Ave Oak Creek, WI 53154 7-Eleven			
Operator 2020-2021 Renewal	Hoehn, Kendrick W 1008 Montclair Dr Racine, WI 53402 Milwaukee Burger Company			

Type/ Time	Applicant Information	Approve	Hold	Deny
Operator 2020-2021 Renewal	Humont, Kenneth C 7119 W Jordan Ct Franklin, WI 53132 The Rock Sports Complex			
Operator 2020-2021 Renewal	Kagerbauer, Justin D S86W18930 Woods Rd, #301 Muskego, WI 53150 Croatian Park			
Operator 2020-2021 Renewal	Khudarathullah, Vasim S 13455 W Fountain Dr New Berlin, WI 53151 Andy's On Ryan Rd			
Operator 2020-2021 Renewal	Klafka, Taylor 4785 S 82 nd St Greenfield, WI 53220 Rawson Pub			
Operator 2020-2021 Renewal	Kuglitsch, Kelly K 4358 S Louisiana Ave Milwaukee, WI 53221 Irish Cottage			
Operator 2020-2021 Renewal	Kust, Apolonia 10845 W St. Martins Rd Franklin, WI 53132 Crossroads II Pizza & Subs			
Operator 2020-2021 Renewal	Lee, Christian J 8401 S 116 th St Franklin, WI 53132 Crossroads II Pizza & Subs			
Operator 2020-2021 Renewal	Lloyd, Michael J 8908 W Verona Ct Milwaukee, WI 53227 The Rock Sports Complex			
Operator 2020-2021 Renewal	Menzel, Kristen A 13100 Northwestern Ave Franksville, WI 53126 Rawson Pub			
Operator 2020-2021 Renewal	Nelson, Samantha A S75W16880 Gregory Dr, Apt D Muskego, WI 53150 Milwaukee Burger Company			
Operator 2020-2021 Renewal	Neu, Jessica L 2217 W Hilltop Ln Oak Creek, WI 53154 Iron Mike's			
Operator 2020-2021 Renewal	Nicolai, Camille M 7935 W Park Circle Way S Franklin, WI 53132 Hampton Inn & Suites			
Operator 2020-2021 Renewal	Okrzezik, Tyler K 6010 S New York Ave Cudahy, WI 53110 Milwaukee Burger Company			

Type/ Time	Applicant Information	Approve	Hold	Deny
Operator 2020-2021 Renewal	Otto, Lori A 5967 Oriole Ln Greendale, WI 53129 Rawson Pub			
Operator 2020-2021 Renewal	Peters, Miranda R 4950 S Heritage Dr, Apt 101 Greenfield, WI 53220 Irish Cottage			
Operator 2020-2021 Renewal	Rabiega, Richard G 7731 Cedar Ridge Ct Franklin, WI 53132 Polonia Sport Club			
Operator 2020-2021 Renewal	Risacher Cavros, Jean M 4620 W Anita Ln Franklin, WI 53132 Hampton Inn & Suites			
Operator 2020-2021 Renewal	Rozek, Jenna 8945 S 116 th St Franklin, WI 53132 Crossroads II Pizza & Subs			
Operator 2020-2021 Renewal	Watson, Tinnia M 11130 W Morgan Ave Greenfield, WI 53228 7-Eleven			
Operator 2020-2021 Renewal	Wiltzius, Julie A 4889 S 72 nd St Greenfield, WI 53220 Irish Cottage			
Operator 2020-2021 Renewal	Zalewski, Raquel M 3625 W Ruskin St Milwaukee, WI 53215 Rawson Pub			
Change of Agent 2020-2021	Sam's Club #8167 Michelle L Peterson 3983 W Heatheridge Dr Franklin, WI 53132			
Entertainment & Amusement 2020-2021	Prime Timez, LLC Db a Fun Timez 6544 S Lovers Lane Rd Mohammed Nowman, Agent			
3.	Adjournment			
		Time		

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

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APPROVAL <i>slw</i> <i>pk</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 6/16/2020
Bills	Vouchers and Payroll Approval	ITEM NUMBER <i>1</i>

Attached are vouchers dated June 2, 2020 through June 12, 2020 Nos 178620 through Nos 178819 in the amount of \$ 1,614,024 43 Also included in this listing are EFT's Nos 4320 through Nos 4329, Library vouchers totaling \$ 736 69, Property tax refunds totaling \$ 10,024 46 and Water Utility vouchers totaling \$ 27,116 80 Voided checks in the amount of \$ (1,047 10) are separately listed

Vouchers approved at prior Council meetings that are included in this distribution

BS & A	Comm Dev & Complaints Software	\$ 47,150 00
Building Services	Chairs	\$ 9,425 00
Super Excavators	S Hickory St Utility Improvements	\$ 428,236 87
American Transmission Company	Power interruption	<u>\$8,000 00</u>
TOTAL		\$492,811.87

Early release disbursements dated June 2, 2020 through June 11, 2020 in the amount of \$ 394,254 89 are provided on a separate listing and are also included in the complete disbursement listing These payments have been released as authorized under Resolution 2013-6920

The net payroll dated June 5, 2020 is \$ 396,145 36 previously estimated at \$ 395,000 00 Payroll deductions dated June 5, 2020 are \$ 254,266 96 previously estimated at \$ 258,000 00

The estimated payroll for June 19, 2020 is \$ 400,000 00 with estimated deductions and matching payments of \$ 415,000 00

The estimated payroll for July 3, 2020 is \$ 388,000 00 with estimated deductions and matching payments of \$ 217,000 00

Attached is a list of property tax disbursements EFT's Nos 322 through Nos 329 and 233(S) through Nos 235(S) dated May 29, 2020 through June 12, 2020 \$ 4,852,824 10 represent settlements, \$ 30,527 60 represents tax refunds, and \$4,300,000 00 represents temporary investments

The Library Board has not approved June 2020 vouchers for payment as of this writing Approval of Library vouchers will be considered at the June 22, 2020 meeting Upon their approval, request is made to authorize the release of these payments not to exceed \$15,000 00

COUNCIL ACTION REQUESTED

Motion approving the following

- City vouchers with an ending date of June 12, 2020 in the amount of \$ 1,614,024 43 and
- Payroll dated June 5, 2020 in the amount of \$ 396,145 36 and payments of the various payroll deductions in the amount of \$ 254,266 96 plus City matching payments and
- Estimated payroll dated June 19, 2020 in the amount of \$ 400,000 and payments of the various payroll deductions in the amount of \$ 415,000 00, plus City matching payments and
- Estimated payroll dated July 3, 2020 in the amount of \$ 388,000 and payments of the various payroll deductions in the amount of \$ 217,000, plus City matching payments and
- Property tax disbursements with an ending date of June 12, 2020 in the amount of \$ 5,943,135 02 and the use of investment funds for tax settlements of \$ 3,240,216 68 and
- Approval to release Library vouchers upon approval by the Library Board not to exceed 15,000 00

ROLL CALL VOTE NEEDED