

The YouTube channel “City of Franklin WI” will be live streaming the Common Council meeting so that the public will be able to view and listen to the meeting.  
<https://www.youtube.com/c/CityofFranklinWIGov>

CITY OF FRANKLIN  
SPECIAL COMMON COUNCIL MEETING  
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS  
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN  
AGENDA\*  
TUESDAY JULY 9, 2024 AT 6:00 P.M.

Due to the Community Development Authority (CDA) meeting commencing at 6:00 p.m. in the Common Council Chambers, the Meeting of the Common Council will commence immediately following the adjournment of the July 9th, 2024 CDA Meeting, estimated to be at approximately 6:10 p.m.

- A. Call to Order, Roll Call and Pledge of Allegiance.
- G. 1. A Resolution in Ratification of a Proclamation to Authorize the Remote Attendance of an Alderperson at Common Council Meetings Upon Temporary Health Circumstances Pertaining to the Alderperson Not Allowing for Physical Mobility to Attend the Meeting in Person and the Availability of a Quorum for the Meeting.
- B. Citizen Comment Period.
- C. Approval of Minutes: [none for approval at this meeting].
- D. Hearings.
- E. Organizational Business: Selection and Appointment of 1<sup>st</sup> District Alderperson and Oath of Office:
  - 1. Doug Schmidt
  - 2. Clarke W. Johnson
  - 3. Jon Peccarelli
- F. Letters.
- G. Reports and Recommendations:
  - 2. A Resolution Authorizing Certain Officials to Execute a First Amendment to License Agreement with the City of Milwaukee for the Installation and Operation of Additional Public Safety Communications Facilities at and Near the Municipal Water Tower at 7401 West Puetz Road.
- H. Adjournment.

## Common Council Meeting Agenda

July 9, 2024

Page 2

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

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

### REMINDERS:

July 16	Common Council	6:30 p.m.
July 18	Plan Commission	6:00 p.m.
August 5	National Night Out	5:30 p.m. to 8:30 p.m.
August 6	Common Council Meeting	6:00 p.m.
August 9	Plan Commission	6:00 p.m.
August 13	Fall Partisan Primary	7:00 a.m.-8:00 p.m.

<b>APPROVAL</b>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> July 9, 2024
<b>REPORTS AND RECOMMENDATIONS</b>	A Resolution in Ratification of A Proclamation to Authorize the Remote Attendance of an Alderperson at Common Council Meetings Upon Temporary Health Circumstances Pertaining to the Alderperson Not Allowing for Physical Mobility to Attend the Meeting In Person and the Availability of a Quorum for the Meeting	<b>ITEM NUMBER</b>  G. 1.

Attached is a copy of the above-entitled Resolution, and the Mayoral Proclamation.

### **COUNCIL ACTION REQUESTED**

A motion to adopt A Resolution in Ratification of A Proclamation to Authorize the Remote Attendance of an Alderperson at Common Council Meetings Upon Temporary Health Circumstances Pertaining to the Alderperson Not Allowing for Physical Mobility to Attend the Meeting In Person and the Availability of a Quorum for the Meeting.

Legal Services Dept.: jw

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

*draft 7/4/24*

RESOLUTION NO. 2024-\_\_\_\_\_

A RESOLUTION IN RATIFICATION OF A PROCLAMATION TO AUTHORIZE THE  
REMOTE ATTENDANCE OF AN ALDERPERSON AT COMMON COUNCIL MEETINGS  
UPON TEMPORARY HEALTH CIRCUMSTANCES PERTAINING TO THE  
ALDERPERSON NOT ALLOWING FOR PHYSICAL MOBILITY TO ATTEND THE  
MEETING IN PERSON AND THE AVAILABILITY OF A QUORUM FOR THE MEETING

---

WHEREAS, there is a scheduled Special Common Council meeting on July 9, 2024, on which date there is a vacancy in the Office of an Alderperson, and Alderperson Mike Barber is not able to physically attend in person due to a recent orthopedic surgery; and

WHEREAS, the Mayor, as the Presiding Officer of the Common Council, under the foregoing circumstances and that another Alderperson was not able to attend the next Common Council meeting on July 2, 2024, issued a Proclamation to Authorize the Remote Attendance of an Alderperson at Common Council Meetings Upon Temporary Health Circumstances Pertaining to the Alderperson Not Allowing for Physical Mobility to Attend the Meeting In Person and the Availability of a Quorum for the Meeting; and

WHEREAS, the Common Council having considered the recent current circumstances of Alderperson Barber's current health related temporary inability to physically attend a meeting, and the need for the Common Council to meet and the current circumstances with regard to having a quorum of the Common Council in attendance, and the public interest in addressing the subject matters currently awaiting review and decision by the Common Council; and the Common Council having recognized that the Proclamation is in effect for the July 9, 2024 meeting for process purposes at the commencement of the July 9, 2024 Special Common Council meeting.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the action of the Mayor of the City of Franklin in issuing a Proclamation to Authorize the Remote Attendance of an Alderperson at Common Council Meetings Upon Temporary Health Circumstances Pertaining to the Alderperson Not Allowing for Physical Mobility to Attend the Meeting In Person and the Availability of a Quorum for the Meeting, as it applies to the July 9, 2024 meeting, and the terms and provisions of the Proclamation, be and the same are hereby ratified and confirmed, and the terms and provisions of the Proclamation are incorporated herein, and it is recognized that the Proclamation was in effect for the July 9, 2024 meeting for process purposes at the commencement of the July 9, 2024 Special Common Council meeting, and the Common Council primarily recognizes the need to allow for remote attendance due to temporary health circumstances pertaining to the Alderperson not allowing for physical mobility to attend the meeting.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_ day of \_\_\_\_\_, 2024.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin  
this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

APPROVED:

\_\_\_\_\_  
John R. Nelson, Mayor

ATTEST:

\_\_\_\_\_  
Shirley J. Roberts, City Clerk

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

A PROCLAMATION TO AUTHORIZE THE REMOTE ATTENDANCE OF AN  
ALDERPERSON AT COMMON COUNCIL MEETINGS UPON TEMPORARY HEALTH  
CIRCUMSTANCES PERTAINING TO THE ALDERPERSON NOT ALLOWING FOR  
PHYSICAL MOBILITY TO ATTEND THE MEETING IN PERSON AND THE  
AVAILABILITY OF A QUORUM FOR THE MEETING

---

WHEREAS, there is a regularly scheduled Common Council meeting on July 2, 2024, on which date there is a vacancy in the Office of an Alderperson, and another Alderperson is not able to attend, and Alderperson Mike Barber is not able to physically attend in person due to a recent orthopedic surgery; and

WHEREAS, having considered the recent current circumstances of Alderperson Barber's current health related temporary inability to physically attend a meeting, and the need for the Common Council to meet and the current circumstances with regard to having a quorum of the Common Council in attendance, and the public interest in addressing the subject matters currently awaiting review and decision by the Common Council, and also that there may be needs for Special Common Council meetings in addition to the regularly scheduled meetings; and

WHEREAS, under the foregoing circumstances, as the Presiding Officer of the Common Council, I hereby determine that it is necessary to authorize the remote attendance at Common Council and Special Common Council meetings by Alderperson Mike Barber until his temporary physical inability to attend the meetings has cured and ended.

NOW, THEREFORE, BE IT PROCLAIMED, that I, John R. Nelson, Mayor of the City of Franklin, Wisconsin, on behalf of all of the Citizens of Franklin and the staff of City government, hereby declare, as follows:

1. Due to Alderperson Mike Barber's current temporary physical inability to attend Common Council and Special Common Council meetings in person, I hereby authorize the remote attendance at such meetings by Alderperson Barber until his temporary physical inability to attend the meetings has cured and ended.
2. I may rescind this Proclamation notwithstanding the foregoing provision 1., upon the occurrence of circumstances not existing or known at this time, and for which there would be a reasonable basis in the interest of the public and proper governmental process.
3. This Proclamation shall be in full force and effect upon the date of the execution hereof, full force and effect including at the commencement of any forthcoming Common Council or Special Common Council meeting.

Dated this 27th day of June, 2024.

  
John R. Nelson, Mayor

<b>APPROVAL</b>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>07/09/2024</b>
<b>ORGANIZATIONAL BUSINESS</b>	<b>Selection and Appointment of 1<sup>st</sup> District Alderspersion, and Oath of Office</b>	<b>ITEM NUMBER</b>  <b>E.</b>

As authorized by the Common Council at their meeting on June 18, 2024, and pursuant to Wis. Stat. § 17.23, the attached Official Notice to Residents of the First Aldermanic District established the deadline of July 1, 2024 at 4:30 p.m. for filing letters of interest for appointment to replace former Alderman Edward Holpfer, who resigned effective June 30, 2024. This appointment will expire April 14, 2025, at which time the Alderspersion elected for a 3-year term at the Spring Election on April 1, 2025 will be sworn in. Attached are three letters of interest from the following First Aldermanic District residents in the order they were received prior to the deadline:

1. Doug Schmidt
2. Clark W. Johnson
3. Jon Peccarelli

Following presentations of interested residents listed above, the Common Council will appoint by majority vote. Wis. Stat. 19.88 prohibits a governing body from filling a vacancy by secret ballot. Secret ballots may only be used for the limited purpose of electing the officers of a governing body, such as the Council President. Therefor, if the paper ballots are used when selecting a person to fill a vacancy in a municipal office, the ballot must contain the name of the person voting as well as the name of the person voted for, so that the vote of each member would be ascertainable. When a person is elected to fill a vacancy on the governing body, the appointment is complete once the result of a sufficient vote is ascertained and announced, and no resolution declaring that person to be appointed is necessary. In addition, the weight of authority seems to be that once a governing body has appointed a person to fill a vacancy in a municipal office, the governing body cannot rescind its vote or reconsider its action and elect another person.

The Oath of Office will be administered by the City Clerk following the appointment.

### **COUNCIL ACTION**

Mayor to appoint \_\_\_\_\_ as First District Alderspersion.

Or

As directed.

June 21, 2024

Shirley Roberts  
Franklin City Clerk  
9229 W. Loomis Rd.  
Franklin, WI 53132

To Franklin Common Council:

Please accept this letter of interest to be appointed First District Alderman for the City of Franklin.

For the record, I was elected alderman for the Fifth District in 2010 and held that position for six years. I have since been realigned into Franklin's First District. I am a fourth generation Franklinite so let there be no doubt about my commitment to our community.

During my time in office, the Common Council completed negotiations with Milwaukee County for the reconstruction of South 76th Street and we also instituted a community-wide tornado alert system. As part of the city's goal towards connectivity, I fought for – and achieved – a pathway along 51st Street extending from Franklin High School to Princeton Estates. We also achieved a widening of 51st Street in front of the high school and enhanced crosswalk safety measures for students.

I also served on the Quarry Monitoring Commission dedicated to maintain a reasonable balance between mining operations and neighborhood concerns and I was a trustee for the Franklin Public Library which focused on adapting its assets to meet the challenges of future decades.

Since 2006, I have served as past president and a board director for the Franklin Historical Society, dedicated to enhancing Franklin's proud rural heritage in Legend Park. I have also authored three books, including an "Images of America" pictorial edition of Franklin.

Beyond that, I have been employed as a substitute teacher for Franklin School District No. 5 for the past 20 years and in 2012, it was my pleasure to coordinate a weekend celebration of Franklin High School's 50th Anniversary.

During my six years as alderman, groundwork was laid for development of an economic and entertainment center in Franklin. Much growth has ensued since 2016 and I would look forward to pursuing enhancement of Franklin's proud heritage as our First District Alderman.

Respectfully submitted,



Doug Schmidt  
7961 S 68th Street



# Clarke W. Johnson

---

7703 Margaret Lane • Franklin, WI 53132 • Cell # •

Dear City of Franklin Mayor and Council,

Please consider me for the Aldermanic position for District One.

I have an unyielding commitment to public service.

I am retired from the Wisconsin Department of Natural Resources Division of State Parks and therefore have time to devote to the City of Franklin.

I am a dynamic organizational leader with over 40 years of achievement driving performance and sustainability. I have been a major participant in the development of master and strategic plans. I have proven my ability to lead and motivate teams, expand individual talents, build strong working relationships, coordinate collaborative efforts with colleagues, clients, stakeholders, partners, and senior executives.

I can leverage strong analytical and decisive leadership skills to respond to and resolve issues, to work towards a common outcome, to manage multiple projects, meet deadlines and deliver unparalleled results.

I have authored and received numerous grants and I have been an adjunct professor at various Universities and Colleges and have instructed classes in economic development, tourism, program planning, facility construction, operations, and maintenance.

These strengths coupled with my years of experience working with public officials, large and diverse staff, service organizations and the public has proven to be a significant asset.

I look forward to discussing all the possibilities of how my skills and experience would be the right fit to help the City of Franklin

Thank you for your consideration.

Sincerely,

Clarke Johnson

# Clarke W. Johnson

---

7703 West Margaret Lane, Franklin WI 53132 - Cell #

---

## POLK COUNTY CONSERVATION DISTRICT

Polk County Des Moines, IA  
June 2015 - September 2015

### **Parks Superintendent**

Hired to assist in the reorganization of the Park Manager/Ranger Department. The new position will temporarily manage and direct the day-to-day operations of the 14,000-acre Polk County Park system. This includes law enforcement (park rangers), recreational facilities, campgrounds, boat launches, beaches, special events, trails (over 70 miles of soft and hard surfaced) greenways, wildlife, conservation and restoration projects. Reorganizing the department and establishing the overall operating standards consistent with PC's mission and strategic plans.

## MILL CREEK METROPOLITAN PARK DISTRICT

Mahoning County Canfield, OH  
December 2010 – October 2012

### **Executive Director**

Appointed by the Mill Creek Metropolitan Park District Board to successfully position Ohio's first park district for the passage of the 2014 levy (passed) and plan a path for a sustainable future by developing and implementing a detailed and comprehensive strategic/master plan.

- Established in 1891, by Volney Rogers, Mill Creek Metro Park system serves Mahoning County (250 square miles and 250,000 residents) the park district budget is over 14 million dollars and consists of over 4,700 diverse acres including nationally recognized gardens, two historical eighteen-hole Donald Ross designed golf courses, amphitheater, working educational farm, lakes, waterways, walking-hiking-biking trails, outdoor educational center, nature preserves, wildlife sanctuaries, equestrian park, athletic fields, park police, park foundation and many other recreational facilities.
- Directly supervised 10 department Directors which in turn managed a staff of 65 full-time, 50 part time/full time equivalents, 200 seasonal employees and 150 volunteers.

## THE CITY OF PORTAGE PARKS AND RECREATION DEPARTMENT

Portage, IN  
July 2008 – February 2010

### **Superintendent.**

- Established and maintained a partnership with the National Park Service to insure the smooth opening and operation of a 10-million-dollar, Gold LEED Certified, regional environmental education center – Lakefront Park and Riverwalk. First Year attendance over 150,000
- ♦ Lakefront Pavilion and Riverwalk was awarded the 2009 **Governor's Award for Environmental Excellence, The Marquette Plan, Burnham Award for Metropolitan Planning and The Indiana Parks and Recreation Association Award for Outstanding Park Development**
- Managed and directed parks (700 acres), budgets (\$800,000) personnel (30 FT, 29 PT, and 150 seasonal), programs, Museum, events, Park Foundation and facilities.
- Supervise reservations for parks, pavilions, athletic fields, banquet halls and facilities.
- Oversee contracts and partnerships with outside organizations - National Park Service, US Steel, adult sports, BMX facility, mountain bike park. Soccer associations, Pop Warner football, theater troupe and seasonal celebrations/festivals organizers.

***Superintendent/Team Leader for the newly created Lakeshore State Park located in downtown Milwaukee.***

- Developed the \$17.5 million Lakeshore State Park and recreational areas.
- Created coalitions and established the Lakeshore State Park *Friends Group*.
- Promoted public awareness through interfacing with local organizations.
- Managed the park property and all its operations including law enforcement.
- Direct the public use (attendance 1,000,000+), visitor protection, citizen contact programs, marina, special events and department management systems.
- ♦ Chosen for the 2007 **Park Design Award of Merit** by the Wisconsin Parks and Recreation Association

***Southeast Trail Coordinator & Manager of Hank Aaron State Trail.***

1997 – 2008

- Spearheaded the planning and development of a 7-mile urban multi-model trail.
- Acquired land and obtained easements from property owners.
- Established partnerships with government agencies and special interest groups.
- Planned and implemented special events and fundraisers that included political, governmental, social, (Hank Aaron, Governor Thompson) and dignitaries

## RACINE COUNTY YOUTH SPORTS,

Racine, WI  
2000 - 2002***Executive Director****A collaborative effort between the United Way, county, and city that provides recreation facilities and programs for over 5000 participants of football, basketball, baseball, and volleyball.*

- Guided the construction of Haban Sports Facility, 38 acres, 12 baseball fields, 8 football fields and a 20,000 sq ft multi-purpose building housing a concession stand, offices and equipment.
- Controlled the direction and administration of sports activities of a county (population over 190,000). Over 5,000 participants, 500 volunteers, and 100 part-time employees.
- Planned, developed and maintained all facilities, tournaments, banquets, special programs and events
- Traveled to Moscow, Russia to establish a yearly youth sport player exchange.
- ♦ Chosen for the 2001 **Partnership Award** by the Wisconsin Parks and Recreation Association.

CITY OF OCONOMOWOC PARKS, RECREATION AND FORESTRY DEPT. Oconomowoc, WI  
1982 – 1997***Director of Parks, Recreation, and Forestry***

- Planned and implemented a school district wide (40,000 residents) parks and recreation program; managed parks (400 acres) athletic fields, urban forest/public trees (4,500), amphitheater, park rangers, beaches (4) boat launches/ marinas (3) lake access points, skating rinks, and budgets (\$800,000).
- Hired, trained, supervised and evaluated staff (20 ft, 10 pt, 80 seasonal) administered internship program, and scheduled rental of community center and park facilities
- Organized and directed all city special events, including parades and festivals attracting up to 10,000 people per event.
- Received favorable national press coverage on ABC's *Good Morning America*.
- Coordinated production of *Escape to Wisconsin* television commercial starring Bob Uecker: secured site, selected talent and located props.
- Planned and directed the rehabilitation (removal of over 150,000 Carp and the stocking of over 400,000 pan and game fish) of the Lac La Belle fishery (1,200 acres) and the restoration of Rosenow Creek (native trout stream)
- ♦ Named the **Conservationist of the Year** by the Waukesha County Conservation Alliance for the above projects.

MADISON AREA TECHNICAL COLLEGE, Madison, WI  
UNIVERSITY OF WISCONSIN, MILWAUKEE, Milwaukee, WI  
YOUNGSTOWN STATE UNIVERSITY, Youngstown, OH  
PITTSBURG STATE UNIVERSITY, Pittsburg, KS

20 plus years

### ***Adjunct Professor – Instructor***

*Teaching courses in tourism, hospitality management, facility operation, maintenance and program & event planning to students majoring in parks, recreation and tourism management.*

- Planned and developed curriculum consisting of facility maintenance and management principles, operations, program and event planning.
- Assisted and advised students with job placement and internships.

### **EDUCATION**

Master of Science Degree, Education - Parks and Recreation Administration  
PITTSBURG STATE UNIVERSITY. Pittsburg, Kansas  
Bachelor of Science Degree, Education - Parks and Recreation/Natural Resources  
THE OHIO STATE UNIVERSITY. Columbus, Ohio  
Certified and Credentialed Law Enforcement Officer- DNR Park Ranger  
MILWAUKEE AREA TECHNICAL COLLEGE. Milwaukee, Wisconsin  
Certified Public Manager Program –assorted classes  
UNIVERSITY OF WISCONSIN. Madison, Wisconsin  
Performance Management – assorted classes  
PUBLIC AGENCY TRAINING COUNCIL. Madison, Wisconsin

### **LEADERSHIP**

Member: National Recreation and Park Association  
Wisconsin Parks and Recreation Association  
***Certified Parks and Recreation Professional***

Past Member: Ohio Parks and Recreation Association  
Mahoning County Trustees Association  
Youngstown State University- School of Human Ecology, Curriculum  
Youngstown/Warren Regional Chamber of Commerce  
Eastgate Regional Council of Governments  
Alliance for Watershed Action and Resource Education  
Indiana Parks and Recreation Association  
Wisconsin Park and Recreation Association  
Board Advisor to Student Section  
Legislative Representative  
Chairperson of Student Grants Committee  
President Southeast Parks and Recreation Council  
Service Organizations  
Board Member Oconomowoc Area Chamber of Commerce  
Board Member Town and Country YMCA  
Board of Directors, Waterford High School Booster Club  
City of Franklin Park Commission and Public Works Committee

Dear Franklin Common Council members,

I would like to express my interest in representing the First Aldermanic district on the Franklin Common Council. I am passionate about making a positive impact in our community. I am confident I have the necessary skills, background and capability to positively contribute to the council and community. I have been a Franklin resident since 1977 and attended both Franklin Public Schools and Milwaukee Public Schools through the Chapter 220, ultimately graduating from Franklin High School. I received my Bachelor of Science in Computer Science and later my Master of Science, Management - Finance Analysis - both from UWM. I have witnessed the growth of our community over the past 45+ years and I am very committed to helping us through our current and future challenges to achieve our potential. I value multiple viewpoints to help achieve the strongest of outcomes. I have been with the same company since my college graduation in 1997, have held various IT roles including leadership roles with increasing responsibilities since 2012. I am currently IT Director with an organization of over 150 employees responsible for our business and customer application technology, architecture strategy and budget. My organization has annual O&M and capital budgets of similar size to our city's budget. Besides technology roles, I have been a project manager, project stakeholder, project sponsor, project technology leader and program steering committee member over my career. I am very passionate about leveraging data to determine strategic direction, make informed decisions and execute towards successful outcomes.

I am excited for the opportunity to leverage my expertise to serve the residents of Franklin on the Common Council. Thank you for considering me for this position.

Sincerely,  
Jon Peccarelli

Other relevant experience includes:

- Sports Car Club of America (SCCA) Milwaukee Region Solo Board Member (2006 – 2008), Solo Instructor (2005 - 2007)
- Former Member on the United Way of Milwaukee & Waukesha Technology Council
- SecureFutures (Make A Difference Wisconsin) Volunteer Classroom Presenter (2008 - Present) at a number of high schools including:
  - Bradley Tech High School
  - Ronald Reagan High School
  - Bay View High School
  - Cudahy High School
  - Carmen High School
  - Franklin High School
- Coached Franklin Little League girls softball, including tournament teams
- Coached youth basketball through the Franklin Rec Department
- Youth flag football coach

<b>APPROVAL</b>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> July 9, 2024
<b>REPORTS AND RECOMMENDATIONS</b>	A Resolution Authorizing Certain Officials to Execute a First Amendment To License Agreement with the City of Milwaukee for the Installation and Operation of Additional Public Safety Communications Facilities At and Near the Municipal Water Tower At 7401 West Puetz Road	<b>ITEM NUMBER</b>  G.2.

Attached is a copy of the above-entitled Resolution, a draft First Amendment to License Agreement, and a draft letter to Milwaukee County stating the City approval of the addition of facilities to the City water tower facilities use property which the City uses pursuant to an easement with Milwaukee County, the owner of the property. The request by Milwaukee is to further improve its Public Safety Communications facilities existing on the property pursuant to a License Agreement approved by the Common Council by Resolution No. 2006-6169, a copy of which is annexed hereto together with a cover letter from the City Clerk's Office sending same to the City of Milwaukee and the Resolution approving the License Agreement (copy is not fully executed but is the document available at the time of this writing). Also annexed hereto is a copy of the Water Tower Easement for the subject property with Milwaukee County.

The specific new facilities requested are set forth in the draft Resolution annexed hereto. Milwaukee has advised that the process on this has to move forward as soon as possible due to the timing requirements of Milwaukee retaining/obtaining/contracting, etc., for the improvements. The draft letter annexed hereto is a requirement from Milwaukee County for this project to move forward, and such approval is referenced in part in the provisions 8., 12. and 7. in the Water Tower Easement.

### **COUNCIL ACTION REQUESTED**

A motion to adopt A Resolution Authorizing Certain Officials to Execute a First Amendment To License Agreement with the City of Milwaukee for the Installation and Operation of Additional Public Safety Communications Facilities At and Near the Municipal Water Tower At 7401 West Puetz Road; and

a motion to authorize the Mayor to execute and staff to deliver a letter to Milwaukee County noting the City approval of the additional Public Safety Communications facilities to be provided by the City of Milwaukee at the 7401 West Puetz Road property, in such final form as prepared by the Mayor and staff.

## RESOLUTION NO. 2024-\_\_\_\_\_

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A FIRST  
AMENDMENT TO LICENSE AGREEMENT WITH THE CITY OF MILWAUKEE FOR THE  
INSTALLATION AND OPERATION OF ADDITIONAL PUBLIC SAFETY  
COMMUNICATIONS FACILITIES AT AND NEAR THE MUNICIPAL WATER TOWER  
AT 7401 WEST PUETZ ROAD

---

WHEREAS, the Common Council adopted A Resolution Authorizing Certain Officials to Execute a License (lease) Agreement with the City of Milwaukee Police Department for the Installation and Operation of an Antenna Array for Public Safety Communications on the Municipal Water Tower at 7401 West Puetz Road, on September 19, 2024; and

WHEREAS, the City of Milwaukee has requested an amendment to the License Agreement to improve its current facilities at and near the water tower in the following ways:

1. add a standalone Public Safety Communications Shelter and generator approximately 75 feet away from the tower in the Southwestern corner of the property;
2. replace two existing antennas on the roof of the tower with newer antennas;
3. add two new three-foot diameter microwave dishes to the roof of the tower; and
4. install a new power meter to bring power from the current transformer to the newly built shelter to avoid drawing from power currently supplied to existing City of Franklin installations; and

WHEREAS, the plans and specifications provided by the City of Milwaukee have been reviewed by the Engineer Department and the Planning Department, and the City of Milwaukee is working with the Planning Department to obtain whatever applications will be required processed and approved, and building and electrical permits will be required; and

WHEREAS, provision A.3. of the existing License Agreement provides: “3. Permits and Approvals Required. Prior to the installation of Licensee's Facilities at the Site, Licensee shall obtain from the appropriate public and/or private authority any required authorization(s), permits or easements to install Licensee's Facilities within any portion of the Site.”, and the draft First Amendment to License Agreement provides in part: “All other provisions of the License Agreement shall remain in full force and effect,...”; and

WHEREAS, the City of Milwaukee has requested the ability to improve its current facilities, noting the current facilities upon installation did improve and broaden its public safety communications, and benefit area municipalities as well as the City of Milwaukee, by way of mutual aid considerations; and the Common Council having recognized the public health and safety benefits of such improvements.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the First Amendment to License Agreement, in such form and content

FIRST AMENDMENT TO LICENSE AGREEMENT WITH THE CITY OF MILWAUKEE

Resolution No. 2024-\_\_\_\_\_

Page 2

as annexed hereto, together with any changes thereto as approved by the City Engineering Department, the City Planning Department and the City Attorney, be and the same is hereby approved.

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

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

APPROVED:

\_\_\_\_\_  
John R. Nelson, Mayor

ATTEST:

\_\_\_\_\_  
Shirley J. Roberts, City Clerk

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



## FIRST AMENDMENT TO LICENSE AGREEMENT

*draft 7/4/24*

This First Amendment to License Agreement is entered into as of the \_\_\_\_ day of July, 2024, by and between the City of Franklin, a municipal corporation, having its principal place of business at City Hall, 9229 West Loomis Road, Franklin, Wisconsin 53132 (herein called "Licensor") and the City of Milwaukee, a municipal corporation, having its principal place of business at City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202 (herein called "Licensee").

WHEREAS, Licensor and Licensee entered into a License Agreement on \_\_\_\_\_, 2007, to allow Licensee to place and maintain radio communications facilities at the Site, the Site being the property used by the Licensor upon a Water Tower Easement from Milwaukee County to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable, the following facilities and appurtenances thereto; two water towers and associated appurtenances, access improvements and water main improvements, which Water Tower Easement after execution by the parties thereto was recorded in the Office of the Register of Deeds for Milwaukee County as document no. 8033249, Reel 5025 Image 1499 on March 8, 2001; and

WHEREAS, Licensee has requested the ability to improve its current facilities by installing and providing additional facilities at and near the existing water tower, as more particularly described in the plans, drawings, and specifications attached hereto and made a part hereof as Exhibit B, noting the current facilities upon installation did improve and broaden Licensee's public safety communications, and benefit area municipalities as well as the City of Milwaukee, by way of mutual aid considerations; and the Licensor having recognized the public health and safety benefits of such improvements.

Now, Therefore, In consideration of the foregoing and of the mutual covenants provided herein, the parties agree as follows:

- A. The License Agreement between Licensor and Licensee entered into on \_\_\_\_\_, 2007, be and the same is hereby amended as to provision A.1. thereof only, to read as follows:
  1. Grant of License. Subject to the provisions of this License, Licensor hereby grants to Licensee the right to use the portion of its Site as set out in the materials of Exhibit A and Exhibit B for the placement of Licensee's Facilities.
- B. All other provisions of the License Agreement shall remain in full force and effect, and are unaffected by this First Amendment to License Agreement, which shall not in any way be construed as a waiver or relinquishment of any right or remedy granted under the License Agreement.

In Witness Whereof, The parties hereto have executed this License as of the day and year first above written.

LICENSOR, CITY OF FRANKLIN

BY. \_\_\_\_\_

PRINT NAME John R. Nelson

TITLE Mayor

DATE. \_\_\_\_\_

BY \_\_\_\_\_

PRINT NAME Danielle L. Brown

TITLE Director of Finance and Treasurer

DATE \_\_\_\_\_

BY \_\_\_\_\_

PRINT NAME Shirley J. Roberts

TITLE City Clerk

DATE. \_\_\_\_\_

Approved as to form and content,  
this \_\_\_\_ day of July, 2024.

\_\_\_\_\_  
Franklin City Attorney

LICENSEE, CITY OF MILWAUKEE

BY. \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE. \_\_\_\_\_

DATE \_\_\_\_\_

BY \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE \_\_\_\_\_

Approved as to form and content,  
this \_\_\_\_ day of July, 2024.

\_\_\_\_\_  
Assistant City Attorney

[letter to Milwaukee County re: the City approval of the additional Public Safety Communications facilities to be provided by the City of Milwaukee at the 7401 West Puetz Road property]

*draft 7/4/24*

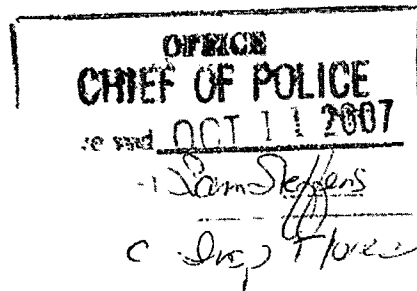
Milwaukee County:

As the Mayor of the City of Franklin, pursuant to provisions of the Water Tower Easement between the City of Franklin and Milwaukee County, which after execution by the parties thereto was recorded in the Office of the Register of Deeds for Milwaukee County as document no. 8033249, Reel 5025 Image 1499, on March 8, 2001, specifically, provisions 8. and 12., on July 9, 2024, the Common Council of the City of Franklin adopted A Resolution Authorizing Certain Officials to Execute a First Amendment To License Agreement with the City of Milwaukee for the Installation and Operation of Additional Public Safety Communications Facilities At and Near the Municipal Water Tower At 7401 West Puetz Road. The First Amendment to License Agreement with the City of Milwaukee allows for the new facilities to further improve the Public Safety Communications Facilities existing at the Easement property as were previously approved by Milwaukee County and the City in 2006-2007. We understand that Milwaukee County has already approved these new facilities subject to approval by the City of Franklin. Should you need any further information, please advise.

Sincerely,

Mayor John R. Nelson

cc: City of Milwaukee



October 4, 2007

The City of Milwaukee  
City Hall  
200 East Wells Street  
Milwaukee, WI 53202

Gentlemen:

Please find enclosed an executed copy of a License (Lease) Agreement with the City of Milwaukee Police Department for the installation and operation of an antenna array for public safety communications on the municipal water tower at 7401 W. Puetz Road.

If you have any questions do not hesitate to contact this office.

Sincerely,

Jodi Vanden Boom  
Deputy City Clerk

Enclosures

cc: Planning & Zoning Department

07-2299

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2006- 6169

**A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO  
EXECUTE A LICENSE (LEASE) AGREEMENT WITH THE CITY OF MILWAUKEE  
POLICE DEPARTMENT FOR THE INSTALLATION AND OPERATION OF  
AN ANTENNA ARRAY FOR PUBLIC SAFETY COMMUNICATIONS ON  
THE MUNICIPAL WATER TOWER AT 7401 WEST PUETZ ROAD**

---

WHEREAS, the City of Milwaukee Police Department having requested Special Use approval to allow for the installation and operation of an antenna array on the City of Franklin water tower at 7401 West Puetz Road to improve and broaden its public safety communications, which installation will benefit area municipalities as well as the City of Milwaukee, by way of mutual aid considerations, such Special Use permission having been granted by the Common Council on June 20, 2006, by Resolution No. 2006-6110; and

WHEREAS, the City of Franklin also having authorized such antenna use subject to the entry of a lease agreement between the municipalities regulating such space use, though without any rent charges and the Puetz Road water tower being within easement upon Milwaukee County lands, Milwaukee County having consented in writing to the antenna use proposed by the City of Milwaukee; and

WHEREAS, the Common Council having reviewed a license agreement proposed by the City of Milwaukee to allow for such antenna use and having found same to be reasonable and in furtherance of the promotion and protection of the health, safety and welfare of the Community.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Franklin, Wisconsin, that the License Agreement in the form and content as annexed hereto, be and the same is hereby approved.

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

Introduced at a regular meeting of the Common Council of the City of Franklin this 19th day of September, 2006.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 19th day of September, 2006.

## **LICENSE AGREEMENT**

This License is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2007, by and between the City of Franklin, a municipal corporation, having its principal place of business at City Hall, 9229 West Loomis Road, Franklin, Wisconsin 53132 (herein called "Licensor") and The City of Milwaukee, a municipal corporation, having its principal place of business at City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202 (herein called "Licensee").

Whereas, Licensor owns and operates an above ground water storage tank at 7401 West Puetz Road, Franklin, Wisconsin (the "Site"); and

Whereas, Licensee has requested permission to place and maintain radio communications facilities at the Site ("Licensee's Facilities") as more particularly described in the plans, drawings, and specifications attached hereto and made a part hereof as Exhibit A; and

Whereas, Licensor's Common Council has approved this License Agreement via Common Council Resolution File No. 2006-6169 adopted on September 19, 2006 and

Whereas, Licensee has approved this License Agreement by action on 2. 27-, 2007;

Now, Therefore, In consideration of the foregoing and of the mutual covenants provided herein, the parties agree as follows;

### **A. SCOPE OF AGREEMENT**

1. **Grant of License.** Subject to the provisions of this License, Licensor hereby grants to Licensee the right to use the portion of its Site as set out in the materials of Exhibit A for the placement of Licensee's Facilities.

2. **Non-Vesting Provision.** No use of Licensor's Site by Licensee or payment of any charges required under this License shall create or vest in Licensee any easements or other ownership of property rights of any nation in the Site.

3. **Permits and Approvals Required.** Prior to the installation of Licensee's Facilities at the Site, Licensee shall obtain from the appropriate public and/or private authority any required authorization(s), permits or easements to install Licensee's Facilities within any portion of the Site.

4. **City's Maintenance Right.** Licensor's right to maintain its Site and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements is in no manner limited by this License. Licensor shall notify Licensee at least forty-five (45) days in advance of the date when the water tower is scheduled to be painted. Licensor will obtain bids for such work and the following terms will be used to address the impact of the Licensee's Facilities on the cost of painting the water tower: the painting contractor will bid on the cost of painting the tower without the Licensee's

Facilities; the contractor will then bid on the cost of painting the tower with the Licensee's Facilities left in place; the contractor will then proceed to paint the tower with Licensee's Facilities left in place; Licensee will reimburse Licensor for the difference between the two bids within thirty (30) days of receipt by Licensee of a detailed invoice for same; Licensee, shall have the alternative option to timely remove the Licensee's Facilities from the tower prior to the painting, so that neither party will incur any painting costs related thereto.

5. No Restriction on Licensor. Nothing contained in this License shall be construed to compel Licensor to construct, reconstruct, retain, extend, place or maintain its Site for use by Licensee unless needed for Licensor's own service requirements.

6. Interference. Radio system operators located on this facility shall follow the appropriate sections of FCC 47CFR22.970 thru 47CFR22.973, as well as 47CFR90.672 thru 47CFR90.675 to resolve any radio interference issues. The initiating party to resolving any radio interference issue emanating from this facility shall inform the City of Franklin that such actions have been undertaken.

#### B. TERM OF LICENSE

This License shall become effective \_\_\_\_\_ and shall continue in effect for 5 years unless terminated as provided or by operation of law. This term may be extended in writing for additional 5 year periods upon the same terms and conditions herein provided.

#### C. LICENSEE OPTION ON RELOCATION

1. In the event Licensor is required for any reason to relocate its facilities from the Site, or any portion thereof, by any governmental authority and Licensor elects to proceed with such relocation, or any portion thereof, Licensee shall have the option to:

(a) Request relocation of Licensee's Facilities along with Licensor's and Licensee shall bear its pro-rata share of any and all costs attributable to such relocation, or

(b) Terminate this License Agreement.

#### D. CONSTRUCTION AND MAINTENANCE

1. Conditions of Installation. Licensee shall provide to Licensor a copy of its construction/installation drawings and specifications and installation schedule for Licensor's approval not less than 1 week prior to Licensee's intended installation at the Site. Licensee shall pay any direct and documented costs incurred by Licensor in making the Site ready for Licensee's Facilities.

2. Construction Practices. Licensee shall, at its own expense, during the term of this License, maintain its Licensee's Facilities covered by this License in a safe condition, properly identified and tagged, in accordance with regulations established by Licensor, so as not to physically conflict or electrically interfere with the facilities placed in the Site by Licensor or others.

#### **E. EMERGENCY PROCEDURES**

1. **Licensors Emergency.** In the event of a Licensors emergency, Licensors facility operation at the Site shall take precedence over any and all operations of Licensee at the Site;

2. **Licensee Emergency.** In the event of a Licensee emergency Licensee shall immediately notify Licensors at its Police Department, tel.414-425-2522 prior to performing any maintenance or repair necessary to correct the emergency situation.

#### **F. MAINTENANCE RIGHTS UPON LICENSEE DEFAULT**

**Maintenance upon Licensee Default.** If any part of Licensees Facilities is not placed and maintained in accordance with the terms and conditions set forth in this License and Licensee has not corrected the violation within thirty (30) days from receipt of written notice thereof from Licensors, then, in such event, Licensors may, at its option, correct said condition and notify Licensee in writing prior to performing such work. However, in the event such conditions pose an immediate threat to the safety of Licensors equipment, operations, employees or the public, or pose an immediate threat to the physical integrity of Licensors facilities, and prior notice to Licensee is not possible under the circumstances, Licensors may perform such work and/or take such action that it deems necessary without first giving written notice to Licensee and without subjecting itself to any liability for damage to Licensees Facilities or for any interruption of Licensees services. As soon as practicable thereafter, Licensors will advise Licensee in writing of the work performed or the action taken. Licensee shall be responsible for all expenses incurred by Licensors associated with any work or action performed by Licensors pursuant hereto and shall reimburse Licensors within thirty (30) days from its receipt of Licensors invoice therefore.

#### **G. FEES AND CHARGES.**

**License Fee.** The License fee due under this Agreement shall be \$0.00/year.

#### **H. LIABILITY AND INDEMNIFICATION.**

1. **Licensors Liability.** Licensors shall exercise caution to avoid damaging Licensees Facilities and shall make an immediate report to Licensee of any and all damage caused by its employees, agents or contractors. Licensors agrees to reimburse Licensee for all reasonable, actual and direct costs incurred by Licensee for the physical repair of its Licensees Facilities damaged by the negligence of Licensors, its employees or agents.

2. **Licensee Liability.** Licensee shall exercise caution to avoid damaging Licensors facilities and shall make an immediate report to Licensors of any and all damage caused by its employees, agents or contractors. Licensee agrees to reimburse Licensors for all reasonable, actual and direct costs incurred by Licensors or other licensees for the physical repair of its facilities damaged by negligence of Licensee, its employees or agents.



3. Licensee Indemnification. Licensee assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of an injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of Licensor or others sustained or alleged to have been sustained in connection with or to have arisen out of, or resulting from the exercise of Licensee of its rights granted herein, including losses, expenses and damages sustained by Licensor, provided that Licensor shall have given prompt written notice to Licensee of the facts giving rise to such losses, expenses, damages or claims. Licensee hereby agrees to indemnify, hold harmless and defend Licensor, its agents and employees from any and all suits or actions brought against them, or any of them, based on any such alleged injury or damage, except for loss caused by direct or negligent action of Licensor, including any failure to comply with Paragraph 3 of this License, and pay all damages, costs and expenses (including reasonable attorney's fees) in connection therewith.

4. No Liability for Consequential Damages. Notwithstanding the above, neither party shall be liable to the other for indirect or consequential damages of the other party, including, but not limited to, any interruption of service, whether caused by the negligence of either party or not.

## I. TERMINATION

1. Mutual Termination. This License may terminate at any time upon written mutual agreement of the parties hereto.

2. Termination upon Determination of a Special Use/Need by Licensor. This License shall terminate upon thirty (30) days notice from Licensor or Licensee if the Licensor's Common Council determines that there is a special use/need for the Site.

3. Termination by Default. If at any time Licensee fails or refuses to perform any of the covenants or conditions contained in this License, and such failure or refusal shall continue for thirty (30) days after receipt of written notice by Licensee from Licensor's Commissioner of Public Works, the Licensor, at its election and upon ten (10) days' advance written notice, may revoke this License. Notwithstanding the above, where a default cannot reasonably be cured within thirty (30) days, if the defaulting party shall proceed promptly to cure the same and prosecute such cure with all due diligence, the time for curing such defaults shall be extended for such a period of time as may be reasonably necessary to complete such cure. The waiver by Licensor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

4. Removal upon Termination. Upon termination of this License for any reason, Licensee shall remove its Licensee's Facilities within sixty (60) days following such termination. In the event Licensee fails to remove its Facilities within such sixty (60) day period, said Facilities shall be deemed abandoned and Licensor, at its sole discretion and

without liability, shall remove the Licensee's Facilities and Licensee shall reimburse Licensor for all costs associated with such removal.

5. Liability Not Extinguished. Termination of this License shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination.

J. INSURANCE

Licensee shall provide Licensor, at Licensor's request, with proof of insurance or a statement of self-insurance in form and substance acceptable to Licensor before the effective date of this License. Any insurance shall name the Licensor as an additional insured for purposes of this License.

K. ASSIGNMENT

Assignment Requires Consent. This Agreement shall be binding upon the inure to the benefit of the parties hereto and their respective successors or assigns; provided, however, that no assignment hereof or of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of each party hereto.

L. NOTICES.

All notices and other communications to be given pursuant to this License shall be deemed to have been duly given (i) if personally delivered to the person being served or to an officer of the corporate party being served; (ii) if mailed by United States certified mail, return receipt requested, postage prepaid; or (iii) if delivered by overnight carrier, delivery receipt requested, to the parties at the following address:

**Licensor:**

City of Franklin  
Attention: City Clerk  
9229 West Loomis Road  
Franklin, WI 53132

**Licensee:**

City of Milwaukee  
Attention: Chief of Police  
749 W. State Street  
P.O. Box 531  
Milwaukee, WI 53201-0531

or at such other address as the parties hereto may specify from time to time by written notice delivered in accordance herewith.

**M. GENERAL PROVISIONS**

1. Liens and Encumbrances. Licensee has no power, authority or right to create and will not permit any lien or encumbrance, including, without limitation, tax liens, mechanics liens, or other liens or encumbrances with respect to work performed or equipment furnished, in connection with the installation, repair, maintenance or operation of its License's Facilities at the Site.

2. Governing Law. This License shall be governed by and construed in accordance with the laws of the State of Wisconsin without giving effect to its choice of law principles.

3. Severability. In the event that any one or more of the clauses, covenants or provisions contained in this License should be held to be unenforceable under any federal, state or city law, statute, code, administrative or regulatory rule, such invalidity or unenforceability shall not affect the remainder of this License, which shall remain in full force and effect.

4. Binding Effect. This License shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

In Witness Whereof, The parties hereto have executed this License as of the day and year first above written.

IN THE PRESENCE OF

LICENSOR, CITY OF FRANKLIN

\_\_\_\_\_

\_\_\_\_\_  
Mayor

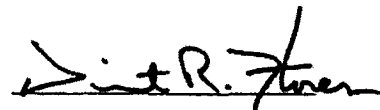
\_\_\_\_\_

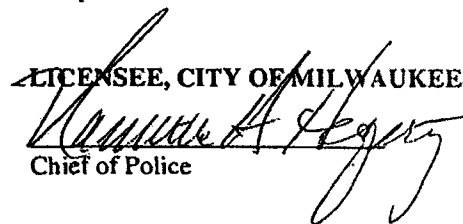
\_\_\_\_\_  
City Clerk

\_\_\_\_\_

COUNTERSIGNED

\_\_\_\_\_  
Comptroller

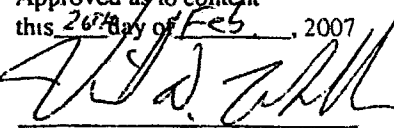
  
\_\_\_\_\_

  
\_\_\_\_\_  
LICENSEE, CITY OF MILWAUKEE  
Chief of Police

LICENSOR, CITY OF FRANKLIN

LICENSEE, CITY OF MILWAUKEE

Approved as to content  
this \_\_\_\_\_ day of \_\_\_\_\_, 2007

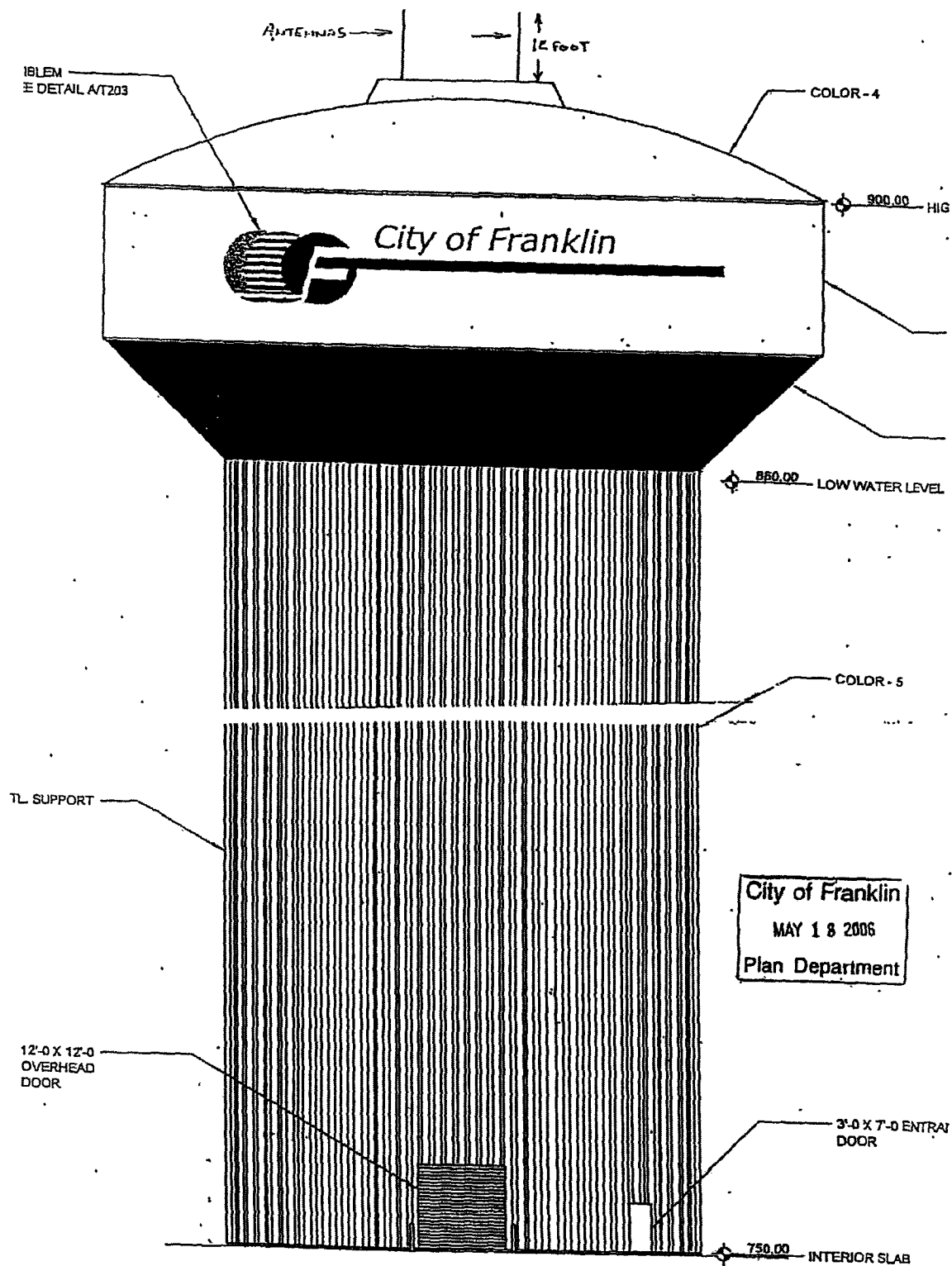
Approved as to content  
this 26th day of Feb, 2007  
  
\_\_\_\_\_  
Assistant City Attorney  
*Dep.*

\_\_\_\_\_  
City Attorney

Approved as to form and execution  
this \_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
City Attorney

\_\_\_\_\_



ELEVATION  
SCALE: 3/32" = 1'-0"

Exhibit A

Water Tower Easement

Document Number

Document Title

8033249

REGISTER'S OFFICE 1 SS  
Milwaukee County, WI

RECORDED AT 1:46 PM

03-08-2001

WALTER R. BARCZAK  
REGISTER OF DEEDS

AMOUNT 36.00

Recording Area

Name and Return Address

CITY OF FRANKLIN  
9229 W. LOOMIS ROAD  
FRANKLIN, WI 53132

Parcel Identification Number (PIN)

REEL

5025

IMAGE

1499

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clauses, legal description, etc. may be placed on this first page of the document or may be placed on additional pages of the document.  
Note: Use of this cover page adds one page to your document and \$2.00 to the recording fee. Wisconsin Statutes, 59.43(2m) WRDA 2/99

### WATER TOWER EASEMENT

**THIS EASEMENT is made by and between** the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City," and Milwaukee County, a municipal corporation of the State of Wisconsin, as owner, hereinafter called "County"

#### WITNESSETH

WHEREAS, County is the owner and holder of record title and fee simple to certain real property particularly described on Exhibit "A" which is attached hereto and incorporated herein (the Property), and

WHEREAS, the City desires to acquire a perpetual, non-exclusive easement with the right of entry in, upon and across a portion of the property as the same is more particularly hereinafter described, with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable, the following facilities and appurtenances thereto; two water towers and associated appurtenances, access improvements and water main improvements, hereinafter collectively referred to the "Facilities," all, including additional temporary construction easement areas as are shown, with all appropriate specifications detailing limitations on the project which may not be exceeded, on the plan attached hereto and incorporated herein as Exhibit "B", and

WHEREAS, the initial construction and installation of the Facilities shall be made by the City, at the expense of the City and the Facilities shall remain the property of the City subject to the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the receipt on which is hereby acknowledged, County, being the sole owner and person interested in the land hereinafter described, does hereby grant unto the City a perpetual, non-exclusive easement for the purposes set forth above in that part of the Northwest quarter (1/4) of Section Twenty-two (22), Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin, more particularly described on Exhibit C attached hereto (the "Easement Area"), subject to the following terms and conditions.

1. The Facilities shall be installed, operated, maintained and kept in good order and condition by the City, at the sole cost and expense of the City. City shall at all times keep or cause to be kept in good maintenance and repair, including painting and the removal of graffiti, any improvements constructed on the property. Whenever, in the judgment of the County, such maintenance and repairs have not been made and it is necessary to effect the same, the County shall notify City in writing, setting forth the nature of the maintenance and repairs that are required. If the nature of the maintenance and repairs so set forth are of an emergency nature, the City shall immediately undertake to make such maintenance and repairs and complete the same in a time and manner satisfactory to the County. In non-emergency cases, the City shall, within thirty (30) days of receipt of

notice from the County take the remedial action required. If a condition arises which, in the judgment of the County constitutes an immediate and serious threat to the safety of the public and the City, having been notified, shall have failed or been unable to remedy the same within a time, which, in the judgment of the County is reasonable, then, and in that event, the County shall, without the consent of the City, have the right to enter in and upon the property and, at City's expense, make such maintenance and repair work as it deems necessary, and all expenses and costs of making such maintenance and repairs shall constitute charges due to the County by City which shall be due immediately upon demand.

2. That if surface or subsurface of the Easement Area is disturbed during any construction, reconstruction, enlargement or repair work occurring in the course of constructing, maintaining and/or operating the Facilities, so much of the surface or subsurface of the Easement Area as may be disturbed will, at the expense of the City, be restored to substantially the same condition as it was prior to such disturbance, excepting for the facilities installed, unless removed. In the event that the land is no longer used for the purposes intended by this easement agreement, then and in that event the water towers and associated appurtenances, access improvements and water main improvements must, at the request of County, at City's sole expense, demolish and remove the water towers and associated appurtenances, access improvements and water main improvements and restore the site to its original pre-easement condition or such other condition as the County and City may then agree.
3. The City shall pay, indemnify, and save harmless the County, its agents and employees, from all suits, actions, claims, demands, damages, losses, and other reasonable expenses and costs of every kind and description (except those proximately resulting from or growing out of acts of commission or omission, involving negligence or fault on the part of the County or its employees or agents) to which the County or its employees or agents, may be subjected by reason of injury (including death) to persons or damage to property resulting from or growing out of any act of commission or omission by the City, its agents, or employees or its contractors or subcontractors in connection with (1) any building, construction, reconstruction, installation, development or removal work, service or operation being undertaken or performed by or for the City in, on, or over the property, or (2) any use, occupancy or operation in, on or of the property, whether such suits, actions, claims, demands, damage, losses, expenses and costs be against, suffered or sustained by the County and/or its agents and employees.
4. That no structure may be placed within the limits of the Easement Area by the County except that improvements such as walks, pavements for driveways, parking lot surfacing and landscaping may be constructed or placed within the Easement Area provided such improvements do not interfere with the purposes of this Easement or the construction, use, operation, maintenance, repair, enlargement or relocation of the Facilities.
5. That no charges will be made by the City against the property for the cost of maintenance or operation of the Facilities in and on the property. Whenever the County makes application for a service connection associated with the services provided by virtue of the



Facility, the regular and customary service connection charge in effect at the time of the application shall be charged by the City and paid by the County.

6. The Facilities shall be accessible for the installation, operation, and maintenance by the City at all times. The County shall submit plans for approval to the City Engineer for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned or delayed. County reserves the right to the use and enjoyment of the land so long as County's activities do not interfere with the purposes of this easement. In any event, sufficient room shall be reserved by City to permit farmer access, ingress and egress between west field and east field on House of Correction property. A locked gate, satisfactory to County shall be installed at the road entrance providing access to the water towers and associated appurtenances, access improvements and water main improvements.
7. City shall not construct nor make any improvements in, on or upon the property and no alterations shall be made in, on, or upon the property, without written approval of the County, under penalty of forfeiture of this easement. Violation of this restriction and prohibition will, alternatively, at County's option, entitle County to injunctive relief and City hereby agrees to reimburse County for its actual reasonable legal fees, costs and disbursements incurred in obtaining such legal relief. Requests by City to construct on or develop, improve or alter the property shall be in writing and accompanied by detailed plans and specifications, prepared by a Professional Engineer or Architect registered in the State of Wisconsin, covering proposed development, improvement or alteration. Upon written approval by the County of such plans and specifications for any improvement or alteration, as to the height, location and exterior aesthetics of the two water towers and associated appurtenances, access improvements and water main improvements, construction, development, improvement or alteration by City shall be in accordance with such approved plans and specifications. Similarly, the County shall submit plans for all surface alterations of plus or minus 1 foot or greater within the limits of said Easement Area to the City Engineer. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed. The City shall make application, secure and pay for all permits, licenses or other authorizations required by authority of Federal, State or Local laws, ordinances, codes and other regulatory measures in connection with the conduct of the operation of water towers and associated appurtenances, access improvements and water main improvements and the City shall pay all fees, taxes and charges assessed under Federal, State and Local laws or ordinances insofar as they are applicable, including real estate taxes, if any.
8. Advertising limitation, Communication Equipment, revenue sharing: Advertising signs, displays, lighting, Communication Equipment (particularly, that connected with transmission and reception of wireless telephone, radio, data and other communication signals and for the construction, maintenance, repair or replacement of related facilities, antennas, or equipment and related activities incidental to the operation of these activities), control and directional lights or devices will be subject to approval of the County, and shall in all respects conform to Federal and State, and local requirements:

reserving to the County the right to restrict number, size, location and design. City and County shall share equally in any revenues derived from any advertising and/or telecommunication equipment affixed in any way to the water towers or tanks. County shall have the right to affix communication equipment to the water towers or tanks as needed. City hereby agrees that it will not levy or impose charges or fees upon County in connection with County's placement of any such communication equipment onto the water towers or tanks.

9. The City and County shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns. City will construct and maintain water towers and associated appurtenances, access improvements and water main improvements in such a way as not to interfere with the ability of the person or persons farming the surrounding area to have access, ingress and egress between the fields east and west of the site of the water towers and associated appurtenances.
10. The City and County each hereby waives all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy of insurance and that each party shall notify the other if such party's insurance would be so invalidated.
11. Either party hereto may enforce this easement by appropriate action. In the event City does not respond to Milwaukee County's rightful demand for work, maintenance or repair, Milwaukee County will be entitled to self help for which it will be entitled to bill City, and for which charges City agrees to pay.
12. This easement may not be modified or amended, except by a writing executed and delivered by the City and County or their respective successors and assigns. The property shall be used exclusively for the purpose of building and constructing and/or operating, maintaining, repairing, enlarging, reconstructing, relocating and inspecting as may be or may become applicable, two water towers and associated appurtenances, access improvements and water main improvements, subject to the provisions herein relating to advertising and telecommunication equipment. Any contemplated change in the authorized use of the property is subject to prior approval by County. The City will not, in any manner subeasement, assign, transfer, convey or encumber any of the easement rights received herein from the County nor any of the improvements constructed within the property without written approval of the County. Violation by City of this restriction of the use it may put to this property will, at County's option, entitle County to injunctive relief and City hereby agrees to reimburse County for its actual reasonable legal fees, costs and disbursements incurred in obtaining such legal relief.

13. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.
14. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.
15. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
16. It is agreed between the City and the County that in consideration for granting the easement as described in Exhibit "C", that the City will not levy a special assessment for the installation of water main in West Puetz Road against the County lands abutting that portion of West Puetz Road on the south side of West Puetz Road between South 68<sup>th</sup> Street and South 76<sup>th</sup> Street. The City will pay the amounts which would otherwise have been specially assessed to the County in consideration of this Easement.
17. It is also agreed between the City and the County that in consideration for granting the easements as described in Exhibit "C", that the City will grant a ten (10) year interest free deferment for the proposed levy of the special assessment for the installation of water main in West Puetz Road against the County land on the north side of West Puetz Road from South 76<sup>th</sup> Street to South 68<sup>th</sup> Street. Said deferment shall be on the principal and interest of the special assessment for water main assessed against the above described portion of West Puetz Road for a period of ten (10) years from adoption of the resolution levying the special assessment or until such time the County transfers or develops the abutting property, whichever is sooner. The City will pay the cost of such deferment in consideration of this Easement.
18. Environmental Remediation Costs.
  - a) County represents that it has no knowledge of any Hazardous Substances (as defined below) on the Property that is identified as hazardous, toxic or dangerous in any applicable Federal, State or local law or regulation. City and County shall not, either with or without negligence, cause or permit the escape, unlawful disposal, or re-easement beyond lawful limits of any Hazardous Materials as hereinafter defined. City and County shall not bring onto the Premises and/or Property or knowingly allow the storage or use of Hazardous Materials in any manner if prohibited by law or if not sanctioned by the highest standards prevailing in the industry for the storage and use of such substances or materials. For the purposes of this paragraph, the term "Hazardous Materials" shall mean, (i) any substances defined as "hazardous substances", "pollutants", "contaminants", "hazardous materials", "hazardous

waste", or "hazardous and toxic substances" as now and hereafter defined in any applicable federal, state or local law, regulation, ordinances or directive, including, but not limited to the Resource Conservation and Recovery Act of 1976 (42USC Sec 6901 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, amended by SARA, 42 USC Sec. 9601), et. seq.; the Hazardous Materials Transportation act, 49 USC Sec. 1801 et. seq.; the Toxic control substance Act, 15USC Sec. 2601, et. seq.; the Resource Conservation and Recovery Act, as amended (42 USC Sec. 9601, et. seq.; the Clean Water Act, 33 USC Sec. 1251 et. seq.; the Clean Air Act, 42 USC Sec 7412, et. seq.; as any such act may be amended, modified, or supplemental; (ii) those substances listed or otherwise identified in the regulations adopted and publication issued, as may be amended, modified or supplemented, pursuant to any of the above referenced statutes; (iii) any friable asbestos, airborne asbestos, or any substances or materials containing asbestos; (iv) any substances, the presence of which on the Premises or Property is prohibited by any legal requirement of any governmental authority or which may give rise to an assessment of a governmental authority; and (v) any other substance which by legal requirement of any governmental authority requires special handling in its collection, storage, treatment or disposal.

- b) If a federal or state agency shall, in its reasonable discretion, require testing to ascertain whether or not there has been any re-easement of Hazardous Materials by City, then the reasonable costs thereof attributable shall be reimbursed by City to County upon demand to the extent such testing is attributable to City if such requirement applies to City's use of the Premises or Property. If testing conducted by County pursuant to this subparagraph identifies the presence of any re-easement of Hazardous Materials by City, City shall have the right and opportunity to perform, at City's costs, a retest to confirm or refute the results of County's testing. City shall execute affidavits, representations and the like from time to time at County's reasonable request concerning City's best knowledge and belief regarding the presence of Hazardous Materials on the Premises or Property.
- c) City Indemnification of County. City shall indemnify and hold harmless County, it's officers, employees, agents, successors and assigns from and against any and all losses, claims, damages, penalties, liabilities, costs and expenses (including reasonable attorney's fees and court costs), fines, injuries, penalties, response costs (including costs of any required or necessary investigation, testing, monitoring, repair cleanup, detoxification, preparation of any closure or other required plans or other removal, response or remedial action at or relating to the Property) (collectively, the "Claims and costs"), with respect to, as a direct or indirect result of, or arising out of any of the following: (i) any legal requirements, lawsuit (brought or threatened), reasonable settlement, or requirement of any insurer of the Premise or Property or any portion thereof, relating to the generation, presence, management, disposal, re-easement (or threatened re-easement), escape,

seepage, leakage or cleanup or any Hazardous Materials at or from or under all or a portion of the Premises or Property to the extent which City, its agents, contractors or invitees are responsible, or (ii) the migration of Hazardous Materials to the extent caused by City from the Premises or Property to any other property or onto the Premises or Property; or (iii) the treatment, disposal or storage of Hazardous Materials from the Premises or Property by City, its agents, contractors or invitees, or (iv) the incorporation by City of any Hazardous Materials on the Premises.

- d) County Indemnification of City. County shall agree to indemnify, defend and hold City and its officers, partners, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims) or loss including attorney's fees, consultants fees and expert fees which arise during or after the term of this Easement from or in connection with the presence in the soil, groundwater or soil vapor on or under the Property of Hazardous materials, unless the Hazardous Materials are present as a result of the negligence or willful misconduct of City, its officers, employees or agents. Without limiting the generality of the foregoing, the indemnification provided by this paragraph (c) shall specifically cover costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any federal, state or local government agency or political subdivision because of the presence of Hazardous Material in the soil, groundwater or soil vapor on or under the Property, unless the Hazardous Materials are present solely as a result of the negligence or willful misconduct of City, its officers, employees or agents. Without limiting the generality of any of the foregoing the indemnification provided by paragraph (c) shall also specifically cover costs incurred in connection with
1. Hazardous Materials present in the soil, groundwater or soil vapor on or under the Property before the term of this Easement commenced;
  2. Hazardous Materials that migrate, flow, percolate, diffuse or in any way move onto or under the Property after the commencement of this easement, except to the extent caused by City; or
  3. Hazardous Materials present on or under the Property as a result of any discharge, dumping, or spilling, (accidental or otherwise) on to the Property, prior to or during the easement by any persons, corporation, partnership or entity other than City.
19. All of the terms and conditions of this Water Tower Easement shall be binding upon the City and County and their respective successors and assigns.
20. If City does not substantially commence construction of a water tower and associated appurtenances, access improvements and water main improvements by January 31, 2002, or complete construction by January 31, 2004, this easement will terminate and City will, at

County's option, either (i) turn any partially completed water tower and associated appurtenances, access improvements and water main improvements over to the County; or (ii) at City's sole expense, demolish and remove the partially completed water tower and associated appurtenances, access improvements and water main improvements and restore the site to its original condition or such other conditions as the County and City may then agree. If in the future City commences construction of a second water tower and associated appurtenances, access improvements and water main improvements but does not complete construction thereof within two years thereafter, then and in that event, City will, at County's option, either (i) turn any partially completed second water tower and associated appurtenances, access improvements and water main improvements over to the County; or (ii) at City's sole expense, demolish and remove the partially completed second water tower and associated appurtenances, access improvements and water main improvements and restore the site to the condition the site was in prior to commencement of construction on the second water tank, or such other condition or conditions as the County and City may then agree.

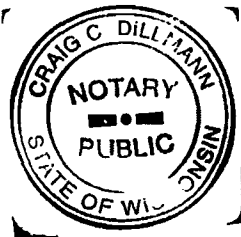
IN WITNESS WHEREOF, Milwaukee County has caused these presents to be signed by F. Thomas Ament, County Executive, at Milwaukee, Wisconsin, this 26<sup>th</sup> day of February, 2000.

BY: F. Thomas Ament  
F. Thomas Ament, County Executive

STATE OF WISCONSIN)  
MILWAUKEE COUNTY) SS

Personally came before me this 26<sup>th</sup> day of February, 2000, F. Thomas Ament, County Executive of the above named municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be the County Executive of said municipal corporation and acknowledge the same.

C. C. Well  
Notary Public  
State of Wisconsin  
My Commission Expires: 11-9-03



APPROVED AS TO FORM  
John J. [Signature]  
CORPORATION COUNSEL 2/23/01

IN WITNESS WHEREOF, Milwaukee County has caused these presents to be signed by Mark Ryan, County Clerk, at Milwaukee, Wisconsin, this 26<sup>th</sup> day of February, 2000.

BY: 

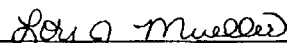
Mark Ryan, County Clerk

STATE OF WISCONSIN)

MILWAUKEE COUNTY)

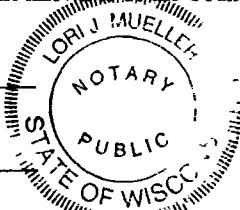
SS

Personally came before me this 26<sup>th</sup> day of February, 2000, Mark Ryan, County Clerk of the above named municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be the County Clerk of said municipal corporation and acknowledge the same.



Notary Public

State of Wisconsin

My Commission Expires: 10-19-03

CITY OF FRANKLIN

By: 

Frederick F. Klimetz

By: 

Sandra L. Claus, City Clerk

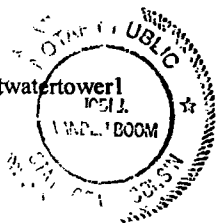
STATE OF WISCONSIN)

COUNTY OF MILWAUKEE)

SS

On this 5<sup>th</sup> day of January, A.D. 2000, before me personally appeared Frederick F. Klimetz and Sandra L. Claus, who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority, and pursuant to resolution file No. 2000-5129 adopted by its Common Council on 12/19, 2000.

forms/easement/watertower1



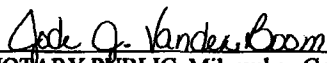
  
NOTARY PUBLIC, Milwaukee County, Wisconsin  
My commission expires 9-19-04

EXHIBIT A  
DESCRIPTION OF THE PROPERTY  
(TAX KEY NO. 000-000-001)

All of the NW 1/4 of Section 22, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin. Excepting the South 198.00 feet of North 1285.00 feet of East 220.00 feet of said quarter section and excepting West 80.00 feet for street right of way. Containing 153.791 acres.

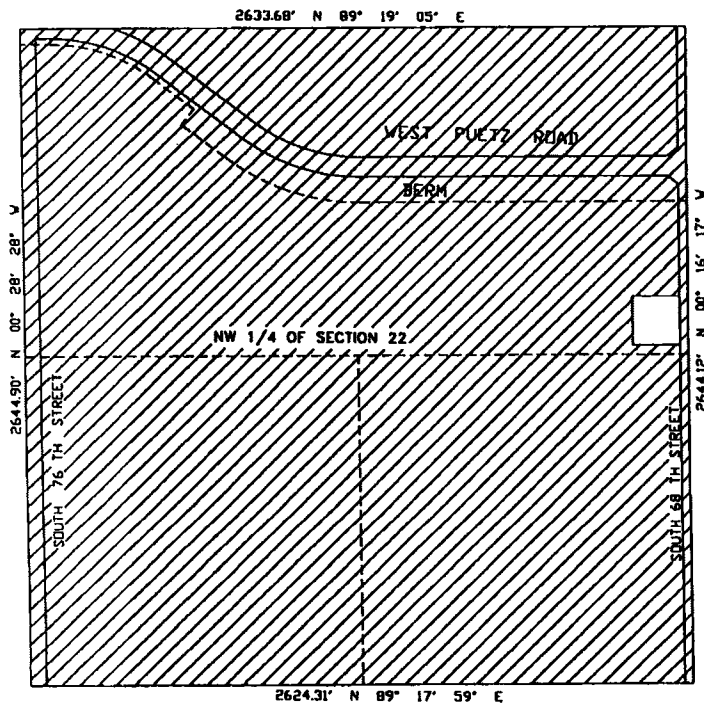




EXHIBIT B  
DEFECTION OF THE FACILITIES  
1 of 2

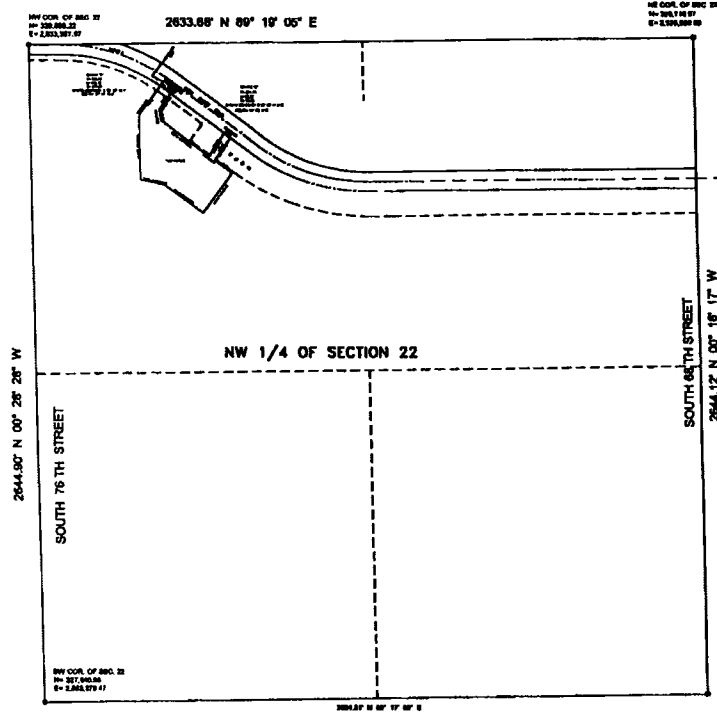


EXHIBIT B  
DEPECTION OF THE FACILITIES

2 of 2



SCALE 1" = 150'

NW COR. OF SEC. 22  
N= 329,685.22  
E= 2,533,357.57

N 89° 19' 05" E  
2633.68'

CURVE "A"  
R= 721.78  
L= 450.72  
C= 443.43  
CHORD BEARING= S 72° 48' 10.1" E  
DELTA= 37° 54' 18.6"

CURVE °C  
R= 661.78  
L= 22.28  
C= 22.28  
CHORD BEARING= S 83° 58' 41.0" E  
DELTA= 01° 52' 14.5"

2644.90' N 00° 28' 28" W

SW COR. OF SEC. 22  
N= 327,040.58  
E= 2,533,379.47

start time: 12:12

EXHIBIT C

(Description of Easement Area)

Being a part of the NW ¼ of Section 22, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

Commencing at the Northwest corner of the Northwest ¼ of Section 22, thence N 89° 19' 05" E, along centerline of West Puetz Road, 114.83 feet, thence southeasterly along the said centerline, 450.72 feet, along the arc of a curve whose center lies to the south, whose radius is 721.78 feet, whose chord bears S 72° 48' 10.1" E, 443.43 feet to a point, thence S 35° 05' 11.3" W, 40.00 feet to a point of beginning of the lands to be described, thence continuing S 35° 05' 11.3" W, 144.56 feet to a point, thence S 00° 28' 23" E, 254.23 feet to a point, thence S 77° 06' 26" E, 92.51 feet to a point, thence S 53° 02' 26" E, 191.61 feet to a point, thence N 35° 05' 11" E, 200.11 feet to a point, thence N 53° 02' 26" W, 85.05 feet to a point, thence N 35° 05' 11" E, 109.06 feet to a point, thence N 53° 02' 26" W, 30.00 feet to a point, thence S 35° 05' 11" W, 109.06 feet to a point, thence N 53° 02' 26" W, 230.12 feet to a point, thence N 08° 58' 37" W, 43.14 feet to a point, thence N 35° 05' 11.3" E, 79.04 feet to a point, thence N 53° 27' 28" W, 27.74 feet to a point, thence northwesterly 450.72 feet along the arc of a curve whose center lies to the southwest, whose radius is 681.78 feet, whose chord bears N 53° 58' 41.5" W, 22.26 feet to the point of beginning. Containing 86486.35 square feet, 1.99 acres

AN  
F  
DESK  
KOS 2/21/01  
EXHIBIT C

**BLANK PAGE**