

CITY OF FRANKLIN  
COMMON COUNCIL MEETING\*  
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS  
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN  
AGENDA\*\*  
TUESDAY, JANUARY 8, 2019 AT 6:30 P.M.

- A. Call to Order and Roll Call.
- B.
  - 1. Citizen Comment Period.
  - 2. Mayoral Announcement: Intergovernmental Cooperation Council Meeting on January 14, 2019 in the Village of Greendale.
- C. Approval of Minutes:  
Regular Common Council Meeting of December 18, 2018.
- D. Hearings.
- E. Organizational Business.
- F. Letters and Petitions.
- G. Reports and Recommendations:
  - 1. An Initial Resolution Authorizing General Obligation Bonds in an Amount Not to Exceed \$3,045,000 for Tax Incremental District No. 3 Projects.
  - 2. An Initial Resolution Authorizing Not to Exceed \$10,830,000 General Obligation Bonds for Refunding Purposes.
  - 3. A Resolution Providing for the Sale of Not to Exceed \$13,875,000 Taxable General Obligation Corporate Purpose Bonds, Series 2019A.
  - 4. An Initial Resolution Authorizing General Obligation Bonds in an Amount Not to Exceed \$6,570,000 for Tax Incremental District No. 6 Projects.
  - 5. A Resolution Providing for the Sale of Not to Exceed \$6,570,000 General Obligation Community Development Bonds, Series 2019B.
  - 6. A Resolution Directing Publication of Notice to Electors Relating to Bond Sales.
  - 7. Purchase of Five Ford Explorer Squad Vehicles for the Police Department in the Amount of \$182,210.
  - 8. A Resolution Authorizing Certain Officials to Accept Two Reciprocal Driveway Area Easements for and as Part of the Review and Approval of a Site Plan for a Senior Housing Development at Ballpark Commons (7220 South Ballpark Drive) (The Boldt Company, Applicant).
  - 9. Report on Ballpark Commons Infrastructure and Site Work Draws Financial Report.
  - 10. Request to Initiate Land Acquisition Process and Proceed to Finalize Plans and Solicit Contractors for the S. 51st Street and W. Drexel Avenue Intersection Project.

Common Council Meeting Agenda  
January 8, 2019  
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11. Standards, Findings and Decision of the City of Franklin Common Council Upon the Application of Scott Cole, Owner of Innovative Health & Fitness, LLC Applicant, for a Special Exception to Certain Natural Resource Provisions of the City of Franklin Unified Development Ordinance.
12. A Resolution to Adopt "Housing Diversity in Franklin Wisconsin-December 2018" Report.
13. November 2018 Monthly Financial Report.
14. City Attorney Request for Potential Conflict of Interest Informed Consent Waiver with Regard to the Performance of Legal Services for the Department of Public Works Building/Facility Intergovernmental Cooperation Agreement Between the City of Franklin and the Village of Hales Corners Subject Matter.

H. Licenses and Permits.  
Miscellaneous Licenses from License Committee Meeting of January 8, 2019.

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

J. Adjournment.

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

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

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

REMINDERS:

January 10	Plan Commission Meeting	7:00 p.m.
January 14	Committee of the Whole	6:30 p.m.
January 22	Common Council Meeting	6:30 p.m.
January 24	Plan Commission Meeting	7:00 p.m.
February 4	Committee of the Whole	6:30 p.m.
February 5	Common Council Meeting	6:30 p.m.
February 7	Plan Commission Meeting	7:00 p.m.
February 19	Common Council Meeting	6:30 p.m.
February 19	Spring Primary	7:00 a.m.-8:00 p.m.
February 21	Plan Commission Meeting	7:00 p.m.

C.

CITY OF FRANKLIN  
COMMON COUNCIL MEETING  
DECEMBER 18, 2018  
MINUTES

- |  |         |   |
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| ROLL CALL  | A.      | The regular meeting of the Common Council was held on December 18, 2018 and called to order at 6:30 p.m. by Mayor Steve Olson in the Franklin City Hall Council Chambers, 9229 W. Loomis Road, Franklin, Wisconsin. On roll call, the following were in attendance: Alderman Mark Dandrea, Alderman Dan Mayer, Alderwoman Kristen Wilhelm, Alderman Steve F. Taylor, Alderman Mike Barber and Alderman John R. Nelson. Also present were City Engineer Glen Morrow, Dir. of Administration Mark Luberd, City Attorney Jesse A. Wesolowski and City Clerk Sandra Wesolowski. |
| CITIZEN COMMENT  | B.1.    | Citizen comment period was opened at 6:32 p.m. and closed at 7:05 pm.   |
| COMM. OF WHOLE<br>JANUARY 4, 2019  | B.2.(a) | Mayor Olson noted that a Committee of the Whole meeting has been scheduled for January 14, 2019, at 6:30 p.m.   |
| GFOA CERTIFICATE   | B.2.(b) | Mayor Olson noted that a Certificate of Achievement for Excellence in Financial Reporting was received by the City of Franklin from the Government Finance Officers Association.  |
| MINUTES<br>DECEMBER 4, 2018  | C.1.    | Alderman Barber moved to approve the minutes of the regular Common Council meeting of December 4, 2018, as presented. Seconded by Alderman Mayer. All voted Aye; motion carried.  |
| APPT. OF KAREN<br>SPARAPANI AS<br>HUMANE OFFICER                                 | E.      | Alderman Dandrea moved to appoint Karen Sparapani, Executive Director of Milwaukee Area Domestic Animal Control Commission (MADACC) as Humane Officer. Seconded by Alderman Barber. On roll call, Alderman Dandrea, Alderman Mayer, Alderwoman Wilhelm, Alderman Barber, and Alderman Nelson voted Aye; Alderman Taylor voted No. Motion carried.   |
| ORD. 2018-2346<br>AMEND MUN. CODE<br>TO INCLUDE<br>ELECTRONIC<br>SMOKING DEVICES | G.1.    | Alderman Barber moved to adopt Ordinance No. 2018-2346, AN ORDINANCE TO AMEND ARTICLE XVIII "TOBACCO PRODUCTS" AND 183.71. "RESTRICTING THE USE OF CIGARETTES AND TOBACCO PRODUCTS" OF THE MUNICIPAL CODE, TO INCLUDE THE REGULATION OF ELECTRONIC SMOKING DEVICES AND PRODUCTS IN ADDITION TO AND OTHER THAN TOBACCO PRODUCTS INTENDED FOR INHALATION USES. Seconded by Alderman Taylor. On roll call, all voted Aye. Motion carried.  |

ORD. 2018-2347  
AMEND MUN. CODE  
PARKING  
RESTRICTIONS ON  
BOTH SIDES OF  
S. 35TH ST.

G.7. Alderman Taylor moved to adopt Ordinance No. 2018-2347, AN ORDINANCE TO AMEND THE MUNICIPAL CODE SECTION 245-5.F. EXTENDING PARKING RESTRICTIONS ON BOTH SIDES OF S. 35TH STREET FROM 25 FEET TO 100 FEET SOUTH OF W. HILLTOP LANE RIGHT OF WAY AND EXTENDING FROM 25 FEET TO 50 FEET ON THE WEST SIDE OF S. 35TH STREET NORTH OF W. HILLTOP LANE RIGHT OF WAY. Seconded by Alderman Mayer. All voted Aye; motion carried.

RES. 2018-7448  
POLICE DEPT.  
FIREARMS RANGE  
RENOVATION

G.2. Alderman Taylor moved to authorize staff to proceed with the Firearms Range Capital Improvement Fund Project process and to adopt Resolution No. 2018-7448, A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE AN AGREEMENT [INCLUDING ANY CHANGES THERETO APPROVED BY THE CHIEF OF POLICE AND THE CITY ATTORNEY] FOR ARCHITECTURAL AND/OR ENGINEERING, DESIGN, BIDDING AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE POLICE DEPARTMENT INDOOR FIREARMS RANGE RENOVATION PROJECT BETWEEN THE CITY OF FRANKLIN AND ANGUS-YOUNG ASSOCIATES, INC., with the condition that using the 2018 appropriation of \$191,250 already approved for the range renovation project, the 2019 appropriation must be under spent by at least a like amount. Seconded by Alderwoman Wilhelm. All voted Aye; motion carried.

RES. 2018-7449  
CONSERVATION  
EASEMENT  
11911 W. RYAN RD.  
MILLS HOTEL  
WYOMING, LLC

G.3. Alderman Nelson moved to adopt Resolution No. 2018-7449, A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A CONSERVATION EASEMENT FOR AND AS PART OF THE REVIEW AND APPROVAL OF A CERTIFIED SURVEY MAP FOR PROPERTY LOCATED AT 11911 WEST RYAN ROAD (MILLS HOTEL WYOMING, LLC, APPLICANT), subject to review and approval by the Department of City Development and technical corrections by the City Attorney. Seconded by Alderman Taylor. Alderman Dandrea, Alderwoman Wilhelm, Alderman Barber, and Alderman Nelson voted Aye; Alderman Mayer and Alderman Taylor voted No. Motion carried.

RES. 2018-7450  
CONTRACT WITH  
LAKESIDE ENG. FOR S.  
68TH ST. DESIGN

G.4 Alderman Barber moved to adopt Resolution No. 2018-7450, A RESOLUTION TO AMEND PROFESSIONAL SERVICES CONTRACT WITH LAKESIDE ENGINEERS FOR PHASE 2 OF DESIGN OF S. 68TH STREET FROM W. LOOMIS ROAD TO

W. PUETZ ROAD FOR \$48,597.80. Seconded by Alderwoman Wilhelm. All voted Aye; motion carried.

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| RES. 2018-7451<br>CONTRACT WITH<br>JACOBS ENG. FOR<br>REDESIGN OF W. ELM<br>RD.                                      | G.5.  | Alderman Taylor moved to adopt Resolution No. 2018-7451, A RESOLUTION TO AUTHORIZE A PROFESSIONAL SERVICES CONTRACT NOT TO EXCEED \$45,000 WITH JACOBS ENGINEERING FOR THE REDESIGN OF WISDOT'S IMPROVEMENTS OF W. ELM ROAD FROM I-94 TO S. 27TH STREET. Seconded by Alderman Dandrea. All voted Aye; motion carried.   |
| CITY HALL DESIGN<br>ARCHITECT  | G.6.  | No action was taken on additional direction for the contract with Quorum Architects for the design of the City Hall Roof, HVAC, and Fascia Wood Replacement Project following an update by the Director of Administration.  |
| RES. 2018-7452<br>DESIGN STANDARDS<br>AND CONSTRUCTION<br>SPECS JULY 2017  | G.8.  | Alderman Taylor moved to adopt Resolution No. 2018-7452, A RESOLUTION AUTHORIZING APPROVAL OF THE REVISIONS TO THE CITY OF FRANKLIN DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS JULY 2017. Seconded by Alderwoman Wilhelm. All voted Aye; motion carried.  |
| ORD. 2018-2348<br>AMENDING 2018<br>ANNUAL BUDGETS<br>FOR CAPITAL OUTLAY<br>FOR POLICE DEPT.<br>COMPUTER<br>PURCHASES | G.9.  | Alderman Mayer moved to adopt Ordinance No. 2018-2348, AN ORDINANCE TO AMEND ORDINANCE NO. 2017-2301, AN ORDINANCE ADOPTING THE 2018 ANNUAL BUDGETS FOR CAPITAL OUTLAY FUND FOR THE CITY OF FRANKLIN FOR FISCAL YEAR 2018, TO RECLASSIFY \$4,635 OF COMPUTER EQUIPMENT PURCHASE APPROPRIATIONS TO POLICE COMPUTER PURCHASES FROM SAVINGS IN OTHER DEPARTMENT COMPUTER EQUIPMENT PURCHASES. Seconded by Alderwoman Wilhelm. On roll call, all voted Aye. Motion carried. |
| ORD. 2018-2349<br>AMEND 2018 BUDGET<br>ORD. FOR TIRE<br>REPLACEMENT<br>MACHINE                                       | G.10. | Alderman Taylor moved to adopt Ordinance No. 2018-2349, AN ORDINANCE TO AMEND ORDINANCE NO. 2017-2301, AN ORDINANCE ADOPTING THE 2018 ANNUAL BUDGETS FOR CAPITAL OUTLAY FUND FOR THE CITY OF FRANKLIN FOR FISCAL YEAR 2018, TO RECLASSIFY \$8,000 OF APPROPRIATIONS FOR A TIRE REPLACEMENT MACHINE FROM CONTINGENCY TO HIGHWAY EQUIPMENT. Seconded by Alderman Barber. On roll call, all voted Aye. Motion carried.   |

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| FINANCIAL REPORT<br>OCTOBER 2018   | G.11. | Alderman Taylor moved to receive the October 2018 Financial Report and place on file. Seconded by Alderman Dandrea. All voted Aye; motion carried.  |
| RES. 2018-7453<br>CONTRACT WITH<br>GREELEY AND<br>HANSEN FOR IND.<br>PARK LIFT STATION | G.12. | Alderman Taylor moved to adopt Resolution No. 2018-7453, A RESOLUTION TO AUTHORIZE PHASE 2A OF A PROFESSIONAL SERVICES CONTRACT WITH GREELEY AND HANSEN FOR THE DESIGN OF INDUSTRIAL PARK LIFT STATION ABANDONMENT AND SEWER EXTENSION FOR AN ADDITIONAL \$95,510. Seconded by Alderman Barber. All voted Aye; motion carried.  |
| QUOTES FROM PDS<br>FOR WATER DEPT.<br>SERVER   | G.13. | Alderman Taylor moved to authorize the Director of Administration to execute the two quotes presented with Paragon Development Systems, Inc. (PDS) for \$12,875.07 and \$2,800 for the purchase and installation/upgrade of the Water Department's server to a VMWare server and platform. Seconded by Alderman Dandrea. All voted Aye; motion carried.   |
| SOFTWARE<br>CONTRACT WITH<br>NORTHWOODS FOR<br>CITY'S WEBSITE                          | G.14. | Alderman Mayer moved to authorize the Director of Administration to execute a proposal from Northwoods Software, at a cost of \$22,920 for an upgrade to the Tital CMS software driving the City's website and for an initial migration of website content and for the project to be funded by 2019 General Fund Contingency appropriations. Seconded by Alderwoman Wilhelm. All voted Aye; motion carried. |
| PENSION PLAN<br>MODIFICATIONS  | G.15. | Alderman Barber moved to approve the proposed pension plan modifications to the City of Franklin Defined Contribution Retirement Plan and the City of Franklin Defined Benefit Retirement Plan and authorize the Director of Administration to execute the restated plan documents. Seconded by Alderman Mayer. All voted Aye; motion carried.  |
| INSPECTION<br>SERVICES DEPT.<br>RENAMING AND<br>MODIFYING JOB<br>DESCRIPTIONS          | G.16. | Alderman Barber moved to approve renaming "Building Inspection" to "Inspection Services" and modifying the job descriptions as listed on the Request for Council Action included in the packet for this meeting. Seconded by Alderman Mayer. All voted Aye; motion carried.   |
| CONTRACT WITH<br>SOUTHEAST<br>INSPECTION   | G.17. | Alderman Taylor moved to approve a service contract between the City of Franklin and Southeast Inspection Management Services, LLC, for Building Inspector Services, subject to approval of the necessary 2019 budget modification, and to authorize the release of   |

checks in accordance with the terms of the agreement and in advance of Common Council action when necessary. Seconded by Alderman Mayer. All voted Aye; motion carried.

ORD. 2018-2350  
AMEND 2018 BUDGET  
ORD. FOR INSPECTION  
SERVICES DEPT.

G.18. Alderman Taylor moved to adopt Ordinance No. 2018-2350, AN ORDINANCE TO AMEND ORDINANCE NO. 2018-2345, AN ORDINANCE ADOPTING THE 2019 ANNUAL BUDGETS FOR THE GENERAL FUND FOR THE CITY OF FRANKLIN FOR FISCAL YEAR 2019, TO RECLASSIFY \$104,194 OF BUILDING INSPECTION PERSONNEL SERVICES TO BUILDING INSPECTION OTHER SERVICES, SUPPLIES, ETC. FOR THE CONTRACTURAL SERVICES OF SCOTT SATULA WITH SOUTHEAST INSPECTION MANAGEMENT SERVICES, LLC, FOR BUILDING INSPECTOR SERVICES. Seconded by Alderman Barber. On roll call, all voted Aye. Motion carried.

LICENSES AND  
PERMITS

H. Alderman Taylor moved to approve the following licenses:  
Grant Operator license to Nicole Schilcher, 10509 W. South County Line Rd, Franksville, with a warning letter from City Clerk; Rick Boardman, 2112 S. 72nd St., West Allis; Cheryl Endter, 461 Adeline Dr., Franksville; Brad Herron, 207 W. Hidden Trail, Elkhorn; Breanna Roberts, 7517 S. Riverview Rd.;  
Hold Operator license application for appearance for Anna Matecki, 2222 E. Vollmer Ave., Milwaukee; and  
Grant Class B Combination and Entertainment & Amusement license for Franklin Food & Beverage, LLC, Agent Frank Orcholski, 9643 S. 76th St., subject to closing of property documents and compliance with City and State Codes; and  
Grant (PUBLIC) People Uniting for the Betterment of Life and Investment in the Community Grant pending proof of insurance for Fleet Reserve Association Branch 14, St. Martins Fair; and  
Grant (PUBLIC) People Uniting for the Betterment of Life and Investment in the Community Grant pending projected budget for Knights of Columbus, Arts & Crafts Fair; and  
Grant (PUBLIC) People Uniting for the Betterment of Life and Investment in the Community Grant for Federation of Croatian Societies, Inc, Fundraisers; Franklin Historical Society, Historic Village; Franklin Noon Lions Club, St. Martins Fair; Franklin Police Citizens Academy Alumni, St. Martins Fair; Franklin Public Library Foundation, Fundraisers; Root River Church, St. Martins Fair.  
Seconded by Alderman Barber. All voted Aye; motion carried.

VOUCHERS AND  
PAYROLL

- I. Alderman Barber moved to approve City vouchers with an ending date of December 13, 2018 in the amount of \$1,161,186.19; and payroll dated December 7, 2018 in the amount of \$405,866.51 and payments of the various payroll deductions in the amount of \$219,757.03 plus City matching payments; and estimated payroll dated December 21, 2018 in the amount of \$383,000.00 and payments of the various payroll deductions in the amount of \$403,000.00 plus City matching payments; and estimated payroll dated January 4, 2019 in the amount of \$389,000.00 and payments of the various payroll deductions in the amount of \$213,000.00 plus City matching payments; and property tax refunds with an ending date of December 13, 2018 in the amount of \$426.26; and the release of payment to Knight Barry, Inc. not to exceed \$2,575,452.29; and the release of Library vouchers upon approval by the Library Board; and the release of payment to Wesolowski, Reidenbach and Sajdak, S.C. not to exceed \$35,000.00. Seconded by Alderman Mayer. On roll call, all voted Aye. Motion carried.

ADJOURNMENT

- J. Alderman Mayer moved to adjourn the regular meeting of the Common Council at 8:03 p.m. Seconded by Alderman Barber. All voted Aye; motion carried.



APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Jan 8, 2019
REPORTS & RECOMMENDATIONS	INITIAL RESOLUTION AUTHORIZING GENERAL OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED \$3,045,000 FOR TAX INCREMENTAL DISTRICT NO. 3 PROJECTS	ITEM NUMBER <i>G.I.</i>

### Analysis

The Common Council adopted Resolution 2017-7327 on November 21, 2017 authorizing a Developer's Agreement with TI Investors of Franklin Apartments LLC. That Developers Agreement awarded a \$5 million grant to the Developer for the completion of five multi-family developments, payable upon occupancy permits.

Completion of the first of the units is imminent, with additional units to be completed shortly thereafter.

The TID has accumulated sufficient resources to pay \$2 million of the Grant, however needs an additional \$3 million to fund the balance of the Grant.

The sale will be combined with a TID5 refunding bond into one Taxable General Obligation Bond to be considered later this meeting.

The sale will be a competitive sale with a sale date of February 5, 2019.

Quarles & Brady prepared an authorizing Council Resolution for review and an updated resolution based on the results of the sale will be presented at the sale meeting for adoption. The authorizing resolution is attached.

Our Financial Advisor for this transaction is Ehlers & Associates, LLC, represented by Jon Cameron. Mr Cameron will be in attendance to describe the Pre-Sale Report for the proposed offering.

### Fiscal Note

The 2019 Budget anticipated this issue.

### **COUNCIL ACTION REQUESTED**

Motion to adopt Resolution No. 2019 - \_\_\_\_\_ an initial resolution authorizing General Obligation Bonds in an amount not to exceed \$3,045,000 for Tax Incremental District No. 3 projects.

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. \_\_\_\_\_

INITIAL RESOLUTION AUTHORIZING GENERAL  
OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED  
\$3,045,000 FOR TAX INCREMENTAL DISTRICT NO. 3 PROJECTS

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BE IT RESOLVED by the Common Council of the City of Franklin, Milwaukee County, Wisconsin, that there shall be issued, pursuant to Chapter 67, Wisconsin Statutes, general obligation bonds in an amount not to exceed \$3,045,000 for the public purpose of paying the cost of providing financial assistance to community development projects under Section 66.1105, Wisconsin Statutes, in the City's Tax Incremental District No. 3.

Introduced at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

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

ATTEST:

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

(SEAL)

AYES\_\_\_\_NOES\_\_\_\_ABSENT\_\_\_\_

APPROVAL <i>Slew</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Jan 8, 2019
REPORTS & RECOMMENDATIONS	INITIAL RESOLUTION AUTHORIZING NOT TO EXCEED \$10,830,000 GENERAL OBLIGATION BONDS FOR REFUNDING PURPOSES	ITEM NUMBER <i>G.2.</i>

### **Analysis**

The Common Council adopted Resolution 2018-7364 on April 17, 2018 authorizing the Sale of \$23,480,000 of Taxable Note Anticipation Notes, Series 2018A. That issue funded infrastructure costs associated with TID5. The issue anticipated that \$10 million or more of the infrastructure costs would be spent by March 1, 2019, and provided for a \$10 million payment on March 1, 2019.

In fact the City has expended in excess of \$10 million for infrastructure costs to date, and the sale of these notes will fix the cost of funds and amortization of the resources.

The sale will be combined with a TID3 bond into one Taxable General Obligation Bond to be considered later this meeting.

The sale will be a competitive sale with a sale date of February 5, 2019.

Quarles & Brady prepared an authorizing Council Resolution for review and an updated resolution based on the results of the sale will be presented at the sale meeting for adoption. The authorizing resolution is attached.

Our Financial Advisor for this transaction is Ehlers & Associates, LLC, represented by Jon Cameron. Mr. Cameron will be in attendance to describe the Pre-Sale Report for the proposed offering.

### **Fiscal Note**

The 2019 Budget anticipated this issue.

### **COUNCIL ACTION REQUESTED**

Motion to adopt Resolution No. 2019 - \_\_\_\_\_ an initial resolution authorizing not to exceed \$10,830,000 General Obligation Bonds for refunding purposes.

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. \_\_\_\_\_

INITIAL RESOLUTION AUTHORIZING NOT TO EXCEED  
\$10,830,000 GENERAL OBLIGATION BONDS FOR  
REFUNDING PURPOSES

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BE IT RESOLVED by the Common Council of the City of Franklin, Milwaukee County, Wisconsin, that there shall be issued, pursuant to Chapter 67, Wisconsin Statutes, general obligation bonds in an amount not to exceed \$10,830,000 for the public purpose of paying the cost of refunding obligations of the City, including interest on them.

Introduced at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

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

ATTEST:

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

(SEAL)

AYES\_\_\_\_NOES\_\_\_\_ABSENT\_\_\_\_\_

APPROVAL <i>Shw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Jan 8, 2019
REPORTS & RECOMMENDATIONS	RESOLUTION PROVIDING FOR THE SALE OF NOT TO EXCEED \$13,875,000 TAXABLE GENERAL OBLIGATION CORPORATE PURPOSE BONDS, SERIES 2019A	ITEM NUMBER <i>G.3.</i>

### Analysis

The Common Council adopted Resolution 2018-7364 on April 17, 2018 authorizing the Sale of \$23,480,000 of Taxable Note Anticipation Notes, Series 2018A. That issue provided for a \$10 million payment on March 1, 2019.

The Common Council adopted Resolution 2017-7327 authorizing a Developer's Agreement in TID3 providing for a \$5 million grant upon the occupancy permit for multi-family housing. TID3 requires \$3 million of additional resources to pay that Grant as it comes due during 2019.

The proposed sale will be combine the TID5 Refunding requirement with the TID3 requirement into one Taxable General Obligation Bond.

The sale will be a competitive sale with a sale date of February 5, 2019.

Quarles & Brady prepared an authorizing Council Resolution for review and an updated resolution based on the results of the sale will be presented at the sale meeting for adoption. The authorizing resolution is attached.

Our Financial Advisor for this transaction is Ehlers & Associates, LLC, represented by Jon Cameron. Mr.Cameron will be in attendance to describe the Pre-Sale Report for the proposed offering.

### Fiscal Note

The 2019 Budget anticipated these TID3 & 5 bonds.

### **COUNCIL ACTION REQUESTED**

Motion to adopt Resolution No. 2019 - \_\_\_\_\_ a Resolution providing for the sale of not to exceed \$13,875,000 Taxable General Obligation Corporate purpose bonds, Series 2019A..

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. \_\_\_\_\_

RESOLUTION PROVIDING FOR THE SALE OF  
NOT TO EXCEED \$13,875,000 TAXABLE GENERAL OBLIGATION  
CORPORATE PURPOSE BONDS, SERIES 2019A

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WHEREAS, the City of Franklin, Milwaukee County, Wisconsin (the "City") has adopted initial resolutions (the "Initial Resolutions") authorizing the issuance of general obligation bonds for the following public purposes and in the following not to exceed amounts:

- (a) \$3,045,000 for the cost of providing financial assistance to community development projects under Section 66.1105, Wisconsin Statutes, in the City's Tax Incremental District No. 3 (the "Project"); and
- (b) \$10,830,000 for refunding obligations of the City, including interest on them (the "Refunding").

WHEREAS, the Common Council hereby finds and determines that the Project is within the City's power to undertake and therefore serves a "public purpose" as that term is defined in Section 67.04(1)(b), Wisconsin Statutes;

WHEREAS, the Common Council deems it to be necessary, desirable and in the best interest of the City to undertake the Refunding to refund a portion of the Taxable Note Anticipation Notes, Series 2018A, dated May 1, 2018;

WHEREAS, the Common Council of the City hereby finds and determines that general obligation bonds in an amount not to exceed \$13,875,000 should be issued pursuant to the Initial Resolutions; and

WHEREAS, due to certain provisions contained in the Internal Revenue Code of 1986, as amended, it is necessary to issue such general obligation bonds on a taxable rather than tax-exempt basis.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1. Combination of Issues. The issues referred to above are hereby combined into one issue of bonds designated "Taxable General Obligation Corporate Purpose Bonds, Series 2019A" (the "Bonds") in an amount not to exceed \$13,875,000 for the public purposes above specified.

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

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

Section 4. Official Statement. The City Clerk (in consultation with Ehlers) shall also cause an Official Statement to be prepared and distributed. The appropriate City officials shall determine when the Official Statement is final for purposes of Securities and Exchange Commission Rule 15c2-12 and shall certify said Statement, such certification to constitute full authorization of such Statement under this resolution.

Introduced at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

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

ATTEST:

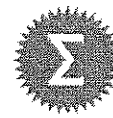
\_\_\_\_\_  
Sandra L. Wesolowski  
City Clerk

(SEAL)

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

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**EHLERS**

LEADERS IN PUBLIC FINANCE

January 8, 2019

## Pre-Sale Report for

City of Franklin, Wisconsin

\$13,875,000 General Obligation Taxable Corporate  
Purpose Bonds, Series 2019A



*City of Franklin*

### Prepared by:

Dawn Gunderson-Schiel, CPFO, CIPMA  
Senior Municipal Advisor

&

Jon Cameron, CIPMA  
Senior Municipal Advisor



## Executive Summary of Proposed Debt

Proposed Issue:	\$13,875,000 General Obligation Taxable Corporate Purpose Bonds, Series 2019A
Purposes:	<p>The proposed issue includes financing for the following purposes:</p> <p>Finance TID #3 project costs and refinance the callable portion of the 2018 NAN for TID #5</p> <ul style="list-style-type: none"> <li>• Finance TID #3 projects. Debt service will be paid from tax increment revenues.</li> <li>• Refund TID #5 portion of 2018 NAN. Debt service will be paid from tax increment revenues.</li> </ul> <p>The interest rate on the obligations proposed to be refunded is 2.500%. The refunding would extend the term over which the refunded obligations will be repaid by 12 years. This refunding is considered to be a Current Refunding as the obligations being refunded are either callable (pre-payable) now, or will be within 90 days of the date of issue of the new Bonds.</p>
Authority:	<p>The Bonds are being issued pursuant to Wisconsin Statute(s):</p> <ul style="list-style-type: none"> <li>• 67.04</li> </ul> <p>The Bonds will be general obligations of the City for which its full faith, credit and taxing powers are pledged.</p> <p>The Bonds count against the City's General Obligation Debt Capacity Limit of 5% of total City Equalized Valuation. Following issuance of the Bonds, the City's total General Obligation debt principal outstanding will be \$40,274,970, which is 20% of its limit. Remaining General Obligation Borrowing Capacity will be approximately \$160,872,100.</p>
Term/Call Feature:	<p>The Bonds are being issued for a term of 13 years. Principal on the Bonds will be due on March 1 in the years 2020 through 2032. Interest is payable every six months beginning September 1, 2019.</p> <p>The Bonds will be subject to prepayment at the discretion of the City on March 1, 2026 or any date thereafter.</p>
Bank Qualification:	Because the Bonds are taxable obligations they will not be designated as "bank qualified" obligations.



Rating:	<p>The City's most recent bond issues were rated by Moody's Investors Service. The current ratings on those bonds are "Aa2". The City will request a new rating for the Bonds.</p> <p>If the winning bidder on the Bonds elects to purchase bond insurance, the rating for the issue may be higher than the City's bond rating in the event that the bond rating of the insurer is higher than that of the City.</p>
Basis for Recommendation:	<p>Based on our knowledge of your situation, your objectives communicated to us, our advisory relationship as well as characteristics of various municipal financing options, we are recommending the issuance of Bonds as a suitable option based on:</p> <ul style="list-style-type: none"> <li>• The expectation this form of financing will provide the overall lowest cost of funds while also meeting the City's objectives for term, structure and optional redemption.</li> <li>• The Tax Increment District Project Plans contemplated the issuance of General Obligation Bonds.</li> <li>• The existing General Obligation pledge securing the obligations to be refunded.</li> </ul>
Method of Sale/Placement:	<p>We will solicit competitive bids for the purchase of the Bonds from underwriters and banks.</p> <p>We will include an allowance for discount bidding in the terms of the issue. The discount is treated as an interest item and provides the underwriter with all or a portion of their compensation in the transaction.</p> <p>If the Bonds are purchased at a price greater than the minimum bid amount (maximum discount), the unused allowance may be used to reduce your borrowing amount.</p>
Premium Pricing:	<p>In some cases, investors in municipal bonds prefer "premium" pricing structures. A premium is achieved when the coupon for any maturity (the interest rate paid by the issuer) exceeds the yield to the investor, resulting in a price paid that is greater than the face value of the bonds. The sum of the amounts paid in excess of face value is considered "reoffering premium." The underwriter of the bonds will retain a portion of this reoffering premium as their compensation (or "discount") but will pay the remainder of the premium to the City.</p> <p>Any premium amount received for that portion of the Bonds being issued for the purpose of refunding existing debt will be used to reduce the issue size. Any premium amount received for the remainder of the Bonds that is in excess of the underwriting discount and any capitalized interest amounts must be placed in the debt service fund and used to pay a portion of the interest payments due on the Bonds. These adjustments may slightly change the true interest cost of the original bid, either up or down.</p> <p>The amount of premium allowed can be restricted in the bid specifications. Restrictions on premium may result in fewer bids, but may also</p>



	eliminate large adjustments on the day of sale and unintended results with respect to debt service payment impacts. Ehlers will identify appropriate premium restrictions for the Bonds intended to achieve the City's objectives for this financing.
Other Considerations:	The Bonds will be offered with the option of the successful bidder utilizing a term bond structure. By offering underwriters the option to "term up" some of the maturities at the time of the sale, it gives them more flexibility in finding a market for your Bonds. This makes your issue more marketable, which can result in lower borrowing costs. In the event that the successful bidder utilizes a term bond structure, we recommend the City retain a paying agent to handle responsibility for processing mandatory redemption/call notices associated with term bonds.
Review of Existing Debt:	<p>We have reviewed all outstanding indebtedness for the City and find that, other than the obligations proposed to be refunded by the Bonds, there are no other refunding opportunities at this time.</p> <p>We will continue to monitor the market and the call dates for the City's outstanding debt and will alert you to any future refunding opportunities.</p>
Continuing Disclosure:	Because the City has more than \$10,000,000 in outstanding debt (including this issue) and this issue is over \$1,000,000, the City will be agreeing to provide certain updated Annual Financial Information and its Audited Financial Statement annually, as well as providing notices of the occurrence of certain reportable events to the Municipal Securities Rulemaking Board (the "MSRB"), as required by rules of the Securities and Exchange Commission (SEC). The City is already obligated to provide such reports for its existing bonds, and has contracted with Ehlers to prepare and file the reports.
Arbitrage Monitoring:	The Bonds are taxable obligations and are therefore not subject to IRS arbitrage and yield restriction requirements.
Investment of and Accounting for Proceeds:	In order to more efficiently segregate funds for this project and maximize interest earnings, we recommend using an investment advisor, to assist with the investment of bond proceeds until they are needed to pay project costs. Ehlers Investment Partners, a subsidiary of Ehlers and registered investment advisor, will discuss an appropriate investment strategy with the City.
Risk Factors:	<p><b>GO with Planned Abatement:</b> The City expects to abate a portion of the City debt service with tax incremental revenues. In the event this revenue is not available, the City is obligated to levy property taxes in an amount sufficient to make all debt payments.</p> <p><b>Current Refunding:</b> The Bonds are being issued to finance a current refunding of prior City debt obligations. Those prior debt obligations are "callable" on or after February 20, 2019. The new Bonds will not be pre-payable until March 1, 2026.</p>



	<p>This refunding is being undertaken based in part on an assumption that the City does not expect to pre-pay off this debt prior to the new call date and that market conditions warrant the refunding at this time.</p>
<p>Other Service Providers:</p>	<p>This debt issuance will require the engagement of other public finance service providers. This section identifies those other service providers, so Ehlers can coordinate their engagement on your behalf. Where you have previously used a particular firm to provide a service, we have assumed that you will continue that relationship. For services you have not previously required, we have identified a service provider. Fees charged by these service providers will be paid from proceeds of the obligation, unless you notify us that you wish to pay them from other sources. Our pre-sale bond sizing includes a good faith estimate of these fees, but the final fees may vary. If you have any questions pertaining to the identified service providers or their role, or if you would like to use a different service provider for any of the listed services please contact us.</p> <p><b>Bond Counsel:</b> Quarles &amp; Brady LLP</p> <p><b>Paying Agent:</b> Bond Trust Services Corporation, if term bonds</p> <p><b>Rating Agency:</b> Moody's Investors Service</p>



## Proposed Debt Issuance Schedule

Pre-Sale Review by Common Council:	January 8, 2019
Distribute Official Statement:	Week of January 28, 2019
Conference with Rating Agency:	January 29 or 30, 2019
Common Council Meeting to Award Sale of the Bonds:	February 5, 2019
Estimated Closing Date:	February 20, 2019
Redemption Date for Bonds Being Refunded:	February 20, 2019

## Attachments

Estimated Sources and Uses of Funds  
Estimated Proposed Debt Service Schedules  
Bond Buyer Index

## Ehlers Contacts

Municipal Advisors:	Dawn Gunderson-Schiel	(262) 796-6166
	Jon Cameron	(262) 796-6179
Disclosure Coordinator:	Peter Curtin	(262) 796-6187
Financial Analyst:	Mary Zywiec	(262) 796-6171

The Preliminary Official Statement for this financing will be sent to the Common Council at their home or email address for review prior to the sale date.

# City of Franklin, Wisconsin

\$13,875,000 Taxable General Obligation Corporate Purpose Bonds, Series 2019A  
Issue Summary

Dated: February 20, 2019 Assumes AA Taxable scale 12/17/18 + .25

## Total Issue Sources And Uses

Dated 02/20/2019 | Delivered 02/20/2019

	TID #3	TID #5 portion of 2018 NAN	Issue Summary
<b>Sources Of Funds</b>			
Par Amount of Bonds	\$3,045,000.00	\$10,830,000.00	\$13,875,000.00
Transfers from Prior Issue Debt Service Funds	-	117,361.11	117,361.11
Est. Int Earnings	15,000.00	-	15,000.00
<b>Total Sources</b>	<b>\$3,060,000.00</b>	<b>\$10,947,361.11</b>	<b>\$14,007,361.11</b>
<b>Uses Of Funds</b>			
Total Underwriter's Discount (1.250%)	38,062.50	135,375.00	173,437.50
Municipal Advisor	7,527.46	26,772.54	34,300.00
Quarles Bond Counsel	3,950.27	14,049.73	18,000.00
Disclsoure Counsel Fee	2,370.16	8,429.84	10,800.00
Trustee Origination	186.54	663.46	850.00
Rating Agency Fee.Moodys	3,730.81	13,269.19	17,000.00
Deposit to Capitalized Interest (CIF) Fund	-	631,074.84	631,074.84
Deposit to Project Construction Fund	3,000,000.00	-	3,000,000.00
Deposit to Current Refunding Fund	-	10,117,361.11	10,117,361.11
Rounding Amount	4,172.26	365.40	4,537.66
<b>Total Uses</b>	<b>\$3,060,000.00</b>	<b>\$10,947,361.11</b>	<b>\$14,007,361.11</b>



# City of Franklin, Wisconsin

\$13,875,000 Taxable General Obligation Corporate Purpose Bonds, Series 2019A

Issue Summary

Dated: February 20, 2019 Assumes AA Taxable scale 12/17/18 + .25

## Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
02/20/2019	-	-	-	-	-
09/01/2019	-	-	271,279.42	271,279.42	271,279.42
03/01/2020	675,000.00	3.170%	255,656.00	930,656.00	-
09/01/2020	-	-	244,957.25	244,957.25	1,175,613.25
03/01/2021	975,000.00	3.190%	244,957.25	1,219,957.25	-
09/01/2021	-	-	229,406.00	229,406.00	1,449,363.25
03/01/2022	1,505,000.00	3.310%	229,406.00	1,734,406.00	-
09/01/2022	-	-	204,498.25	204,498.25	1,938,904.25
03/01/2023	950,000.00	3.390%	204,498.25	1,154,498.25	-
09/01/2023	-	-	188,395.75	188,395.75	1,342,894.00
03/01/2024	1,000,000.00	3.530%	188,395.75	1,188,395.75	-
09/01/2024	-	-	170,745.75	170,745.75	1,359,141.50
03/01/2025	1,000,000.00	3.640%	170,745.75	1,170,745.75	-
09/01/2025	-	-	152,545.75	152,545.75	1,323,291.50
03/01/2026	1,045,000.00	3.720%	152,545.75	1,197,545.75	-
09/01/2026	-	-	133,108.75	133,108.75	1,330,654.50
03/01/2027	1,100,000.00	3.800%	133,108.75	1,233,108.75	-
09/01/2027	-	-	112,208.75	112,208.75	1,345,317.50
03/01/2028	1,100,000.00	3.870%	112,208.75	1,212,208.75	-
09/01/2028	-	-	90,923.75	90,923.75	1,303,132.50
03/01/2029	1,100,000.00	3.910%	90,923.75	1,190,923.75	-
09/01/2029	-	-	69,418.75	69,418.75	1,260,342.50
03/01/2030	1,125,000.00	4.010%	69,418.75	1,194,418.75	-
09/01/2030	-	-	46,862.50	46,862.50	1,241,281.25
03/01/2031	1,150,000.00	4.040%	46,862.50	1,196,862.50	-
09/01/2031	-	-	23,632.50	23,632.50	1,220,495.00
03/01/2032	1,150,000.00	4.110%	23,632.50	1,173,632.50	-
09/01/2032	-	-	-	-	1,173,632.50
<b>Total</b>	<b>\$13,875,000.00</b>	<b>-</b>	<b>\$3,860,342.92</b>	<b>\$17,735,342.92</b>	<b>-</b>

## Yield Statistics

Bond Year Dollars	\$100,503.96
Average Life	7.244 Years
Average Coupon	3.8409860%
Net Interest Cost (NIC)	4.0135538%
True Interest Cost (TIC)	4.0334018%
Bond Yield for Arbitrage Purposes	3.8266641%
All Inclusive Cost (AIC)	4.1311810%

## IRS Form 8038

Net Interest Cost	3.8409860%
Weighted Average Maturity	7.244 Years

Prop 2019ATaxable GO Bond | Issue Summary | 1/4/2019 | 1:42 PM



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# City of Franklin, Wisconsin

\$3,045,000 Taxable General Obligation Corporate Purpose Bonds, Series 2019A

TID #3

Dated: February 20, 2019

## Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
02/20/2019	-	-	-	-	-
09/01/2019	-	-	52,522.08	52,522.08	52,522.08
03/01/2020	675,000.00	3.170%	49,497.25	724,497.25	-
09/01/2020	-	-	38,798.50	38,798.50	763,295.75
03/01/2021	975,000.00	3.190%	38,798.50	1,013,798.50	-
09/01/2021	-	-	23,247.25	23,247.25	1,037,045.75
03/01/2022	995,000.00	3.310%	23,247.25	1,018,247.25	-
09/01/2022	-	-	6,780.00	6,780.00	1,025,027.25
03/01/2023	400,000.00	3.390%	6,780.00	406,780.00	-
09/01/2023	-	-	-	-	406,780.00
<b>Total</b>	<b>\$3,045,000.00</b>	<b>-</b>	<b>\$239,670.83</b>	<b>\$3,284,670.83</b>	<b>-</b>

## Yield Statistics

Bond Year Dollars	\$7,303.04
Average Life	2.398 Years
Average Coupon	3.2817946%
Net Interest Cost (NIC)	3.8029816%
True Interest Cost (TIC)	3.8344780%
Bond Yield for Arbitrage Purposes	3.8266641%
All Inclusive Cost (AIC)	4.0965045%

## IRS Form 8038

Net Interest Cost	3.2817946%
Weighted Average Maturity	2.398 Years



# City of Franklin, Wisconsin

\$10,830,000 Taxable General Obligation Corporate Purpose Bonds, Series 2019A

TID #5 portion of 2018 NAN

Dated: February 20, 2019

## Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
02/20/2019	-	-	-	-	-
09/01/2019	-	-	218,757.34	218,757.34	218,757.34
03/01/2020	-	-	206,158.75	206,158.75	-
09/01/2020	-	-	206,158.75	206,158.75	412,317.50
03/01/2021	-	-	206,158.75	206,158.75	-
09/01/2021	-	-	206,158.75	206,158.75	412,317.50
03/01/2022	510,000.00	3.310%	206,158.75	716,158.75	-
09/01/2022	-	-	197,718.25	197,718.25	913,877.00
03/01/2023	550,000.00	3.390%	197,718.25	747,718.25	-
09/01/2023	-	-	188,395.75	188,395.75	936,114.00
03/01/2024	1,000,000.00	3.530%	188,395.75	1,188,395.75	-
09/01/2024	-	-	170,745.75	170,745.75	1,359,141.50
03/01/2025	1,000,000.00	3.640%	170,745.75	1,170,745.75	-
09/01/2025	-	-	152,545.75	152,545.75	1,323,291.50
03/01/2026	1,045,000.00	3.720%	152,545.75	1,197,545.75	-
09/01/2026	-	-	133,108.75	133,108.75	1,330,654.50
03/01/2027	1,100,000.00	3.800%	133,108.75	1,233,108.75	-
09/01/2027	-	-	112,208.75	112,208.75	1,345,317.50
03/01/2028	1,100,000.00	3.870%	112,208.75	1,212,208.75	-
09/01/2028	-	-	90,923.75	90,923.75	1,303,132.50
03/01/2029	1,100,000.00	3.910%	90,923.75	1,190,923.75	-
09/01/2029	-	-	69,418.75	69,418.75	1,260,342.50
03/01/2030	1,125,000.00	4.010%	69,418.75	1,194,418.75	-
09/01/2030	-	-	46,862.50	46,862.50	1,241,281.25
03/01/2031	1,150,000.00	4.040%	46,862.50	1,196,862.50	-
09/01/2031	-	-	23,632.50	23,632.50	1,220,495.00
03/01/2032	1,150,000.00	4.110%	23,632.50	1,173,632.50	-
09/01/2032	-	-	-	-	1,173,632.50
<b>Total</b>	<b>\$10,830,000.00</b>	<b>-</b>	<b>\$3,620,672.09</b>	<b>\$14,450,672.09</b>	<b>-</b>

## Yield Statistics

Bond Year Dollars	\$93,200.92
Average Life	8.606 Years
Average Coupon	3.8848031%
Net Interest Cost (NIC)	4.0300538%
True Interest Cost (TIC)	4.0510925%
Bond Yield for Arbitrage Purposes	3.8266641%
All Inclusive Cost (AIC)	4.1342729%

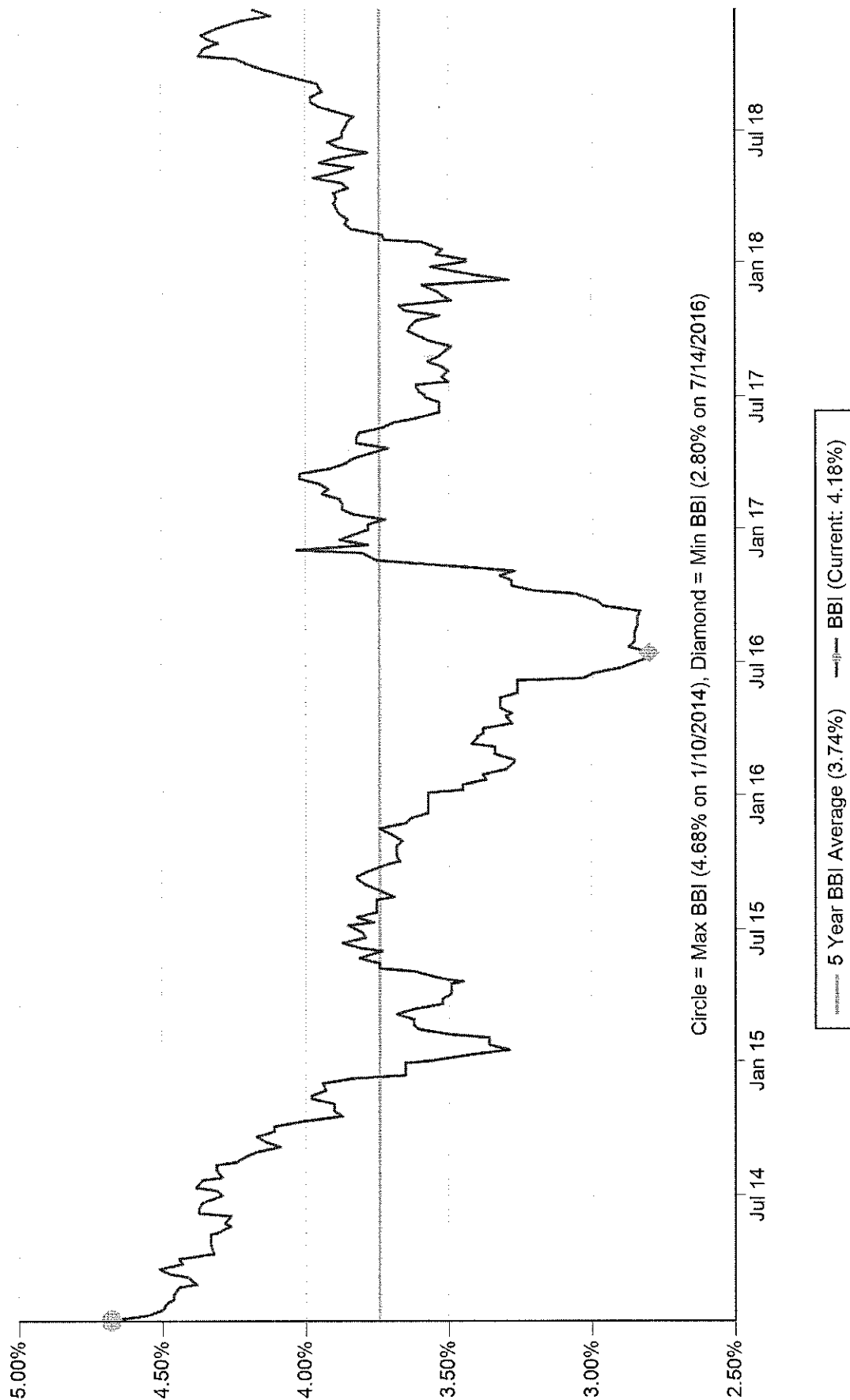
## IRS Form 8038

Net Interest Cost	3.8848031%
Weighted Average Maturity	8.606 Years



# 5 YEAR TREND IN MUNICIPAL BOND INDICES

Weekly Rates January, 2014 - January, 2019



The Bond Buyer "20 Bond Index" (BBI) shows average yields on a group of municipal bonds that mature in 20 years and have an average rating equivalent to Moody's Aa2 and S&P's AA.

Source: The Bond Buyer



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APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Jan 8, 2019
REPORTS & RECOMMENDATIONS	INITIAL RESOLUTION AUTHORIZING GENERAL OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED \$6,570,000 FOR TAX INCREMENTAL DISTRICT NO. 6 PROJECTS	ITEM NUMBER <i>3,4.</i>

### Analysis

The Common Council adopted Resolution 2018-7441 on November 28, 2018 authorizing a Developer's Agreement with Loomis And Ryan, Inc. for development in Tax Increment District No 6. That Developer's Agreement requires the City to fund infrastructure costs in the District.

The Developer plans to begin construction in the spring of 2019, making draw requests monthly as construction progresses.

The proposed sale will provide the resources for that infrastructure.

The sale will be a competitive sale with a sale date of February 5, 2019.

Quarles & Brady prepared an authorizing Council Resolution for review and an updated resolution based on the results of the sale will be presented at the sale meeting for adoption. The authorizing resolution is attached.

Our Financial Advisor for this transaction is Ehlers & Associates, LLC, represented by Jon Cameron. Mr Cameron will be in attendance to describe the Pre-Sale Report for the proposed offering.

### Fiscal Note

The 2019 Budget was adopted prior to the Developers Agreement and did not include any provision for this sale.

### **COUNCIL ACTION REQUESTED**

Motion to adopt Resolution No. 2019 - \_\_\_\_\_ an initial resolution authorizing General Obligation Bonds in an amount not to exceed \$6,570,000 for Tax Incremental District No. 6 projects.

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. \_\_\_\_\_

INITIAL RESOLUTION AUTHORIZING GENERAL OBLIGATION BONDS  
IN AN AMOUNT NOT TO EXCEED \$6,570,000 FOR  
TAX INCREMENTAL DISTRICT NO. 6 PROJECTS

-----

BE IT RESOLVED by the Common Council of the City of Franklin, Milwaukee County, Wisconsin, that there shall be issued, pursuant to Chapter 67, Wisconsin Statutes, general obligation bonds in an amount not to exceed \$6,570,000 for the public purpose of paying the cost of providing financial assistance to community development projects under Section 66.1105, Wisconsin Statutes, in the City's Tax Incremental District No. 6.

Introduced at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

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

ATTEST:

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

(SEAL)

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

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Jan 8, 2019
REPORTS & RECOMMENDATIONS	RESOLUTION PROVIDING FOR THE SALE OF NOT TO EXCEED \$6,570,000 GENERAL OBLIGATION COMMUNITY DEVELOPMENT BONDS, SERIES 2019B	ITEM NUMBER <i>G.5.</i>

### Analysis

The Common Council adopted Resolution 2018-7441 on November 28, 2018 authorizing a Developer's Agreement with Loomis And Ryan, Inc within Tax Increment District No 6. The City committed to fund the cost of infrastructure costs within the District upto \$9 million. The Developer has scheduled infrastructure work of approximately \$6 million in 2019. The proposed sale will provide the resources for that infrastructure.

The sale will be a competitive sale with a sale date of February 5, 2019.

Quarles & Brady prepared an authorizing Council Resolution for review and an updated resolution based on the results of the sale will be presented at the sale meeting for adoption. The authorizing resolution is attached.

Our Financial Advisor for this transaction is Ehlers & Associates, LLC, represented by Jon Cameron. Mr.Cameron will be in attendance to describe the Pre-Sale Report for the proposed offering.

### Fiscal Note

The 2019 Budget did not anticipate this issue as the Budget was adopted prior to the Developer's Agreement adoption. .

### **COUNCIL ACTION REQUESTED**

Motion to adopt Resolution No. 2019 - \_\_\_\_\_ a Resolution providing for the sale of not to exceed \$6,570,000 General Obligation Community Development Bonds, Series 2019B..

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. \_\_\_\_\_

RESOLUTION PROVIDING FOR THE SALE OF NOT TO EXCEED  
\$6,570,000 GENERAL OBLIGATION COMMUNITY DEVELOPMENT BONDS, SERIES 2019B

-----

WHEREAS, the City of Franklin, Milwaukee County, Wisconsin (the "City") has adopted an initial resolution (the "Initial Resolution") authorizing the issuance of general obligation bonds for the following public purpose and in the following not to exceed amount: \$6,570,000 for the public purpose of providing financial assistance to community development projects under Section 66.1105, Wisconsin Statutes, in the City's Tax Incremental District No. 6;

WHEREAS, the Common Council hereby finds and determines that the project described in the Initial Resolution is within the City's power to undertake and therefore serves a "public purpose" as that term is defined in Section 67.04(1)(b), Wisconsin Statutes; and

WHEREAS, the Common Council of the City hereby finds and determines that general obligation bonds in an amount not to exceed \$6,570,000 should be issued pursuant to the Initial Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1. Issuance of the Bonds. The bonds authorized by the Initial Resolution shall be designated "General Obligation Community Development Bonds, Series 2019B" (the "Bonds") in an amount not to exceed \$6,570,000 for the public purpose above specified.

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

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



Section 4. Official Statement. The City Clerk (in consultation with Ehlers) shall also cause an Official Statement to be prepared and distributed. The appropriate City officials shall determine when the Official Statement is final for purposes of Securities and Exchange Commission Rule 15c2-12 and shall certify said Statement, such certification to constitute full authorization of such Statement under this resolution.

Introduced at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

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

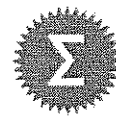
ATTEST:

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

(SEAL)

AYES\_\_\_\_NOES\_\_\_\_ABSENT\_\_\_\_

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**EHLERS**

LEADERS IN PUBLIC FINANCE

January 8, 2019

## Pre-Sale Report for

City of Franklin, Wisconsin

\$6,570,000 General Obligation Community Development  
Bonds, Series 2019B



*City of Franklin*

**Prepared by:**

Dawn Gunderson-Schiel, CPFO, CIPMA  
Senior Municipal Advisor

&

Jon Cameron, CIPMA  
Senior Municipal Advisor



## Executive Summary of Proposed Debt

Proposed Issue:	\$6,570,000 General Obligation Community Development Bonds, Series 2019B
Purposes:	<p>The proposed issue includes financing for the following purposes:</p> <ul style="list-style-type: none"> <li>Finance public infrastructure in TID #6. Debt service will be paid from tax increment revenues.</li> </ul>
Authority:	<p>The Bonds are being issued pursuant to Wisconsin Statute(s):</p> <ul style="list-style-type: none"> <li>67.04 &amp; 66.1105</li> </ul> <p>The Bonds will be general obligations of the City for which its full faith, credit and taxing powers are pledged.</p> <p>The Bonds count against the City's General Obligation Debt Capacity Limit of 5% of total City Equalized Valuation. Following issuance of the Bonds, the City's total General Obligation debt principal outstanding will be \$46,844,970, which is 23% of its limit. Remaining General Obligation Borrowing Capacity will be approximately \$154,302,100.</p>
Term/Call Feature:	<p>The Bonds are being issued for a term of 15 years. Principal on the Bonds will be due on March 1 in the years 2022 through 2034. Interest is payable every six months beginning September 1, 2019.</p> <p>The Bonds will be subject to prepayment at the discretion of the City on March 1, 2026 or any date thereafter.</p>
Bank Qualification:	<p>Because the City is issuing, or expects to issue, more than \$10,000,000 in tax-exempt obligations during the calendar year, the City will be not able to designate the Bonds as "bank qualified" obligations.</p>
Rating:	<p>The City's most recent bond issues were rated by Moody's Investors Service. The current ratings on those bonds are "Aa2". The City will request a new rating for the Bonds.</p> <p>If the winning bidder on the Bonds elects to purchase bond insurance, the rating for the issue may be higher than the City's bond rating in the event that the bond rating of the insurer is higher than that of the City.</p>
Basis for Recommendation:	<p>Based on our knowledge of your situation, your objectives communicated to us, our advisory relationship as well as characteristics of various municipal financing options, we are recommending the issuance of Bonds as a suitable option based on:</p> <ul style="list-style-type: none"> <li>The expectation this form of financing will provide the overall lowest cost of funds while also meeting the City's objectives for term, structure and optional redemption.</li> </ul>



	<ul style="list-style-type: none"> <li>The existing General Obligation pledge securing the obligations to be refunded.</li> </ul>
Method of Sale/Placement:	<p>We will solicit competitive bids for the purchase of the Bonds from underwriters and banks.</p> <p>We will include an allowance for discount bidding in the terms of the issue. The discount is treated as an interest item and provides the underwriter with all or a portion of their compensation in the transaction.</p> <p>If the Bonds are purchased at a price greater than the minimum bid amount (maximum discount), the unused allowance may be used to reduce your borrowing amount.</p>
Premium Pricing:	<p>In some cases, investors in municipal bonds prefer “premium” pricing structures. A premium is achieved when the coupon for any maturity (the interest rate paid by the issuer) exceeds the yield to the investor, resulting in a price paid that is greater than the face value of the bonds. The sum of the amounts paid in excess of face value is considered “reoffering premium.” The underwriter of the bonds will retain a portion of this reoffering premium as their compensation (or “discount”) but will pay the remainder of the premium to the City.</p> <p>For this issue of Bonds, any premium amount received that is in excess of the underwriting discount and any capitalized interest amounts must be placed in the debt service fund and used to pay a portion of the interest payments due on the Bonds.</p> <p>The amount of premium allowed can be restricted in the bid specifications. Restrictions on premium may result in fewer bids, but may also eliminate large adjustments on the day of sale and unintended results with respect to debt service payment impacts. Ehlers will identify appropriate premium restrictions for the Bonds intended to achieve the City’s objectives for this financing.</p>
Other Considerations:	<p>The Bonds will be offered with the option of the successful bidder utilizing a term bond structure. By offering underwriters the option to “term up” some of the maturities at the time of the sale, it gives them more flexibility in finding a market for your Bonds. This makes your issue more marketable, which can result in lower borrowing costs. In the event that the successful bidder utilizes a term bond structure, we recommend the City retain a paying agent to handle responsibility for processing mandatory redemption/call notices associated with term bonds.</p>
Review of Existing Debt:	<p>We have reviewed all outstanding indebtedness for the City and find that there are no refunding opportunities at this time.</p> <p>We will continue to monitor the market and the call dates for the City’s outstanding debt and will alert you to any future refunding opportunities.</p>



Continuing Disclosure:	Because the City has more than \$10,000,000 in outstanding debt (including this issue) and this issue is over \$1,000,000, the City will be agreeing to provide certain updated Annual Financial Information and its Audited Financial Statement annually, as well as providing notices of the occurrence of certain reportable events to the Municipal Securities Rulemaking Board (the "MSRB"), as required by rules of the Securities and Exchange Commission (SEC). The City is already obligated to provide such reports for its existing bonds, and has contracted with Ehlers to prepare and file the reports.
Arbitrage Monitoring:	Because the Bonds are tax-exempt obligations, the City must ensure compliance with certain Internal Revenue Service (IRS) rules throughout the life of the issue. These rules apply to all gross proceeds of the issue, including initial bond proceeds and investment earnings in construction, escrow, debt service, and any reserve funds. How issuers spend bond proceeds and how they track interest earnings on funds (arbitrage/yield restriction compliance) are common subjects of IRS inquiries. Your specific responsibilities will be detailed in the Tax Exemption Certificate prepared by your Bond Attorney and provided at closing. We recommend that you regularly monitor compliance with these rules and/or retain the services of a qualified firm to assist you. We also recommend that you establish written procedures regarding compliance with IRS rules.
Investment of and Accounting for Proceeds:	In order to more efficiently segregate funds for this project and maximize interest earnings, we recommend using an investment advisor, to assist with the investment of bond proceeds until they are needed to pay project costs. Ehlers Investment Partners, a subsidiary of Ehlers and registered investment advisor, will discuss an appropriate investment strategy with the City.
Risk Factors:	<b>GO with Planned Abatement:</b> The City expects to abate a portion of the City debt service with tax incremental revenues. In the event this revenue is not available, the City is obligated to levy property taxes in an amount sufficient to make all debt payments.
Other Service Providers:	<p>This debt issuance will require the engagement of other public finance service providers. This section identifies those other service providers, so Ehlers can coordinate their engagement on your behalf. Where you have previously used a particular firm to provide a service, we have assumed that you will continue that relationship. For services you have not previously required, we have identified a service provider. Fees charged by these service providers will be paid from proceeds of the obligation, unless you notify us that you wish to pay them from other sources. Our pre-sale bond sizing includes a good faith estimate of these fees, but the final fees may vary. If you have any questions pertaining to the identified service providers or their role, or if you would like to use a different service provider for any of the listed services please contact us.</p> <p><b>Bond Counsel:</b> Quarles &amp; Brady LLP</p> <p><b>Paying Agent:</b> Bond Trust Services Corporation, if term bonds</p> <p><b>Rating Agency:</b> Moody's Investors Service</p>



## Proposed Debt Issuance Schedule

Pre-Sale Review by Common Council:	January 8, 2019
Distribute Official Statement:	Week of January 28, 2019
Conference with Rating Agency:	January 29 or 30, 2019
Common Council Meeting to Award Sale of the Bonds:	February 5, 2019
Estimated Closing Date:	February 20, 2019

## Attachments

Estimated Sources and Uses of Funds  
Estimated Proposed Debt Service Schedule  
Bond Buyer Index

## Ehlers Contacts

Municipal Advisors:	Dawn Gunderson-Schiel	(262) 796-6166
	Jon Cameron	(262) 796-6179
Disclosure Coordinator:	Peter Curtin	(262) 796-6187
Financial Analyst:	Mary Zywiec	(262) 796-6171

The Preliminary Official Statement for this financing will be sent to the Common Council at their home or email address for review prior to the sale date.



# City of Franklin, Wisconsin

\$6,570,000 General Obligation Community Development Bonds, Series 2019B

TID 6

Dated: February 20, 2019 Assumes AA Tax Exempt scale 12/17/18 + .25

## Sources & Uses

Dated 02/20/2019 | Delivered 02/20/2019

### Sources Of Funds

Par Amount of Bonds	\$6,570,000.00
Est. Int Earnings	30,000.00
<b>Total Sources</b>	<b>\$6,600,000.00</b>

### Uses Of Funds

Total Underwriter's Discount (1.250%)	82,125.00
Financial Advisor	14,400.00
Bond Counsel	14,000.00
Underwriter's Counsel	8,400.00
Trustee & Counsel Fees	850.00
Rating Agency Fee	6,000.00
Deposit to Capitalized Interest (CIF) Fund	471,250.18
Deposit to Project Construction Fund	6,000,000.00
Rounding Amount	2,974.82
<b>Total Uses</b>	<b>\$6,600,000.00</b>



# City of Franklin, Wisconsin

\$6,570,000 General Obligation Community Development Bonds, Series 2019B

TID 6

Dated: February 20, 2019 Assumes AA Tax Exempt scale 12/17/18 + .25

## Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
02/20/2019	-	-	-	-	-
09/01/2019	-	-	98,802.18	98,802.18	98,802.18
03/01/2020	-	-	93,112.00	93,112.00	-
09/01/2020	-	-	93,112.00	93,112.00	186,224.00
03/01/2021	-	-	93,112.00	93,112.00	-
09/01/2021	-	-	93,112.00	93,112.00	186,224.00
03/01/2022	200,000.00	2.220%	93,112.00	293,112.00	-
09/01/2022	-	-	90,892.00	90,892.00	384,004.00
03/01/2023	250,000.00	2.300%	90,892.00	340,892.00	-
09/01/2023	-	-	88,017.00	88,017.00	428,909.00
03/01/2024	300,000.00	2.390%	88,017.00	388,017.00	-
09/01/2024	-	-	84,432.00	84,432.00	472,449.00
03/01/2025	400,000.00	2.490%	84,432.00	484,432.00	-
09/01/2025	-	-	79,452.00	79,452.00	563,884.00
03/01/2026	535,000.00	2.590%	79,452.00	614,452.00	-
09/01/2026	-	-	72,523.75	72,523.75	686,975.75
03/01/2027	550,000.00	2.690%	72,523.75	622,523.75	-
09/01/2027	-	-	65,126.25	65,126.25	687,650.00
03/01/2028	565,000.00	2.780%	65,126.25	630,126.25	-
09/01/2028	-	-	57,272.75	57,272.75	687,399.00
03/01/2029	580,000.00	2.880%	57,272.75	637,272.75	-
09/01/2029	-	-	48,920.75	48,920.75	686,193.50
03/01/2030	600,000.00	2.960%	48,920.75	648,920.75	-
09/01/2030	-	-	40,040.75	40,040.75	688,961.50
03/01/2031	620,000.00	3.020%	40,040.75	660,040.75	-
09/01/2031	-	-	30,678.75	30,678.75	690,719.50
03/01/2032	635,000.00	3.060%	30,678.75	665,678.75	-
09/01/2032	-	-	20,963.25	20,963.25	686,642.00
03/01/2033	655,000.00	3.110%	20,963.25	675,963.25	-
09/01/2033	-	-	10,778.00	10,778.00	686,741.25
03/01/2034	680,000.00	3.170%	10,778.00	690,778.00	-
09/01/2034	-	-	-	-	690,778.00
<b>Total</b>	<b>\$6,570,000.00</b>	<b>-</b>	<b>\$1,942,556.68</b>	<b>\$8,512,556.68</b>	<b>-</b>

## Yield Statistics

Bond Year Dollars	\$66,395.75
Average Life	10.106 Years
Average Coupon	2.9257244%
Net Interest Cost (NIC)	3.0494146%
True Interest Cost (TIC)	3.0624895%
Bond Yield for Arbitrage Purposes	2.9159803%
All Inclusive Cost (AIC)	3.1413160%

## IRS Form 8038

Net Interest Cost	2.9257244%
Weighted Average Maturity	10.106 Years

Prop 2019B Tax Exempt GO | TID 6 | 1/3/2019 | 12:19 PM

Ehlers

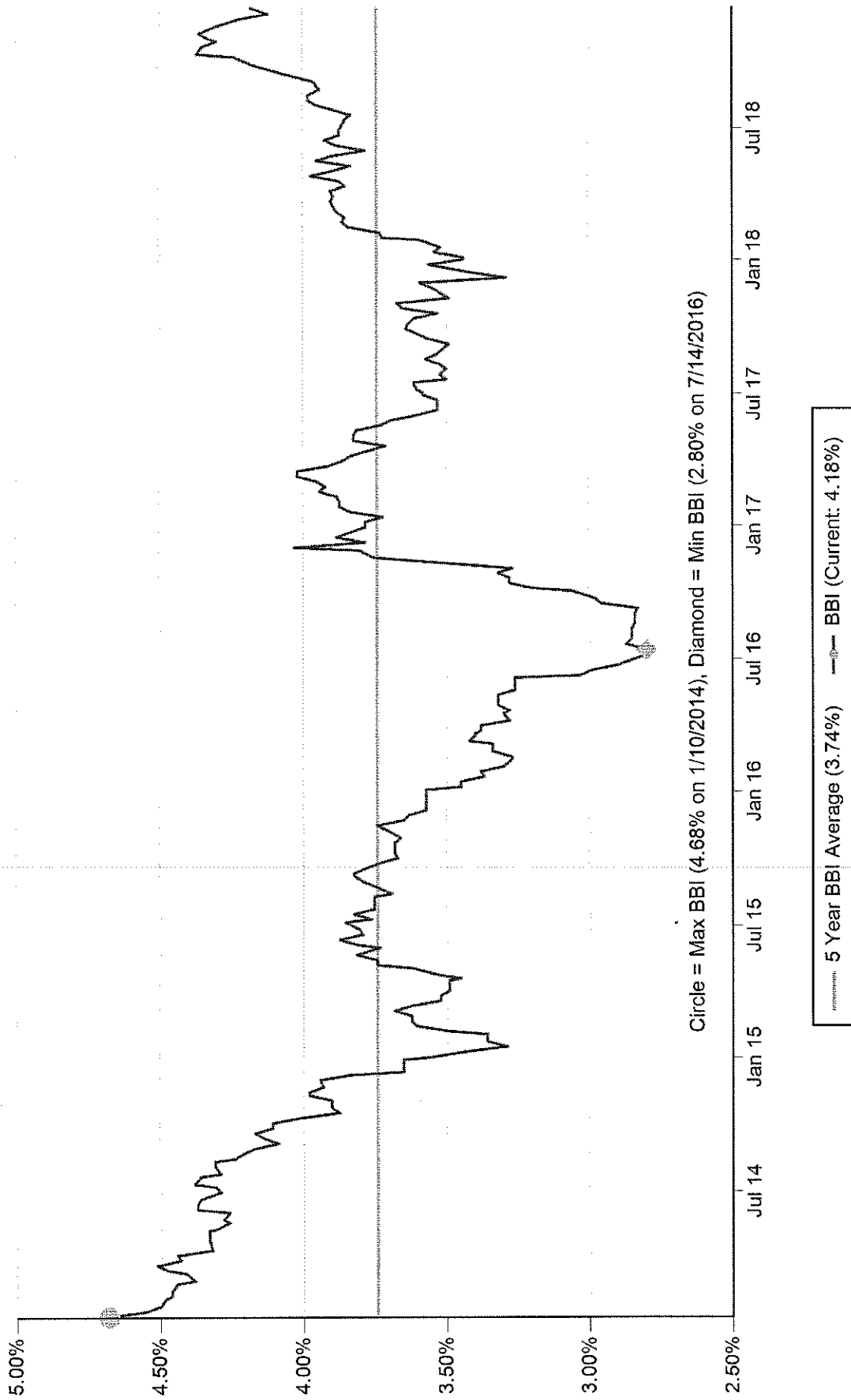
Public Finance

January 8, 2019

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# 5 YEAR TREND IN MUNICIPAL BOND INDICES

Weekly Rates January, 2014 - January, 2019



The Bond Buyer "20 Bond Index" (BBI) shows average yields on a group of municipal bonds that mature in 20 years and have an average rating equivalent to Moody's Aa2 and S&P's AA.

Source: The Bond Buyer

APPROVAL <i>Shw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Jan 8, 2019
REPORTS & RECOMMENDATIONS	RESOLUTION DIRECTING PUBLICATION OF NOTICE TO ELECTORS RELATING TO BOND SALES	ITEM NUMBER <i>G. 6.</i>

**Background**

The Common Council has considered the sale of two Bond issues, 2019A for \$13,875,000 and 2019B for \$6,570,000. Issue 2019A will fund projects in Tax Incremental District 3 and a Refunding of Note Anticipation Notes supporting projects in TID 5, while 2019B will fund projects in TID 6.

The adoption of the authorizing resolutions then requires the publication of notice to the residents of the City of their adoption.

Quarles & Brady, City Bond Council, has drafted the attached resolution directing the Publication of the Required Public Notice to Electors.

**COUNCIL ACTION REQUESTED**

Adoption of Resolution 2019-\_\_\_\_\_, a Resolution directing publication of Notice to Electors relating to Bond Issues.

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. \_\_\_\_\_

RESOLUTION DIRECTING PUBLICATION OF NOTICE TO ELECTORS  
RELATING TO BOND ISSUES

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WHEREAS, initial resolutions authorizing general obligation bonds have been adopted by the Common Council of the City of Franklin, Milwaukee County, Wisconsin (the "City") and it is now necessary that said initial resolutions be published to afford notice to the residents of the City of their adoption;

NOW, THEREFORE, BE IT RESOLVED that the City Clerk shall, within 15 days, publish a notice to the electors in substantially the form attached hereto in the official City newspaper as a class 1 notice under ch. 985, Wis. Stats.

Introduced at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 8th day of January, 2019.

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

ATTEST:

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

(SEAL)

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

<b>APPROVAL</b>  <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>1/08/2019</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>PURCHASE OF SQUAD CARS FOR THE POLICE DEPARTMENT</b>	<b>ITEM NUMBER</b>  <i>G.7.</i>

The Police Department requests authorization to proceed with the purchase of squad cars as approved in the police department's 2019 budget:

5 Ford Explorers at \$36,442 each for a total of \$182,210

**Council Action Requested**

Motion to approve purchase of five squad cars approved in the 2019 Police Department Budget in the amount of \$182,210.

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<b>APPROVAL</b>  <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>January 8, 2018</b>
<b>REPORTS AND RECOMMENDATIONS</b>	A Resolution Authorizing Certain Officials to Accept Two Reciprocal Driveway Area Easements for and as Part of the Review and Approval of a Site Plan for a Senior Housing Development at Ballpark Commons (7220 South Ballpark Drive) (The Boldt Company, Applicant)	<b>ITEM NUMBER</b>  <i>G.8.</i>

Attached is a copy of the above two Reciprocal Driveway Area Easements for the Senior Housing Development property. These Easements (typically referred to as cross access easements) were required by the Site Plan approval for the subject property in Plan Commission Resolution No. 2018-008, conditionally approving a Site Plan for a Senior Housing Development within the Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) development, in condition number 11, adopted on June 21, 2018.

Staff would note that the one of the Easements is for the cross access between lots 1 and 2 of Certified Survey Map No. 9078, and the other Easement is for the cross access between lots 2 and 3 of Certified Survey Map No. 9078, and that both of these Easements reflect the driveways as depicted in the currently approved Site Plan for the Senior Housing Development project.

### **COUNCIL ACTION REQUESTED**

A motion to adopt A Resolution Authorizing Certain Officials to Accept Two Reciprocal Driveway Area Easements for and as Part of the Review and Approval of a Site Plan for a Senior Housing Development at Ballpark Commons (7220 South Ballpark Drive) (The Boldt Company, Applicant) subject to technical corrections by City staff.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2019-\_\_\_\_\_

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT TWO  
RECIPROCAL DRIVEWAY AREA EASEMENTS FOR AND AS PART OF THE  
REVIEW AND APPROVAL OF A SITE PLAN FOR A SENIOR HOUSING  
DEVELOPMENT AT BALLPARK COMMONS (7220 SOUTH BALLPARK DRIVE)  
(THE BOLDT COMPANY, APPLICANT)

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WHEREAS, the Plan Commission having approved a Site Plan upon the application of BPC Master Developer, LLC, on June 21, 2018, and the Plan Commission having conditioned approval thereof in part upon Common Council approval of a Cross Access Easement; and

WHEREAS, the City Engineering Department, Department of City Development and the Office of the City Attorney having reviewed the proposed Reciprocal Driveway Area Easements (typically referred to as Cross-Access Easements) 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 Reciprocal Driveway Area Easements submitted by The Boldt Company, in the form and content as annexed hereto, be and the same is hereby approved, subject to technical corrections by the City staff; and the Mayor and City Clerk are hereby authorized to execute such Easements as evidence of the consent to and acceptance of such Easements 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 Cross-Access 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 \_\_\_\_\_, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

APPROVED:

\_\_\_\_\_  
STEPHEN R. OLSON, Mayor



RESOLUTION AUTHORIZING CERTAIN OFFICIALS  
TO ACCEPT TWO RECIPROCAL DRIVEWAY AREA EASEMENTS  
SENIOR HOUSING DEVELOPMENT (BALLPARK COMMONS)  
RESOLUTION NO. 2019-\_\_\_\_\_

Page 2

ATTEST:

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

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

**THIS DOCUMENT WAS DRAFTED BY  
AND WHEN RECORDED RETURN TO:**

**FOLEY & LARDNER LLP**  
Attn: Matthew K. Impola  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

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**DECLARATION OF RECIPROCAL  
DRIVEWAY AREA EASEMENTS**

This **DECLARATION OF RECIPROCAL DRIVEWAY AREA EASEMENTS** ("Declaration") is dated for reference purposes as of December \_\_\_\_, 2018 and is made by ZIM-MAR PROPERTIES LLC ("Declarant A") and FRANKLIN RE, LLC ("Declarant B" and collectively with "Declarant A" referred to herein as "Declarants"), with reference to the following facts, which are a material part of this Declaration:

A. Declarant A is the owner of certain real property located in the City of Franklin, County of Milwaukee, State of Wisconsin, which is legally described as:

Lots 1 of Certified Survey Map No. 9078 recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin, on October 16, 2018 as Document No. 10820171, being part of Lot 3 and 4 of Certified Survey Map No. 9042 and the Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, County of Milwaukee, State of Wisconsin.

Tax Key Numbers: A Part of 754-9004-000 and 754-9003-000 and a vacated part of Loomis Road (no tax key number).

For purposes of reference in this Declaration, the above-described real property is referred to as "Lot 1".

B. Declarant B is the owner of certain real property located in the City of Franklin, County of Milwaukee, State of Wisconsin, which is legally described as:

Lot 2 of Certified Survey Map No. 9078 recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin, on October 16, 2018 as Document No. 10820171, being part of Lot 3 and 4 of Certified Survey Map No. 9042 and the Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, County of Milwaukee, State of Wisconsin.

Tax Key Numbers: A Part of 754-9004-000 and 754-9003-000 and a vacated part of Loomis Road (no tax key number).

For purposes of reference in this Declaration, the above-described real property is referred to as "Lot 2".

C. Declarants desire to (i) create and establish on Lot 1, and Lot 2 certain non-exclusive easements relating to the construction, maintenance, repair and replacement of the Driveway Improvements and for access, ingress and

egress on, over, through and across the Driveway Easement Areas to and from each Lot and Ballpark Drive, and (ii) subject the Lots to certain reciprocal covenants, agreements and restrictions concerning the maintenance and use of the Driveway Improvements and Driveway Easement Areas, all as more particularly described in this Declaration.

**NOW, THEREFORE,** Declarants declare that Lot 1-and Lot 2 shall be owned, held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the rights, limitations, restrictions and covenants set forth in this Declaration, all of which shall run with the land and shall be binding on and inure to the benefit of the Owners (as defined below) who now or in the future own any right, title or interest in Lot 1 and Lot 2 as follows:

1. **Definitions.** The defined words or phrases used in this Declaration shall, unless the context otherwise indicates, have the meanings specified in this Section 1. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, as the context indicates. Additional terms defined elsewhere in this Declaration shall have the same definition for all purposes of this Declaration, unless otherwise indicated, notwithstanding that such additional terms are not defined in this Section 1.

1.1 **"Declarant"** means either Declarant A or Declarant B, the current owners of the Lots, and any successors in interest who becomes an Owner of either of the Lots.

1.2 **"Driveway Easement Area"** means those areas of Lots 1-and 2 depicted on Exhibit "1" attached hereto and incorporated herein by reference; references to "Driveway Easement Area" mean all of the above described easement areas on Lots 1 and 2.

1.3 **"Driveway Improvements"** means the driveway improvements to be constructed by the Owner of Lot 2 in the Driveway Easement Area as depicted on Exhibit "2" attached hereto and incorporated herein by reference.

1.5 **"Lease"** means any lease, rental agreement or other similar agreements pursuant to which any Occupant has the right to be in possession of any portion of any of a Lot that is binding upon the Declarant or any successor Owner.

1.6 **"Legal Requirements"** means all rules, regulations, laws, ordinances, statutes, judicial decrees or orders of any governmental authority, the compliance with which is required in performing or refraining from the performance of any act or omission permitted or required to be performed or restricted in accordance with this Declaration or otherwise governing the development, construction, use, operation or maintenance of the Lots, including any Legal Requirements concerning Hazardous Substances.

1.7 **"Lot"** means and refers to either of Lot 1 or Lot 2 as the context provides, and a reference to "Lots" means both of Lot 1 and Lot 2.

1.8 **"Occupant"** means and includes those Persons entitled by ownership, Lease or other legal relationship to be in possession of a Lot, any portion of a Lot or any building improvements on any Lot, and their respective customers, invitees, agents, employees and contractors.

1.9 **"Owner"** means the person or entity who is the record owner of a Lot, including Declarant, and any purchaser under an installment sale contract whereby such purchaser is entitled to the beneficial use and possession of a Lot and legal title is held by the seller solely to secure payment of the purchase price of the Lot; provided, however, if ownership of any building improvements on any Lot are severed from the land, whether by lease or deed, only the Owner of the fee simple interest in the land shall be deemed an Owner for purposes of this Declaration; the term "Owners" means all persons or entities who are an Owner, unless the context provides otherwise.

1.10 **"Person"** means any individual, joint venture, corporation, trust, limited liability company or other legal entity.

2. **Creation of Easements.**

2.1 **Access Easement.** Declarants hereby grant to each other and their respective successors and assigns, a perpetual nonexclusive reciprocal easement on, over, through and across the Driveway Easement Area (or such applicable portion thereof) for the purposes of pedestrian and vehicular access, ingress and egress on, over, through and across the Driveway Improvements to be located on, over, within and across the Driveway Easement Area (or such applicable portion thereof). For the avoidance of doubt, the access and ingress and egress easement declared herein shall be limited to the Driveway Easement Area and shall not extend to any of other the paved areas on Lot 1 and Lot 2.

2.2 **Secondary Easement.** Declarants hereby grant to each other and their respective successors and assigns, incidental rights of access, ingress and egress on, over, through and across the Driveway Easement Area in order that the Owners of the Lots may carry out all of their respective rights, duties and obligations hereunder to maintain, repair, replace and improve the Driveway Improvements, the Driveway Easement Area and any related improvements and facilities in connection therewith. The foregoing rights shall be (a) limited to the time and area reasonably necessary to fulfill their respective obligations hereunder, and (b) subject to any and all covenants, conditions and restrictions recorded against the Driveway Easement Area and any and all applicable laws, rules and regulations prohibiting, restricting and/or otherwise affecting access to and/or use of the Driveway Easement Area.

3. **Permanent Easement Nature/Termination.** The easements and related rights granted and established in this Declaration shall run with the land and be continuously binding upon and inure to the benefit of the respective Owners and Occupants of each of the Lots unless released by a written declaration of abandonment and relinquishment, executed, acknowledged and recorded by the Owners of both Lots, such declaration to be effective upon recordation in the office of the Register of Deeds of Milwaukee County, Wisconsin.

4. **Construction, Maintenance, Repair and Replacement.** The Owner of the Lot that is developed first shall have the right and obligation to initially construct the Driveway Improvements and shall bear the costs of such construction. Upon commencement of construction on the second Lot, the Owner of such Lot shall reimburse the Owner of that Lot that initially constructed the Driveway Improvements for one-half (1/2) of the cost of the same. The Owner of Lot 1 shall be responsible for the ongoing maintenance and repair, and if necessary, the replacement of the Driveway Improvements located in the Driveway Easement Area and shall maintain such improvements in a good and operable condition in accordance with all Legal Requirements. The Owner of Lot 2 shall thereafter be obligated to reimburse the Owner of Lot 1 for one-half (1/2) of all costs incurred by such Owner in connection with the ongoing maintenance, repair, and if necessary, the replacement of the Driveway Improvements, such reimbursement to be made within thirty (30) days of receipt of an invoice from the Owner of Lot 1.

4.1 **Cooperation.** All construction, repairs, maintenance and replacements shall be carried out in a commercially reasonable manner and method so as to minimize, to the greatest extent practical, any interference with the use of the Driveway Easement Area by the Owners and Occupants of both Lots.

4.2 **Failure to Maintain.** If the Owner of Lot 1 fails to timely and properly maintain, repair and, if necessary, replace the Driveway Improvements in the Driveway Easement Area, and such failure continues beyond the notice and cure period provided in Section 5 below, then the Owner of Lot 2 shall have the right, but not the obligation, to complete such maintenance, repair and/or replacement and seek reimbursement from the Owner of Lot 1 of one-half (1/2) of the costs incurred by the Owner of Lot 2 in connection therewith. Furthermore, in the event that any Owner fails to repair and restore the Driveway Improvements and/or Driveway Easement Area as required pursuant to Section 4.3 below, then the non-defaulting Owner shall have the right, but not the obligation, to complete such repair and restoration and seek reimbursement from the defaulting Owner of all costs incurred by such Owner in connection therewith.

4.3 **Damage From Improper Use.** Notwithstanding any other provision, in the event that any Owner or its Occupant(s) or any of their respective invitees cause any damage to the Driveway Improvements and/or the Driveway Easement Area, including as a result of improper use of the Driveway Improvements and/or Driveway Easement Area or as a result of negligence or intentional misconduct, then such Owner shall promptly repair such

damage at its sole cost and expense and restore the Driveway Improvements and/or the Driveway Easement Area to its condition prior to such damage or destruction.

5. **Default Notice/Remedies.** In the event an Owner is in default of its obligations under this Declaration, the procedures and remedies provided in this Section shall apply, in addition to any and all other rights and remedies of a party at law or in equity.

5.1 **Notice of Default.** Prior to exercising any rights or remedies, including any entry upon an Owner's Lot, the non-defaulting Owner claiming such default shall give written notice to the defaulting owner generally describing the nature of the default(s). Such notice shall be personally delivered to any officer or authorized representative who is present at any building located on the defaulting Owner's Lot or mailed, certified or registered mail, return receipt requested, to the last known address of the defaulting Owner.

5.2 **Correction of Violation.** The defaulting Owner shall have fifteen (15) days from the delivery of any notice to correct all violations; provided, however, if the nature of a non-monetary default is such that a longer period of time would be required to fully cure and remedy such default, then the time permitted shall be a reasonable time, so long as the defaulting Owner immediately and diligently commences such cure within such fifteen (15) day period and thereafter continuously proceeds to complete such cure as soon as reasonably possible.

5.3 **Reciprocal Lien Rights.** Any non-defaulting Owner may bring an action at law against a defaulting Owner obligated for payment of any the delinquent amounts. In addition, but subject to Section 12 below, any such delinquent amounts shall also constitute a lien and charge against the Lot of the defaulting Owner, and any such lien on the defaulting Owner's Lot shall be subject to foreclosure in accordance with the then-prevailing laws of the State of Wisconsin relating to the foreclosure of general liens upon real property.

6. **Restriction on Use.** The Driveway Easement Area shall be used, on a "first come, first served basis," for the following purposes: (a) transitory vehicular and pedestrian ingress and egress to and from each Lot and Ballpark Drive, (b) additional room for a truck or other large transport vehicle to traverse, /or otherwise maneuver as reasonably required to align the truck or other large transport vehicle on each Lot for deliveries of goods, and (c) for transitory access of pedestrians and vehicles when entering and leaving each Lot's Driveway Easement Area. Any such uses shall be only in compliance with all Legal Requirements and any commercially reasonable rules or regulations of the Owner of the Lot on which such Driveway Easement Area is located; provided, however, any such rules or regulations must apply uniformly to the Occupants of both Lots and shall not change the basic "first come, first served" use rights. Without limiting the generality of the preceding provisions, the Driveway Easement Areas shall *not* be used for purposes of (i) parking of trucks or vehicles (whether temporary or permanent) and trucks and/or (ii) storage (whether temporary or permanent) of any goods, equipment or other items or for the unloading or loading of goods, equipment or other items onto any portion of the Driveway Easement Area and/or (iii) for the construction or placement of any improvements, fixtures or improvements, except driveway paving improvements. In all events access to and across all portions of the Driveway Easement Area shall remain unimpeded and unobstructed, except to the extent reasonably required in connection with the maintenance, repair, renovation or replacement of any Driveway Improvements.

7. **Non-Exclusivity.** The easement rights created and established in this Declaration are nonexclusive, and each Owner reserves the right to establish other easement rights on its Lot, including any portion of its Lot subject to the easement rights, provided that such other easement rights shall not unreasonably interfere with the easement rights granted in this Declaration or the obligations of each Owner hereunder.

8. **Estoppel Certificates.** Each Owner shall, upon ten (10) business days prior written notice from the other Owner, execute and deliver to the requesting Owner a statement (a) certifying that this Declaration is unmodified and in full force and effect or, if there has been modification, describing such modification and stating that this Declaration is in full force and effect as so modified, (b) stating whether all amounts required to be paid by the requesting Owner under this Declaration have been paid, and (c) stating whether there are any other defaults by the requesting Owner under this Declaration.

9. **Maintenance of Insurance.** As a condition to each Owner's continued right to use and permit its Occupants to use the Driveway Easement Area on the other Owner's Lot, each Owner shall procure, pay for and maintain, at all times, commercial general liability insurance (including automobile liability insurance and coverages against bodily injury, death, property damage and contractual liability) in an amount of no less than \$1,000,000.00 combined single limit and a \$3,000,000 umbrella. Upon the written request of an Owner, the other Owner shall provide a Certificate of Insurance evidencing such insurance coverages.

9.1 **Periodic Adjustment of Coverage.** No more frequently than every five (5) years, the insurance coverage amount required under this Section shall be subject to increase upon the request of an Owner, to such coverage amount as is then commercially reasonable for owners and/or occupants of similarly situated commercial real estate projects. In the event that the Owners are unable to agree upon the amount of such increase within sixty (60) days of an Owner's request, either Owner shall have the right to have the issue of the amount of the coverage determined by Arbitration.

10. **No Public Rights.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Lots to the general public or for any public use or purpose whatsoever. It is the intention of Declarant and each of the Owners that this Declaration shall be for the exclusive benefit of the Owners and Occupants of the Lots, and, if applicable, any Mortgagee (as defined below), and this Declaration shall not be for the benefit of any third Person.

11. **Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, but such limitation shall not affect in any manner any of the rights or remedies which the other Owner may have by reason of any breach of this Declaration.

12. **Breach - Effect on Mortgagee and Right to Cure.** The breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any mortgage, deed of trust or other security interest ("**Mortgage**") made in good faith and encumbering any of the Lots, but all of the preceding provisions, restrictions, and covenants shall be binding on and effective against any Owner of any portion of the Lots, or any part thereof, who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale. The mortgagee, beneficiary or holder of any Mortgage ("**Mortgage**") of an Owner who is in default under this Declaration shall be entitled to receive notice of such default, in the same manner that other notices are required to be given to an Owner, provided, that such Mortgagee has, prior to the time of the default, notified the Owner giving notice of default of the Mortgagee's mailing address, and any such Mortgagee shall have the right to cure any such default in the same manner and within the same time as permitted the defaulting Owner. Giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the non-defaulting Owner so declaring a default.

13. **No Partnership.** Neither this Declaration nor any acts of the Owners hereto shall be deemed or construed by the parties hereto, or any of them, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Owners to this Declaration.

14. **Modification.** A modification, waiver, amendment, discharge, or change of this Declaration shall be valid if, but only if, the same is in writing and, executed, acknowledged and recorded by (a) Declarant, in the event such modification is recorded prior to the conveyance of a Lot to any other person who becomes an Owner, or (b) following the conveyance of either Lot, by the Owners of both Lots, such modification to be effective upon recordation in the office of the Register of Deeds of Milwaukee County, Wisconsin.

15. **Non-Waiver and No Estoppel.** This Declaration and the easement rights granted herein shall remain fully enforceable and not be subject to waiver on account of the failure of an Owner to take any action to enforce its easement rights regardless of the length of time that any violations are allowed to continue to exist. In the event that an Owner is determined to have granted permission, either expressly or by implication, to any violation of this Declaration, such permission shall be deemed revocable at any time, except to the extent that such permission is expressly set forth in a written modification of this Declaration, duly executed, acknowledged and properly recorded by all Owners. Under

no circumstances will an Owner be deemed to accrue any prescriptive rights in the easements. Under no circumstances shall the enforcement of the easement rights be subject to estoppel on account of any delay in enforcing such rights regardless of the extent of any reliance on such failure or delay in enforcing any such rights.

16. **Remedies.** In addition to the rights granted in this Declaration to correct or remedy any violation of the easement rights, the parties shall be entitled to all available legal and equitable remedies to enforce the easement rights granted in this Declaration, including without limitation, the right to injunctive and specific enforcement remedies to cause compliance with the requirements of this Declaration and eliminate any interference or impedance with such easement rights.

17. **Validity.** In the event that any portion of this Declaration shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Declaration following a final judicial determination of such invalidity, illegality or unenforceability, and the remaining provisions shall continue and remain in full force and effect, as fully as though the invalid, unenforceable or illegal provision had never been a part of this Declaration.

18. **Late Fees, Finance Charges and Administrative Charges.** Whenever another provision of this Declaration provides for the timely payment of money and an Owner or other Person fails to timely pay such amount, then any amount not paid when due shall be subject to a late fee of 5% of the invoiced amount, and, if any amount remains unpaid for more than thirty (30) days after the due date, a finance charge equal to the lesser of (a) 1.5% per month (i.e. 18% per annum), or (b) the maximum rate permitted by applicable Legal Requirements shall become payable.

19. **Attorneys' Fees.** In the event of any action (including any Arbitration) to enforce or interpret this Declaration, the prevailing party shall be entitled to recover from the other party an amount equal to actual attorneys' fees and other expenses incurred in connection with such action, including, but not limited to, reasonable attorneys' fees and costs incurred in the enforcement of any judgment or award, and in connection with any bankruptcy (or equivalent proceeding) or in connection with any appellate proceedings.

20. **Interpretation.** This Declaration was drafted in connection with arms-length negotiations of the terms and conditions hereof and any legal interpretation providing for written contracts to be interpreted against the party preparing or drafting such contract shall not apply to the interpretation or construction of this Declaration.

21. **Binding Effect.** Except as otherwise expressly provided, this Declaration and the easement rights granted herein shall be binding upon and inure to the benefit of Declarant, any Owners and their respective heirs, personal representatives, successors and assigns.

22. **Exhibits.** All Exhibits attached to this Declaration are incorporated into this Declaration by this reference.

23. **Constructive Notice and Acceptance.** Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of any Lot is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and easement provided for in this Declaration whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Lot.

24. **Mutuality, Reciprocity, Runs with Land.** All restrictions, conditions, covenants and agreements contained in this Declaration are made for the direct mutual and reciprocal benefit of each and every part and parcel of the Lots; shall create mutual, equitable servitudes upon each Lot in favor of every other Lot; shall create reciprocal rights and obligations between the respective Owners of all Lots and privity of contract and estate between all Owners of Lots and their respective heirs, successors and assigns; and shall, as to the Owner of each Lot, its heirs, successors and assigns, operate as covenants running with the land for the benefit of the other Lot.

IN WITNESS WHEREOF, Declarants have executed this Declaration to be effective as of the Effective Date set forth above.

"Declarants"

"Declarant A"

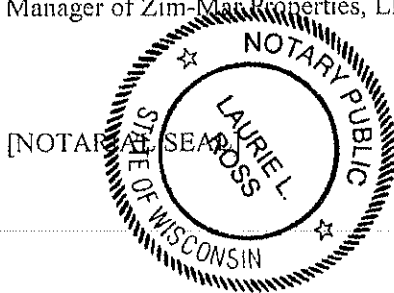
ZIM-MAR PROPERTIES, LLC,  
a Wisconsin limited liability company

By: [Signature]  
Name: Michael Zimmerman  
Title: Manager

By: [Signature]  
Name: Greg Marso  
Title: Manager

STATE OF WISCONSIN     )  
                                  ) ss.  
COUNTY OF MILWAUKEE    )

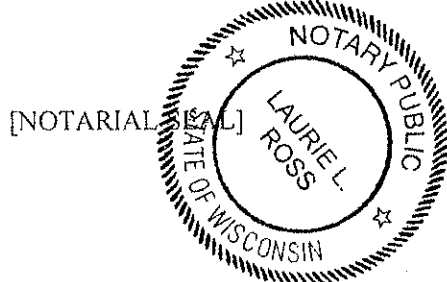
This instrument was acknowledged before me on December 14<sup>th</sup>, 2018, by Michael Zimmerman, Manager of Zim-Mar Properties, LLC, a Wisconsin limited liability company.



[Signature]  
Name Printed: Laurie L. Ross  
Notary Public, County of Milwaukee  
My commission expires: 9/20/19

STATE OF WISCONSIN     )  
                                  ) ss.  
COUNTY OF MILWAUKEE    )

This instrument was acknowledged before me on December 14<sup>th</sup>, 2018, by Greg Marso, Manager of Zim-Mar Properties, LLC, a Wisconsin limited liability company.



[Signature]  
Name Printed: Laurie L. Ross  
Notary Public, County of Milwaukee  
My commission expires: 9/20/19



IN WITNESS WHEREOF, Declarants have executed this Declaration to be effective as of the Effective Date set forth above.

**"Declarant B"**

FRANKLIN RE, LLC

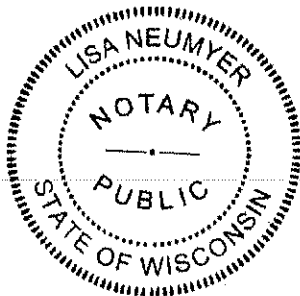
By: Franklin Partners, LLC,  
a Wisconsin limited liability company, its Manager

By: Boldt Capital, LLC,  
a Wisconsin limited liability company, its Manager

By: [Signature]  
Name: James R. Kleinfeldt  
Title: Manager

STATE OF WI  
COUNTY OF Milwaukee <sup>ss</sup>

Before me personally appeared on the 14 day of December, 2018, the above named James R. Kleinfeldt, the Manager of Boldt Capital, LLC, which is the Manager of Franklin Partners, LLC, which is the Manager of Franklin RE, LLC to me known to be the person who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.



[Signature]  
NOTARY PUBLIC  
My commission expires 8/18/20

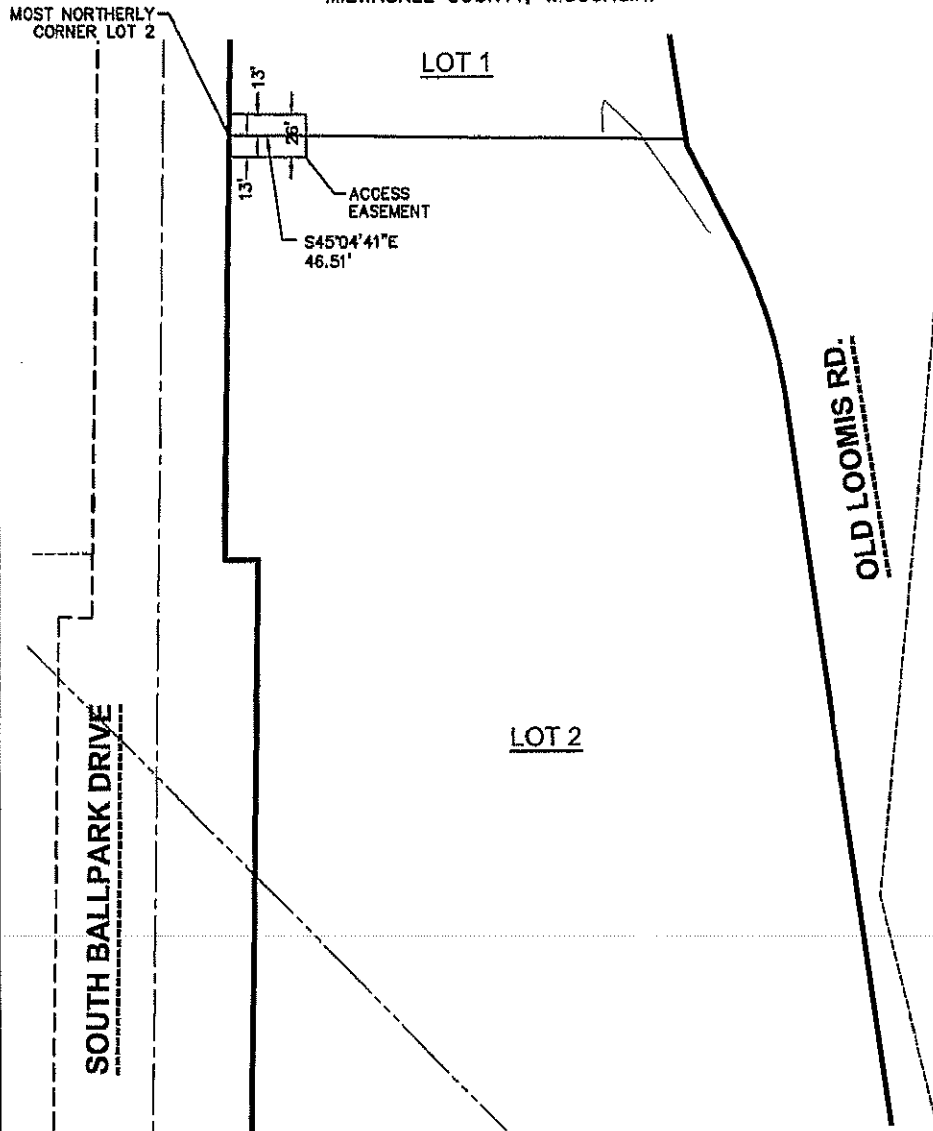
**EXHIBIT "1"**

***DEPICTION OF EASEMENT AREA***

Exhibit 1-1

# EASEMENT EXHIBIT

PART OF LOTS 1 AND 2 OF CERTIFIED SURVEY MAP NO. 9078, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



## EASEMENT EXHIBIT

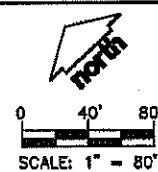
ACCESS EASEMENT

PREPARED BY:  
**JSD** Professional Services, Inc.  
"Integrity • Precision • Innovation"  
N238 W1810 BUSSE ROAD,  
SUITE 100  
MILWAUKEE, WISCONSIN 53180  
PHONE: (262) 513-0888

PREPARED FOR:  
ZIM-MAR PROPERTIES  
510 W. KILBOURN AVE.  
MILWAUKEE, WI 53202

PROJECT NO: 14-8548  
FILE NO: B-  
FIELDBOOK/PG: --  
SHEET NO: 3 OF 4

SURVEYED BY: JSD  
DRAWN BY: DHS  
CHECKED BY: AWW  
APPROVED BY: JJJ



## EASEMENT EXHIBIT

PART OF LOTS 1 AND 2 OF CERTIFIED SURVEY MAP NO. 9078, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

### LEGAL DESCRIPTIONS

PART OF LOTS 1 AND 2 OF CERTIFIED SURVEY MAP NO. 9078, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, THE CENTERLINE OF ACCESS EASEMENTS DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID LOT 2, BEING THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED; THENCE S45°04'41"E ALONG THE NORTHEASTERLY LINE OF SAID LOT A DISTANCE OF 46.51 FEET TO THE POINT OF TERMINUS OF THIS DESCRIPTION.

LANDS CONTAINING 1,209 SQUARE FEET OR 0.0278 ACRES

File: R:\2014\1405448 Ballpark Commons\dwg\1405448 EXHIBIT EASEMENTS SOUTH.dwg Layout: ACCESS EASE 4 User: dtpm/jr Plotted: Dec 10, 2014 -- 7:52am

#### PREPARED BY:

**JSD** Professional Services, Inc.  
Engineers • Surveyors • Planners

4230 WISNOMISS ROAD,  
SUITE 100  
WILKESBORO, WISCONSIN 53180  
PHONE: (262)213-0868

SHEET NO: 4 OF 4

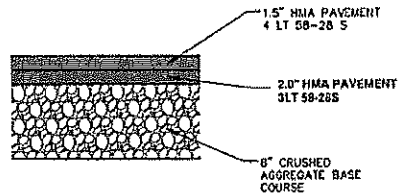
**EXHIBIT "2"**

***DEPICTION OF DRIVEWAY IMPROVEMENTS***

***[TO BE ATTACHED]***

## EXHIBIT "2"

### DEPICTION OF DRIVEWAY IMPROVEMENTS



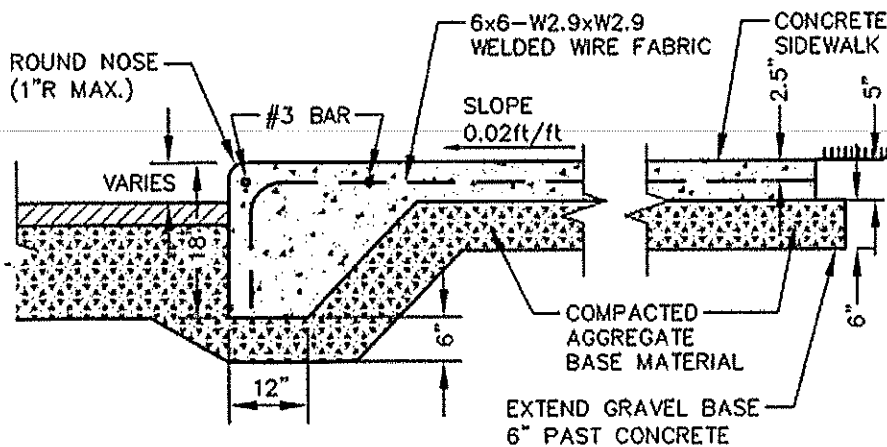
**STANDARD ASPHALT PAVEMENT  
SECTION**

#### GENERAL NOTES:

1. REFER TO PAVEMENT RECOMMENDATIONS IN THE GEOTECHNICAL INVESTIGATION REPORT, PREPARED BY CGC, INC. TITLED "[GEOTECH REPORT TITLE]" DATED [DATE] IF THERE ARE ANY DISCREPANCIES BETWEEN THIS DETAIL AND THE PAVEMENT RECOMMENDATIONS PROVIDED IN THE GEOTECHNICAL INVESTIGATION REPORT, THE GEOTECHNICAL REPORT SHALL GOVERN.
2. WISDOT STANDARD SPECIFICATIONS FOR HIGHWAY AND STRUCTURE CONSTRUCTION, INCLUDING SUPPLEMENTAL SPECIFICATIONS, BUT EXCLUDING LIMITATIONS IN SECTION 460.3.2 RESTRICTING LAYER THICKNESS BY AGGREGATE SIZE.
3. COMPACTION REQUIREMENTS:  
- BITUMINOUS CONCRETE: REFER TO SECTION 460-3.  
- BASE COURSE: REFER TO SECTION 301.3.4.2, STANDARD COMPACTION.
4. MIXTURE TYPE [LT, MT, OR HT] BITUMINOUS PAVEMENT IS RECOMMENDED; REFER TO SECTION 460, TABLE 460-2 OF THE STANDARD SPECIFICATIONS.
5. CONCRETE EQUIPMENT PADS SHALL HAVE A MINIMUM 6" THICK PORTLAND CEMENTER CONCRETE OVER COMPACTED 6" THICK DENSE GRADED BASE WITH REINFORCEMENT FOR CRACK CONTROL.

#### PAVEMENT SECTIONS

N.T.S.



### INTEGRAL CONCRETE CURB & WALK

N.T.S.

REV. 5-19-2017

**THIS DOCUMENT WAS DRAFTED BY  
AND WHEN RECORDED RETURN TO:**

**FOLEY & LARDNER LLP**  
Attn: Matthew K. Impola  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

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**DECLARATION OF RECIPROCAL  
DRIVEWAY AREA EASEMENTS**

This **DECLARATION OF RECIPROCAL DRIVEWAY AREA EASEMENTS** ("Declaration") is dated for reference purposes as of December \_\_\_\_, 2018 and is made by ZIM-MAR PROPERTIES LLC ("Declarant A") and FRANKLIN RE, LLC ("Declarant B" and collectively with "Declarant A" referred to herein as "Declarants"), with reference to the following facts, which are a material part of this Declaration:

A. Declarant A is the owner of certain real property located in the City of Franklin, County of Milwaukee, State of Wisconsin, which is legally described as:

Lots 3 of Certified Survey Map No. 9078 recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin, on October 16, 2018 as Document No. 10820171, being part of Lot 3 and 4 of Certified Survey Map No. 9042 and the Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, County of Milwaukee, State of Wisconsin.

Tax Key Numbers: A Part of 754-9004-000 and 754-9003-000 and a vacated part of Loomis Road (no tax key number).

For purposes of reference in this Declaration, the above-described real property is referred to as "Lot 3".

B. Declarant B is the owner of certain real property located in the City of Franklin, County of Milwaukee, State of Wisconsin, which is legally described as:

Lot 2 of Certified Survey Map No. 9078 recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin, on October 16, 2018 as Document No. 10820171, being part of Lot 3 and 4 of Certified Survey Map No. 9042 and the Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, County of Milwaukee, State of Wisconsin.

Tax Key Numbers: A Part of 754-9004-000 and 754-9003-000 and a vacated part of Loomis Road (no tax key number).

For purposes of reference in this Declaration, the above-described real property is referred to as "Lot 2".

C. Declarants desire to (i) create and establish on Lot 3, and Lot 2 certain non-exclusive easements relating to the construction, maintenance, repair and replacement of the Driveway Improvements and for access, ingress and

egress on, over, through and across the Driveway Easement Areas to and from each Lot and Ballpark Drive, and (ii) subject the Lots to certain reciprocal covenants, agreements and restrictions concerning the maintenance and use of the Driveway Improvements and Driveway Easement Areas, all as more particularly described in this Declaration.

**NOW, THEREFORE,** Declarants declare that Lot 3-and Lot 2 shall be owned, held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the rights, limitations, restrictions and covenants set forth in this Declaration, all of which shall run with the land and shall be binding on and inure to the benefit of the Owners (as defined below) who now or in the future own any right, title or interest in Lot 3 and Lot 2 as follows:

1. **Definitions.** The defined words or phrases used in this Declaration shall, unless the context otherwise indicates, have the meanings specified in this Section 1. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, as the context indicates. Additional terms defined elsewhere in this Declaration shall have the same definition for all purposes of this Declaration, unless otherwise indicated, notwithstanding that such additional terms are not defined in this Section 1.

1.1 **"Declarant"** means either Declarant A or Declarant B, the current owners of the Lots, and any successors in interest who becomes an Owner of either of the Lots.

1.2 **"Driveway Easement Area"** means those areas of Lots 3-and 2 depicted on Exhibit "1" attached hereto and incorporated herein by reference; references to "Driveway Easement Area" mean all of the above described easement areas on Lots 1 and 2.

1.3 **"Driveway Improvements"** means the driveway improvements to be constructed by the Owner of Lot 2 in the Driveway Easement Area as depicted on Exhibit "2" attached hereto and incorporated herein by reference.

1.5 **"Lease"** means any lease, rental agreement or other similar agreements pursuant to which any Occupant has the right to be in possession of any portion of any of a Lot that is binding upon the Declarant or any successor Owner.

1.6 **"Legal Requirements"** means all rules, regulations, laws, ordinances, statutes, judicial decrees or orders of any governmental authority, the compliance with which is required in performing or refraining from the performance of any act or omission permitted or required to be performed or restricted in accordance with this Declaration or otherwise governing the development, construction, use, operation or maintenance of the Lots, including any Legal Requirements concerning Hazardous Substances.

1.7 **"Lot"** means and refers to either of Lot 3 or Lot 2 as the context provides, and a reference to "Lots" means both of Lot 3 and Lot 2.

1.8 **"Occupant"** means and includes those Persons entitled by ownership, Lease or other legal relationship to be in possession of a Lot, any portion of a Lot or any building improvements on any Lot, and their respective customers, invitees, agents, employees and contractors.

1.9 **"Owner"** means the person or entity who is the record owner of a Lot, including Declarant, and any purchaser under an installment sale contract whereby such purchaser is entitled to the beneficial use and possession of a Lot and legal title is held by the seller solely to secure payment of the purchase price of the Lot; provided, however, if ownership of any building improvements on any Lot are severed from the land, whether by lease or deed, only the Owner of the fee simple interest in the land shall be deemed an Owner for purposes of this Declaration; the term "Owners" means all persons or entities who are an Owner, unless the context provides otherwise.

1.10 **"Person"** means any individual, joint venture, corporation, trust, limited liability company or other legal entity.



2. **Creation of Easements.**

2.1 **Access Easement.** Declarants hereby grant to each other and their respective successors and assigns, a perpetual nonexclusive reciprocal easement on, over, through and across the Driveway Easement Area (or such applicable portion thereof) for the purposes of pedestrian and vehicular access, ingress and egress on, over, through and across the Driveway Improvements to be located on, over, within and across the Driveway Easement Area (or such applicable portion thereof). For the avoidance of doubt, the access and ingress and egress easement declared herein shall be limited to the Driveway Easement Area and shall not extend to any of other the paved areas on Lot 3 and Lot 2.

2.2 **Secondary Easement.** Declarants hereby grant to each other and their respective successors and assigns, incidental rights of access, ingress and egress on, over, through and across the Driveway Easement Area in order that the Owners of the Lots may carry out all of their respective rights, duties and obligations hereunder to maintain, repair, replace and improve the Driveway Improvements, the Driveway Easement Area and any related improvements and facilities in connection therewith. The foregoing rights shall be (a) limited to the time and area reasonably necessary to fulfill their respective obligations hereunder, and (b) subject to any and all covenants, conditions and restrictions recorded against the Driveway Easement Area and any and all applicable laws, rules and regulations prohibiting, restricting and/or otherwise affecting access to and/or use of the Driveway Easement Area.

3. **Permanent Easement Nature/Termination.** The easements and related rights granted and established in this Declaration shall run with the land and be continuously binding upon and inure to the benefit of the respective Owners and Occupants of each of the Lots unless released by a written declaration of abandonment and relinquishment, executed, acknowledged and recorded by the Owners of both Lots, such declaration to be effective upon recordation in the office of the Register of Deeds of Milwaukee County, Wisconsin.

4. **Construction, Maintenance, Repair and Replacement.** The Owner of the Lot that is developed first shall have the right and obligation to initially construct the Driveway Improvements and shall bear the costs of such construction, provided that the Owner of Lot 2 shall be responsible directly for the construction and all costs of construction of the parking areas to be constructed in the Driveway Easement Area. Upon commencement of construction on the second Lot, the Owner of such Lot shall reimburse the Owner of that Lot that initially constructed the Driveway Improvements for one-half (1/2) of the cost of the same. The Owner of Lot 3 shall be responsible for the ongoing maintenance and repair, and if necessary, the replacement of the Driveway Improvements located in the Driveway Easement Area and shall maintain such improvements in a good and operable condition in accordance with all Legal Requirements, provided that the Owner of Lot 2 shall be responsible directly for the costs to maintain the parking areas to be constructed in the Driveway Easement Area. The Owner of Lot 2 shall thereafter be obligated to reimburse the Owner of Lot 3 for one-half (1/2) of all costs incurred by such Owner in connection with the ongoing maintenance, repair, and if necessary, the replacement of the Driveway Improvements, such reimbursement to be made within thirty (30) days of receipt of an invoice from the Owner of Lot 3.

4.1 **Cooperation.** All construction, repairs, maintenance and replacements shall be carried out in a commercially reasonable manner and method so as to minimize, to the greatest extent practical, any interference with the use of the Driveway Easement Area by the Owners and Occupants of both Lots.

4.2 **Failure to Maintain.** If the Owner of Lot 3 fails to timely and properly maintain, repair and, if necessary, replace the Driveway Improvements in the Driveway Easement Area, and such failure continues beyond the notice and cure period provided in Section 5 below, then the Owner of Lot 2 shall have the right, but not the obligation, to complete such maintenance, repair and/or replacement and seek reimbursement from the Owner of Lot 3 of one-half (1/2) of the costs incurred by the Owner of Lot 2 in connection therewith. Furthermore, in the event that any Owner fails to repair and restore the Driveway Improvements and/or Driveway Easement Area as required pursuant to Section 4.3 below, then the non-defaulting Owner shall have the right, but not the obligation, to complete such repair and restoration and seek reimbursement from the defaulting Owner of all costs incurred by such Owner in connection therewith.

4.3 **Damage From Improper Use.** Notwithstanding any other provision, in the event that any

Owner or its Occupant(s) or any of their respective invitees cause any damage to the Driveway Improvements and/or the Driveway Easement Area, including as a result of improper use of the Driveway Improvements and/or Driveway Easement Area or as a result of negligence or intentional misconduct, then such Owner shall promptly repair such damage at its sole cost and expense and restore the Driveway Improvements and/or the Driveway Easement Area to its condition prior to such damage or destruction.

5. **Default Notice/Remedies.** In the event an Owner is in default of its obligations under this Declaration, the procedures and remedies provided in this Section shall apply, in addition to any and all other rights and remedies of a party at law or in equity.

5.1 **Notice of Default.** Prior to exercising any rights or remedies, including any entry upon an Owner's Lot, the non-defaulting Owner claiming such default shall give written notice to the defaulting owner generally describing the nature of the default(s). Such notice shall be personally delivered to any officer or authorized representative who is present at any building located on the defaulting Owner's Lot or mailed, certified or registered mail, return receipt requested, to the last known address of the defaulting Owner.

5.2 **Correction of Violation.** The defaulting Owner shall have fifteen (15) days from the delivery of any notice to correct all violations; provided, however, if the nature of a non-monetary default is such that a longer period of time would be required to fully cure and remedy such default, then the time permitted shall be a reasonable time, so long as the defaulting Owner immediately and diligently commences such cure within such fifteen (15) day period and thereafter continuously proceeds to complete such cure as soon as reasonably possible.

5.3 **Reciprocal Lien Rights.** Any non-defaulting Owner may bring an action at law against a defaulting Owner obligated for payment of any the delinquent amounts. In addition, but subject to Section 12 below, any such delinquent amounts shall also constitute a lien and charge against the Lot of the defaulting Owner, and any such lien on the defaulting Owner's Lot shall be subject to foreclosure in accordance with the then-prevailing laws of the State of Wisconsin relating to the foreclosure of general liens upon real property.

6. **Restriction on Use.** The Driveway Easement Area shall be used, on a "first come, first served basis," for the following purposes: (a) transitory vehicular and pedestrian ingress and egress to and from each Lot and Ballpark Drive, (b) additional room for a truck or other large transport vehicle to traverse, /or otherwise maneuver as reasonably required to align the truck or other large transport vehicle on each Lot for deliveries of goods, (c) for transitory access of pedestrians and vehicles when entering and leaving each Lot's Driveway Easement Area, and (d) for parking in those designated stalls contained within the Driveway Easement Area. Any such uses shall be only in compliance with all Legal Requirements and any commercially reasonable rules or regulations of the Owner of the Lot on which such Driveway Easement Area is located; provided, however, any such rules or regulations must apply uniformly to the Occupants of both Lots and shall not change the basic "first come, first served" use rights. Without limiting the generality of the preceding provisions, the Driveway Easement Areas shall *not* be used for purposes of (i) parking of trucks or vehicles (whether temporary or permanent) and trucks (except as in the designated stalls in the Driveway Easement Area) and/or (ii) storage (whether temporary or permanent) of any goods, equipment or other items or for the unloading or loading of goods, equipment or other items onto any portion of the Driveway Easement Area and/or (iii) for the construction or placement of any improvements, fixtures or improvements, except driveway paving improvements. In all events access to and across all portions of the Driveway Easement Area shall remain unimpeded and unobstructed, except to the extent reasonably required in connection with the maintenance, repair, renovation or replacement of any Driveway Improvements.

7. **Non-Exclusivity.** The easement rights created and established in this Declaration are nonexclusive, and each Owner reserves the right to establish other easement rights on its Lot, including any portion of its Lot subject to the easement rights, provided that such other easement rights shall not unreasonably interfere with the easement rights granted in this Declaration or the obligations of each Owner hereunder.

8. **Estoppel Certificates.** Each Owner shall, upon ten (10) business days prior written notice from the other Owner, execute and deliver to the requesting Owner a statement (a) certifying that this Declaration is unmodified

and in full force and effect or, if there has been modification, describing such modification and stating that this Declaration is in full force and effect as so modified, (b) stating whether all amounts required to be paid by the requesting Owner under this Declaration have been paid, and (c) stating whether there are any other defaults by the requesting Owner under this Declaration.

9. **Maintenance of Insurance.** As a condition to each Owner's continued right to use and permit its Occupants to use the Driveway Easement Area on the other Owner's Lot, each Owner shall procure, pay for and maintain, at all times, commercial general liability insurance (including automobile liability insurance and coverages against bodily injury, death, property damage and contractual liability) in an amount of no less than \$1,000,000.00 combined single limit and a \$3,000,000 umbrella. Upon the written request of an Owner, the other Owner shall provide a Certificate of Insurance evidencing such insurance coverages.

9.1 **Periodic Adjustment of Coverage.** No more frequently than every five (5) years, the insurance coverage amount required under this Section shall be subject to increase upon the request of an Owner, to such coverage amount as is then commercially reasonable for owners and/or occupants of similarly situated commercial real estate projects. In the event that the Owners are unable to agree upon the amount of such increase within sixty (60) days of an Owner's request, either Owner shall have the right to have the issue of the amount of the coverage determined by Arbitration.

10. **No Public Rights.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Lots to the general public or for any public use or purpose whatsoever. It is the intention of Declarant and each of the Owners that this Declaration shall be for the exclusive benefit of the Owners and Occupants of the Lots, and, if applicable, any Mortgagee (as defined below), and this Declaration shall not be for the benefit of any third Person.

11. **Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, but such limitation shall not affect in any manner any of the rights or remedies which the other Owner may have by reason of any breach of this Declaration.

12. **Breach - Effect on Mortgagee and Right to Cure.** The breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any mortgage, deed of trust or other security interest ("**Mortgage**") made in good faith and encumbering any of the Lots, but all of the preceding provisions, restrictions, and covenants shall be binding on and effective against any Owner of any portion of the Lots, or any part thereof, who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale. The mortgagee, beneficiary or holder of any Mortgage ("**Mortgagee**") of an Owner who is in default under this Declaration shall be entitled to receive notice of such default, in the same manner that other notices are required to be given to an Owner, provided, that such Mortgagee has, prior to the time of the default, notified the Owner giving notice of default of the Mortgagee's mailing address, and any such Mortgagee shall have the right to cure any such default in the same manner and within the same time as permitted the defaulting Owner. Giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the non-defaulting Owner so declaring a default.

13. **No Partnership.** Neither this Declaration nor any acts of the Owners hereto shall be deemed or construed by the parties hereto, or any of them, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Owners to this Declaration.

14. **Modification.** A modification, waiver, amendment, discharge, or change of this Declaration shall be valid if, but only if, the same is in writing and, executed, acknowledged and recorded by (a) Declarant, in the event such modification is recorded prior to the conveyance of a Lot to any other person who becomes an Owner, or (b) following the conveyance of either Lot, by the Owners of both Lots, such modification to be effective upon recordation in the office of the Register of Deeds of Milwaukee County, Wisconsin.

15. **Non-Waiver and No Estoppel.** This Declaration and the easement rights granted herein shall remain

fully enforceable and not be subject to waiver on account of the failure of an Owner to take any action to enforce its easement rights regardless of the length of time that any violations are allowed to continue to exist. In the event that an Owner is determined to have granted permission, either expressly or by implication, to any violation of this Declaration, such permission shall be deemed revocable at any time, except to the extent that such permission is expressly set forth in a written modification of this Declaration, duly executed, acknowledged and properly recorded by all Owners. Under no circumstances will an Owner be deemed to accrue any prescriptive rights in the easements. Under no circumstances shall the enforcement of the easement rights be subject to estoppel on account of any delay in enforcing such rights regardless of the extent of any reliance on such failure or delay in enforcing any such rights.

16. **Remedies.** In addition to the rights granted in this Declaration to correct or remedy any violation of the easement rights, the parties shall be entitled to all available legal and equitable remedies to enforce the easement rights granted in this Declaration, including without limitation, the right to injunctive and specific enforcement remedies to cause compliance with the requirements of this Declaration and eliminate any interference or impedance with such easement rights.

17. **Validity.** In the event that any portion of this Declaration shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Declaration following a final judicial determination of such invalidity, illegality or unenforceability, and the remaining provisions shall continue and remain in full force and effect, as fully as though the invalid, unenforceable or illegal provision had never been a part of this Declaration.

18. **Late Fees, Finance Charges and Administrative Charges.** Whenever another provision of this Declaration provides for the timely payment of money and an Owner or other Person fails to timely pay such amount, then any amount not paid when due shall be subject to a late fee of 5% of the invoiced amount, and, if any amount remains unpaid for more than thirty (30) days after the due date, a finance charge equal to the lesser of (a) 1.5% per month (i.e. 18% per annum), or (b) the maximum rate permitted by applicable Legal Requirements shall be become payable.

19. **Attorneys' Fees.** In the event of any action (including any Arbitration) to enforce or interpret this Declaration, the prevailing party shall be entitled to recover from the other party an amount equal to actual attorneys' fees and other expenses incurred in connection with such action, including, but not limited to, reasonable attorneys' fees and costs incurred in the enforcement of any judgment or award, and in connection with any bankruptcy (or equivalent proceeding) or in connection with any appellate proceedings.

20. **Interpretation.** This Declaration was drafted in connection with arms-length negotiations of the terms and conditions hereof and any legal interpretation providing for written contracts to be interpreted against the party preparing or drafting such contract shall not apply to the interpretation or construction of this Declaration.

21. **Binding Effect.** Except as otherwise expressly provided, this Declaration and the easement rights granted herein shall be binding upon and inure to the benefit of Declarant, any Owners and their respective heirs, personal representatives, successors and assigns.

22. **Exhibits.** All Exhibits attached to this Declaration are incorporated into this Declaration by this reference.

23. **Constructive Notice and Acceptance.** Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of any Lot is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and easement provided for in this Declaration whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Lot.

24. **Mutuality, Reciprocity, Runs with Land.** All restrictions, conditions, covenants and agreements contained in this Declaration are made for the direct mutual and reciprocal benefit of each and every part and parcel of the Lots; shall create mutual, equitable servitudes upon each Lot in favor of every other Lot; shall create reciprocal rights

and obligations between the respective Owners of all Lots and privity of contract and estate between all Owners of Lots and their respective heirs, successors and assigns; and shall, as to the Owner of each Lot, its heirs, successors and assigns, operate as covenants running with the land for the benefit of the other Lot.

**SIGNATURES TO FOLLOW ON THE NEXT PAGE**

IN WITNESS WHEREOF, Declarants have executed this Declaration to be effective as of the Effective Date set forth above.

"Declarants"

"Declarant A"

ZIM-MAR PROPERTIES, LLC,  
a Wisconsin limited liability company

By: 

Name: Michael Zimmerman

Title: Manager

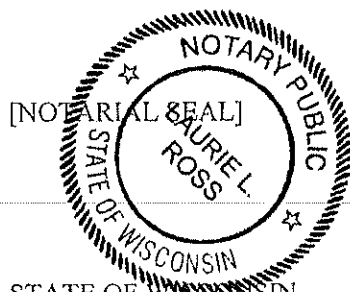
By: 

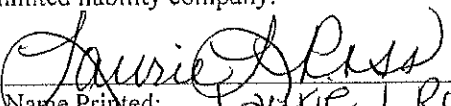
Name: Greg Marso

Title: Manager

STATE OF WISCONSIN       )  
                                      ) ss.  
COUNTY OF MILWAUKEE    )

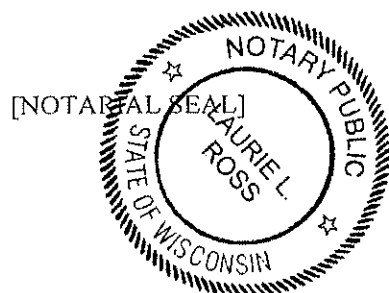
This instrument was acknowledged before me on December 14<sup>th</sup>, 2018, by Michael Zimmerman, Manager of Zim-Mar Properties, LLC, a Wisconsin limited liability company.

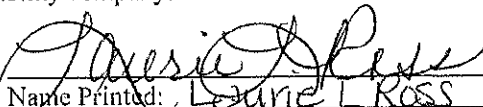


  
Name Printed: Laurie L. Ross  
Notary Public, County of Milwaukee  
My commission expires: 9/20/19

STATE OF WISCONSIN       )  
                                      ) ss.  
COUNTY OF MILWAUKEE    )

This instrument was acknowledged before me on December 14<sup>th</sup>, 2018, by Greg Marso, Manager of Zim-Mar Properties, LLC, a Wisconsin limited liability company.



  
Name Printed: Laurie L. Ross  
Notary Public, County of Milwaukee  
My commission expires: 9/20/19

IN WITNESS WHEREOF, Declarants have executed this Declaration to be effective as of the Effective Date set forth above.

**"Declarant B"**

FRANKLIN RE, LLC

By: Franklin Partners, LLC,  
a Wisconsin limited liability company, its Manager

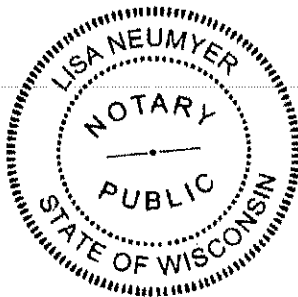
By: Boldt Capital, LLC,  
a Wisconsin limited liability company, its Manager

By: [Signature]  
Name: James R. Kleinfeldt  
Title: Manager

STATE OF WI  
COUNTY OF Milwaukee <sup>SS</sup>

Before me personally appeared on the 14 day of December 2018, the above named James R. Kleinfeldt, the Manager of Boldt Capital, LLC, which is the Manager of Franklin Partners, LLC, which is the Manager of Franklin RE, LLC to me known to be the person who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

[Signature]  
NOTARY PUBLIC  
My commission expires 8/18/20



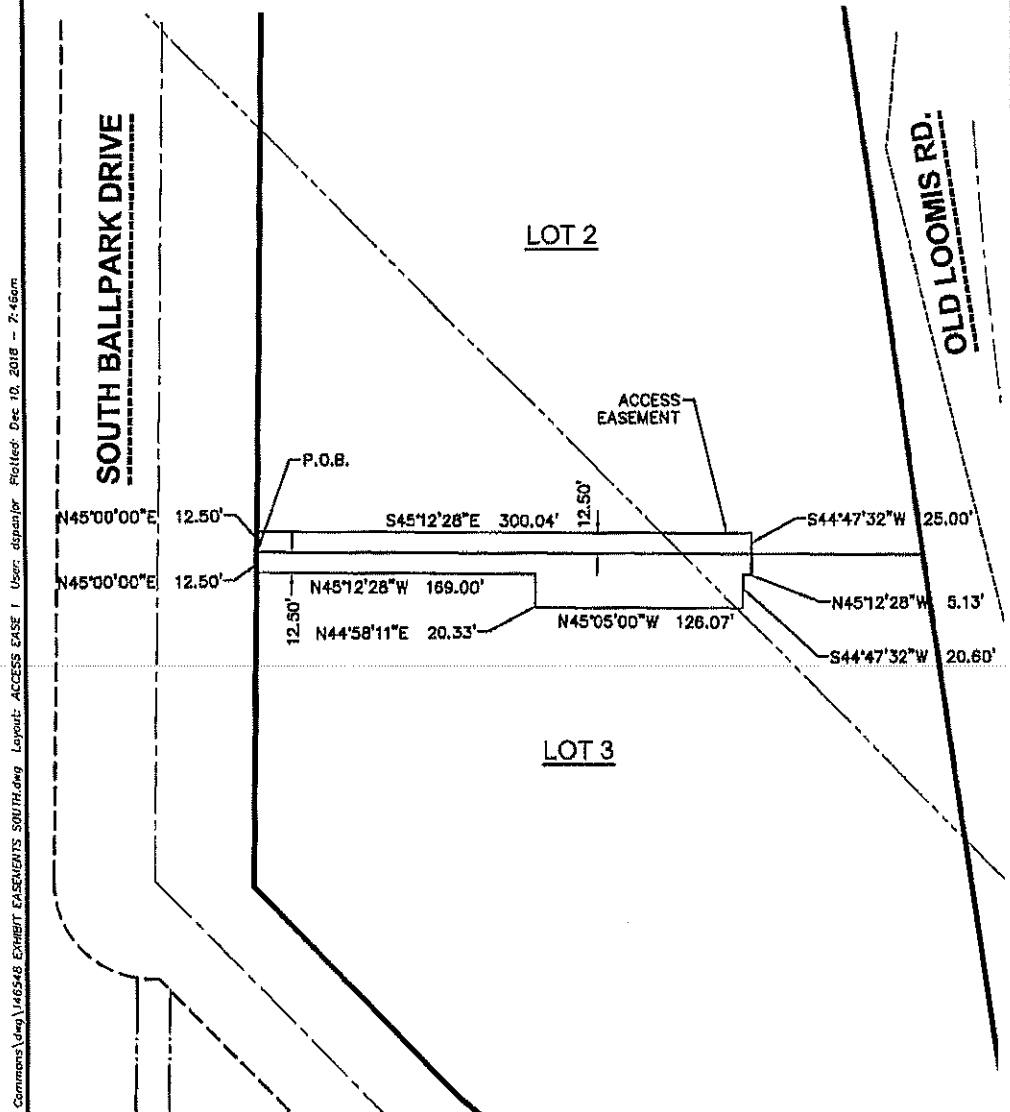
**EXHIBIT "1"**

***DEPICTION OF EASEMENT AREA***



# EASEMENT EXHIBIT

PART OF LOTS 2 AND 3 OF CERTIFIED SURVEY MAP NO. 9078, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



## EASEMENT EXHIBIT

ACCESS EASEMENT

PREPARED BY:

**JSD** Professional Services, Inc.  
SURVEYORS & ENGINEERS & PLANNERS

4238 W1810 BUSSE ROAD,  
SUITE 100  
MILWAUKEE, WISCONSIN 53186  
PHONE: (262)513-0888

PREPARED FOR:

ZIM-MAR PROPERTIES  
510 W. KILBOURN AVE.  
MILWAUKEE, WI 53202

PROJECT NO:

14-0545

FILE NO:

B-\*

FIELDBOOK/PK:

-

SHEET NO:

1 OF 4

SURVEYED BY:

JSD

DRAWN BY:

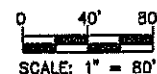
DHS

CHECKED BY:

AWW

APPROVED BY:

JLJ



File: R:\2014\140545\Ballpark Commons\dwg\140545 EXHIBIT EASEMENTS SOUTH.dwg Layout: ACCESS EASE 1 User: djanjan Plotted: Dec 10, 2018 - 7:46am

## EASEMENT EXHIBIT

PART OF LOTS 2 AND 3 OF CERTIFIED SURVEY MAP NO. 9078, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

### LEGAL DESCRIPTIONS

PART OF LOTS 2 AND 3 OF CERTIFIED SURVEY MAP NO. 9078, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF SAID LOT 2, BEING THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED;

THENCE N45°00'00"E ALONG SAID RIGHT OF WAY LINE, 12.50 FEET;  
THENCE S45°12'28"E, 300.04 FEET;  
THENCE S44°47'32"W, 25.00 FEET;  
THENCE N45°12'28"W, 5.13 FEET;  
THENCE S44°47'03"W, 20.80 FEET;  
THENCE N45°05'00"W, 126.07 FEET;  
THENCE N44°58'11"E, 20.33 FEET;  
THENCE N45°12'28"W, 169.00 FEET  
THENCE N45°00'00"E ALONG SAID RIGHT OF WAY LINE, 12.50 FEET TO THE POINT OF BEGINNING.

LANDS CONTAINING 10,082 SQUARE FEET OR 0.2314 ACRES

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PREPARED BY:  
**JSD** Professional Services, Inc.  
Engineering • Surveying • Planning  
10230 W1810 BLISS ROAD,  
SUITE 100  
WALKESEN, WISCONSIN 53108  
PHONE: (262) 513-0900

SHEET NO: 2 OF 4

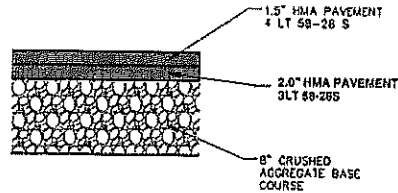
**EXHIBIT "2"**

***DEPICTION OF DRIVEWAY IMPROVEMENTS***

***[TO BE ATTACHED]***

## EXHIBIT "2"

### DEPICTION OF DRIVEWAY IMPROVEMENTS



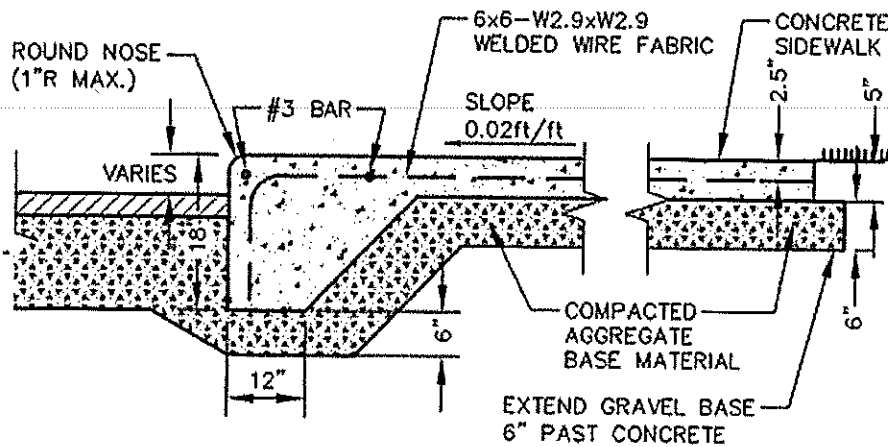
**STANDARD ASPHALT PAVEMENT  
SECTION**

#### GENERAL NOTES:

1. REFER TO PAVEMENT RECOMMENDATIONS IN THE GEOTECHNICAL INVESTIGATION REPORT, PREPARED BY CGC, INC. TITLED "[GEOTECH REPORT TITLE]" DATED [DATE] IF THERE ARE ANY DISCREPANCIES BETWEEN THIS DETAIL AND THE PAVEMENT RECOMMENDATIONS PROVIDED IN THE GEOTECHNICAL INVESTIGATION REPORT, THE GEOTECHNICAL REPORT SHALL GOVERN.
2. WISDOT STANDARD SPECIFICATIONS FOR HIGHWAY AND STRUCTURE CONSTRUCTION, INCLUDING SUPPLEMENTAL SPECIFICATIONS, BUT EXCLUDING LIMITATIONS IN SECTION 460.3.2 RESTRICTING LAYER THICKNESS BY AGGREGATE SIZE.
3. COMPACTION REQUIREMENTS:  
- BITUMINOUS CONCRETE: REFER TO SECTION 460-3.  
- BASE COURSE: REFER TO SECTION 301.3.4.2, STANDARD COMPACTION
4. MIXTURE TYPE [LT, MT OR HT] BITUMINOUS PAVEMENT IS RECOMMENDED; REFER TO SECTION 460, TABLE 460-2 OF THE STANDARD SPECIFICATIONS.
5. CONCRETE EQUIPMENT PADS SHALL HAVE A MINIMUM 6" THICK PORTLAND CEMENTER CONCRETE OVER COMPACTED 6" THICK DENSE GRADED BASE WITH REINFORCEMENT FOR CRACK CONTROL.

#### PAVEMENT SECTIONS

N.T.S.



### INTEGRAL CONCRETE CURB & WALK

N.T.S.

REV. 5-19-2017

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Jan 8, 2019
REPORTS & RECOMMENDATIONS	Report on Ballpark Commons Infrastructure and Site work Draws Financial Report	ITEM NUMBER <i>G.9.</i>

### Background

The City signed a Developers Agreement in February, 2018 with Ballpark Commons. That agreement included City support for infrastructure and site preparation work at Ballpark Commons. The City committed \$22,491,484 toward infrastructure.

### Analysis

Construction for the 2018 season is substantially done as winter weather conditions settle in. While the General Contract plans to continue work at the site, activity will be at a lower level than during the warmer months.

Thru the November 30, 2018 draw requests (processed thru Dec 26, 2018), payments totaling \$14,330,769 have been made. There remains \$8,160,715 of City commitments to be drawn upon.

Contractor retainages totaling approximately \$930,000 will likely be paid out with the December 2018 draw request submitted in mid-January 2019.

The Developer requested certain amounts of contingency be reclassified to other project elements totaling \$2,787,809. A summary of the Original Budget, transfers of Contingency and draws against the project elements is attached. The schedule also indicates the amounts available on the original City commitment

A building permit for a Commercial project north of Rawson Ave was pulled August 1, 2018. A Building permit for the Stadium was pulled on Oct 11, 2018. A building permit for the Senior Housing project was pulled Dec 26, 2018.

Of some concern is the lack of building permits for four Apartment complex buildings. A financing commitment was provided in June, 2018. Building permits were due to have been pulled by May 21, 2018. Those two projects (Apartment buildings and Senior Housing) were to anchor the increment for the City infrastructure financing.

The Milestone Benchmarks were included in the Developer's Agreement as a way of assessing progress on the Development. (copy attached). The Building Permit for the Apartments was due May 21, 2018, but has not been pulled as yet. There are ongoing discussions with the Developer and an interested investor for the apartment buildings.

### Discussion

The Developer committed to have \$20 million of new assessed value by Dec 31, 2018. Assessment review for Jan 1, 2019 is currently underway, but it is doubtful that the initial commitment has been met. The Developer committed to have \$50 million in increased assessed value by Dec 31, 2019 and \$94 million by Dec 31, 2020. The values were to be maintained at these levels until the City General Obligation Bonds were fully paid. Should the values not materialize, then the Developer agreed to pay any shortfall on the regularly schedule debt service.

The Developer was notified in November 2018, that it was likely that a call would be placed in Jan 2020 for the Dec 31, 2018 shortfall.

The delay in constructing the project components will place pressure upon the Developer by way of future calls upon minimum increment guarantees included in the Developer's Agreement.

**COUNCIL ACTION REQUESTED**

Report only – no action required.

City of Franklin  
Ballpark Commons  
31-Dec-18

	Streets	Storm Sewer	Parking Lot	County Methane	MMSD Main Movement	Topsoil Replacement	Berms	Water	Sanitary Sewer	Trail	Sound & Light	Contingency	Total
Dev Agreement Budget	5,157,399	2,584,027	1,930,196	3,887,300	458,000	2,602,500	920,000	1,011,124	782,266	145,000	100,000	2,933,672	22,491,484
Draw # 8 Change		897,491						428,197	25,973			(897,491)	-
Draw # 9		457,818						86,337	136,960			(911,988)	-
Draw # 10		693,517				152,516						(1,069,330)	-
Revised Budget	5,157,399	4,612,852	1,930,196	3,887,300	458,000	2,755,016	920,000	1,525,659	945,199	145,000	100,000	54,863	22,491,484
Draw's													
Draw 1	398,407	99,753	123,528	314,334	48,090	501,681	36,865	79,928	79,928	19,518	45,565		1,747,597
Draw 2	64,474	22,941	64,474	310,577	4,566	13,856		15,098	15,098				511,082
Draw 3	39,611	2,524	1,311	369,089	2,967	5,197		1,311	1,311			750	424,072
Draw 4	266,915	131,445	17,455	124,910	41,411	124,306		15,224	118,532	8,801	3,673		848,997
Draw # 4 - Qualite Ret													3,673
Draw 5	99,896	947,338	10,830	183,741	2,326	161,860	84,935	1,840	16,532	1,105			1,510,403
Draw 6	195,997	1,327,576	46,840	212,579	-	222,094	59,218	10,564	136,835	2,185		750	2,214,639
Draw 7	161,449	133,499	45,791	301,564	3,030	477,714		61,736	185,602				1,370,385
Draw 8	19,968	486,541	196,505	113,302	9,855	198,197	59,931	264,294	93,528			1,075	1,443,197
Draw 9	128,648	413,641	72,698	508,079	3,398	663,555	6,492	864,146	100,156			460	2,761,273
Draw 10	242,241	556,536	29,135	207,355	49,224	197,741		83,579	129,391			250	1,495,452
Total	1,617,607	4,121,794	608,567	2,645,529	164,865	2,566,201	247,441	1,397,720	876,912	31,610	49,238	3,285	14,330,769
Remaining Budget	3,539,792	491,058	1,321,629	1,241,771	293,135	188,815	672,559	127,939	68,287	113,390	50,762	51,578	8,160,715

## EXHIBIT

B-2

## MILESTONE BENCHMARKS

Dated: 2/9/2018

Week Of Goal	Development & Entitlement Events	Type	Status	Verified	TIF Spend Cap	Cumulative
1/15/2018	S3 Anchor Tenants Commitment: SC Waukesha & PT Academy	LOI, Press Release	Completed			
1/22/2018	C1 Retail Anchor Tenant Commitment	LOI, Press Release	Completed			
1/22/2018	B1, B2, B3, and B4 Apartment Site Plan Application	City Submittal	Completed			
1/22/2018	C1 Mixed Use (Office & Retail) Site Plan Application	City Submittal	Completed			
1/22/2018	CSM and PDD Amendment	City Submittal	Completed			
2/6/2018	City Approval of Development Agreement	City Action	Completed			
2/12/2018	Developer to Close on Sale of Landfill with Milwaukee County	Sale Contract				
2/12/2018	Closing on Remaining Parcels South of Rawson	Sale Contract				
2/12/2018	Stadium American Association, New Franchise Bidding Commitment	League Letter	Completed			
2/19/2018	Start Reconstruction of Methane Control System & Infrastructure	Construction				
2/19/2018	C1 Office Tenants Commitment	LOI, Press Release	Completed			
2/26/2018	B1, B2, B3, and B4 Apartment GC Selection	Contract			3,080,000	3,080,000
3/5/2018	C1 GC Selection	Contract				
3/5/2018	B1, B2, B3, and B4 Apartment Management Company Selection	Contract				
3/12/2018	Stadium UWM Binding Commitment	Lease, Press Release				
3/12/2018	PDD Amendment and Site Plan Application: Senior Housing	City Submittal				
3/19/2018	S3, C2 Site Plan Application, Indoor Facility	City Submittal				
3/19/2018	C2 Medical Anchor Tenant Commitment	LOI, Press Release				
3/19/2018	S3 Naming Rights Commitment	LOI, Press Release				
3/26/2018	S2, C3, and C4 (Restaurant & Golf) Site Plan Application	City Submittal				
3/26/2018	S2, C3, and C4 (Restaurant & Golf) Tenant Commitments	LOI, Press Release			1,540,000	4,620,000
4/2/2018	Site Plan Application - Stadium Phase 1	City Submittal				
4/9/2018	Install of Ballfield Light Vissors	City Inspection			1,551,000	6,171,000
5/21/2018	B1, B2, B3, and B4 Apartment Financing & Building Permit	City Approval				
5/21/2018	C1 Mixed Use (Office & Retail) Financing & Building Permit	City Approval				
5/21/2018	Start Stadium Construction	City Approval				
5/21/2018	Ground Breaking Ceremony & Start of Construction -- Apartments & Office	Public Event			2,612,500	8,783,500



APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 01/08/2019
REPORTS AND RECOMMENDATIONS	REQUEST TO INITIATE LAND ACQUISITION PROCESS AND PROCEED TO FINALIZE PLANS AND SOLICIT CONTRACTORS FOR THE S. 51ST STREET AND W. DREXEL AVENUE INTERSECTION PROJECT	ITEM NUMBER  <i>G, 10.</i>

#### **BACKGROUND**

R.A. Smith is the engineering consultant for the roundabout design planned for S. 51<sup>st</sup> Street and W. Drexel Avenue. The project schedule is on track for construction during the summer months. 60% plans with slope intercepts were submitted to Staff in December 2018 and a public information meeting is scheduled for January 23, 2019, at the Franklin High School.

R.A. Smith will be present at the January 8, 2019, Common Council meeting to discuss the project status and answer any questions of the Common Council. Project boards are also available for viewing in the upstairs hallway of City Hall.

#### **ANALYSIS**

The 60% plans include the plan sheets attached. Staff has reviewed the plans and has given the consultant technical comments. The full set may be reviewed by contacting the engineering department. There is also a 60% project estimate that reflects a construction total of \$1,034,000 (previous construction estimate was \$825,000). Not included in the estimate are land acquisition costs. Staff intends to self-perform inspection services to minimize the project budget.

It is anticipated that 90% plans will be ready in March 2019 and the bidding process to receive bids will take place in May 2019. Staff is now requesting permission to advertise for construction bids as soon as possible following the full design process.

There is one property where permanent property acquisition is needed to expand the public right of way. Permanent land acquisition is needed from Payne & Dolan, Inc. on the northwest corner. In addition to the Payne & Dolan property, there are five other properties where temporary limited easement (TLE) acquisitions are needed. Those TLE locations are currently owned by the River Highlands Homeowners Association, Becky Lauber, and City of Franklin on the southwest corner, Gregory & Gail Dietz on the northeast corner, and Franklin School District #5 on the southeast corner. Staff is requesting permission to start the permanent and temporary land acquisition process for these parcels.

#### **FISCAL NOTE**

The approved 2019 Capital Improvement Fund includes \$1,000,000 for this project. R.A. Smith's contract for the design of the project is \$89,933.78 and was encumbered from the 2018 budget. Land acquisition costs are unknown at this time. It is anticipated that a budget amendment will be needed later this year once costs are finalized.

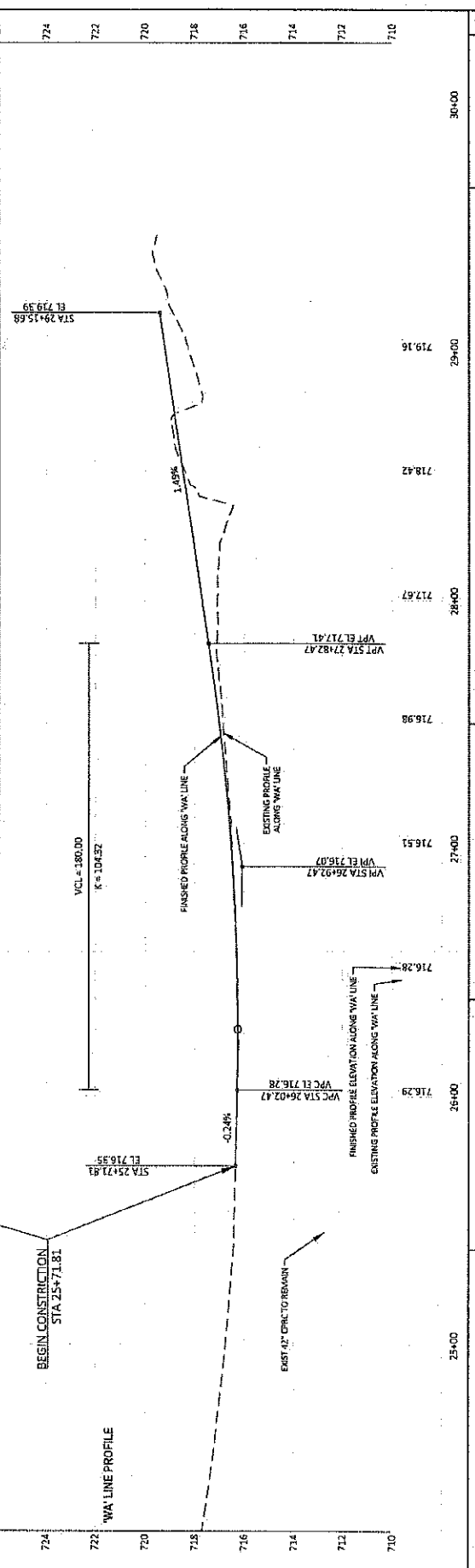
#### **OPTIONS**

- A. Direct Staff to initiate land acquisition processes with landowners. Note that these permanent and temporary land acquisition documents will return to Common Council for approvals. Or,
- B. Direct Staff to proceed to advertise and bid project upon completion and finalization of plans. Note that the bids will return to Common Council for awarding project. Or,
- C. Refer back to Staff with further direction.

#### **RECOMMENDATION**

(Options A and B) Direct Staff to initiate land acquisition process and proceed to finalize plans and solicit contractors per compliance with applicable public works bidding requirements for the S. 51<sup>st</sup> Street and W. Drexel Avenue Intersection Project.

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PROJECT NO:	RASMITH #1180177	HWY: 51ST STREET & DREXEL AVENUE	COUNTY: MILWAUKEE	PLAN AND PROFILE:	DREXEL AVENUE	SHEET	18
THE NAME:	63130177/CP/CD/SD/DP/RE/ST/ET/CP/AN/OS/DP-PP/ENG						
LAUNCH NAME: (C) (N/A)							
PROJECT DATE:	12/16/2018 1:51 PM						
FLAT B1:	BLACKWOOD, IN						
FLAT SCALE:	1"=40'						
PROJECT CODES SHEET: 44							



# 60% Cost Estimate

12/10/18

raSmith #1180177

51st Street/Drexel Ave Roundabout  
City of Franklin

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
205.0100	7,300	CY	EXCAVATION COMMON	\$15.00	\$109,500
305.0110	220	TON	BASE AGGREGATE DENSE 3/4-INCH	\$22.00	\$4,840
305.0120	6,570	TON	BASE AGGREGATE DENSE 1 1/4-INCH	\$17.00	\$111,690
305.0130	5,900	TON	BASE AGGREGATE DENSE 3-INCH	\$15.00	\$88,500
405.0100	160	CY	COLORING CONCRETE RED	\$100.00	\$16,000
416.0170	80	SY	CONCRETE DRIVEWAY 7-INCH	\$45.00	\$3,600
416.0512	275	SY	CONCRETE TRUCK APRON 12-INCH	\$50.00	\$13,750
455.0605	450	GAL	TACK COAT	\$3.00	\$1,350
460.6223	1,480	TON	HMA PAVEMENT 3 MT 58-28 S	\$75.00	\$111,000
460.6224	740	TON	HMA PAVEMENT 4 MT 58-28 S	\$82.00	\$60,680
465.0120	40	TON	ASPHALTIC SURFACE DRIVEWAYS AND FIELD ENTRANCES	\$100.00	\$4,000
602.0410	11,520	SF	CONCRETE SIDEWALK 5-INCH	\$4.50	\$51,840
619.1000	1	EACH	MOBILIZATION (@ 5% CONSTRUCTION)	\$49,000.00	\$49,000
620.0100	535	SF	CONCRETE CORRUGATED MEDIAN	\$8.00	\$4,280
645.0135	4,500	SY	GEOTEXTILE TYPE SR	\$2.00	\$9,000
SPV.0060	25	EACH	STORM SEWER STRUCTURES	\$1,880.00	\$47,000
SPV.0090	1,100	LF	STORM SEWER PIPES	\$65.00	\$71,000
SPV.0090	195	LF	18" REINFORCED CONCRETE CURB AND GUTTER TYPE A	\$14.00	\$2,730
SPV.0090	900	LF	18" REINFORCED CONCRETE CURB AND GUTTER TYPE D	\$15.00	\$13,500
SPV.0090	1,515	LF	30" REINFORCED CONCRETE CURB AND GUTTER TYPE D	\$15.00	\$22,725
SPV.0090	270	LF	36" REINFORCED CONCRETE CURB AND GUTTER TYPE T	\$17.00	\$4,590
SPV.0105	1	LS	LIGHTING	\$60,000.00	\$60,000

## CONSTRUCTION SUBTOTAL

\$861,000

## CONSTRUCTION, MISC ITEMS (EROSION CONTROL, PAVT. MARKING, SIGNING, ETC.)

20%

\$173,000

## CONSTRUCTION TOTAL (2019 DOLLARS)

**\$1,034,000**

## REAL ESTATE NEEDS

13,000	SF	TLE (7 PARCELS)
9,200	SF	FEE (3 PARCELS)

Prepared By: raSmith

### Notes:

- Unit prices based on Bid Express searches of similar quantities from projects in the area.
- EBS is assumed to be 50% of the total cut volume and is backfilled with Base Aggregate Dense 3-Inch
- Geotextile Type SR area is assumed to be 50% of the roadway area

Estimate does not include an estimate of costs for relocation of public or private utilities.

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