


APPROVAL 	REQUEST FOR COUNCIL ACTION	MEETING DATE 11/13/2018
REPORTS & RECOMMENDATIONS	Resolution of Inclusion Under the Wisconsin Retirement System (WRS)	ITEM NUMBER G. 7.

At their meeting of October 2, 2018, the Common Council unanimously approved a motion to "support the pursuit of the City of Franklin migrating its general, non-represented employees to the Wisconsin Retirement System for pension purposes effective January 1, 2019, and to direct the Director of Administration to address remaining implementation issues with the Personnel Committee and to return to the Common Council with a "Resolution of Inclusion Under WRS" prior to November 15, 2018."

Attached is the "Resolution of Inclusion Under the Wisconsin Retirement System." The "Resolution" to be approved is a specific form required by the Wisconsin Department of Employee Trust Funds (ETF) that oversees and implements the WRS. It must be approved by the Council and certified by a City officer and submitted to and received by the ETF prior to the end of business on Thursday, November 15, 2018, for employees to commence participation on January 1, 2019. The deadline is an inflexible, statutory deadline and any delay would mean that January 1, 2020 would be the next earliest participation start date.

As previously discussed, the form is completed to follow the recent statutory provision that allows eligible employees the option to participate in WRS or to waive participation in WRS.

Following are some additional points the Council may want to consider before adopting the resolution.

- At their meeting of October 16, 2018, the Common Council directed the Director of Administration to work with labor counsel to prepare the necessary actions and plan amendments to incorporate the strategies set forth as transition steps for migration to WRS. Those steps will amend the existing pension plans and handbook and Civil Service System. Those steps remain in process and will require such plan modifications prior to the end of the calendar year.
- At their October 23, 2018, meeting, the Finance Committee reviewed and discussed at length a memo from Paul Rotzenberg, Director of Finance & Treasurer, regarding consideration of joining WRS, which memo had as an attachment the Director of Administration's memo of September 28, 2019, that summarized the issues and impacts of joining WRS. The full Finance Committee packet on the item is attached for your convenience. The Finance Director's memo is important because it emphasizes a fiscal concern not clearly expressed in the Director of Administration's earlier analysis. The Finance Director firmly believes that moving certain employees from a Defined Contribution Plan, where the City has no obligations or risks after an employee's retirement, to a Defined Benefit Plan, where the City retains added financial risks and obligations after an employee's retirement, is not in the City's best financial interest, as distinct from the operational human resources issues. Information is provided in the Finance Director's memo that highlights and identifies the risks and points out that the private sector has seen a significant transition away from Defined Benefit Plans, which the City would be moving toward with a move to WRS. Although all Finance Committee members acknowledged the risks, with certain members adamantly concurring as to their significance, other members indicated that the WRS was ubiquitous in the State and was a large, well-managed system which mitigated the risks. Ultimately, the Finance Committee made no specific recommendation on the matter, but directed that the Finance Director's

memo be provided to the Common Council. As the Resolution of Inclusion is irrevocable, all Council members are encouraged to read the memo and contact the Finance Director and Director of Administration with any questions.

- The Director of Administration previously indicated that it was anticipated that there would be no ongoing, annual normal cost in the City's Defined Benefit Plan for employees who move to the WRS. This was based upon the understanding that each year's normal cost accurately addressed the full impact of that current year's year of service. Following a lengthy discussion with the actuary for the plan, the actuary indicated that there would be some ongoing cost associated with the provision allowing the average compensation to continue to accrue in the City's plan for employees who move to the WRS plan. Although neither are actuaries, the Director of Administration performed a detailed analysis (and the Director of Finance confirmed that the logic and methodology appears reasonable) as to the potential cost. The analysis also looked into detail as to which participants in the current Defined Benefit Plan would likely not switch to WRS. The net result is an anticipated added annual cost to the General Fund of approximately \$6,400, with the Sewer and Water Funds experiencing an additional savings of around \$1,700.
- In preparation for the transition, we have reviewed the detailed listing of non-represented employees who might be eligible for WRS. There are a small handful of employees who might now be eligible by statutory standards for participation in the WRS. Employees that work, including paid vacations and holidays, 1200 hours in any continuous 12-month period are eligible. (Additionally, eligibility occurs at 600 hours for an employee who has prior service in WRS occurring before July 1, 2011). As such, two custodians who work 1300 hours per year, one cashier/clerk in Treasury, and the Library Programming and Outreach Coordinator working 1248 would be eligible for participation but are currently designated as non-pension eligible employees by the City policy. If the City adopts the resolution the employee will have the option to choose participation. If they elected participation, however, they would also experience the full 6.55% reduction in take home pay. As such, some might not elect participation if they did not anticipate vesting. Additionally, one custodian, ten Library Assistants, and one clerk who work 1040 hours (half time) would need to be monitored closely so that they did not exceed the 1200 limit.
- Lastly, employees currently working for the City who are already drawing an annuity from WRS have a special circumstance. If their termination date for WRS was prior to July 2, 2013, and they are drawing an annuity, they may waive participation and continue to receive their annuity. If their termination date for WRS was after July 2, 2013, and are receiving an annuity, they can waive new participation but they cannot waive discontinuation of their annuity. As this circumstance may directly impact an individual employee such that consideration of the details would impact that single employee's "employment, promotion, [or] compensation," the City can address the matter in closed session in accordance with Wis. Statutes 19.85 (1)(c). **As such, the Director of Administration recommends the Common Council table this item and go into closed session, as listed on the agenda, and return to this item thereafter.**

COUNCIL ACTION REQUESTED

Motion to approve the "Resolution of Inclusion Under the Wisconsin Retirement System", authorize the Clerk to execute such document, and direct staff to submit it to the ETF prior to the end of business on November 15, 2018.



Resolution of Inclusion Under the Wisconsin Retirement System

Wis. Stat. §§ 40.21, 40.22

Wisconsin Department
of Employee Trust Funds
PO Box 7931
Madison WI 53707-7931
1-877-533-5020 (toll free)
Fax 608-267-4549
etf.wi.gov

The Common Council of the
Governing Body, Wis. Stat. § 40.02 (36)
City of Franklin, authorizes and approves participation in the
Employer Resolving to Participate, Wis. Stat. § 40.21

Wisconsin Retirement System on the effective date of January 1, 2019. Eligible employees will participate in the WRS beginning on the effective date pursuant to the participation option chosen below. This resolution must be received by, and is irrevocable after, November 15 prior to the effective date.

Total number of eligible employees: _____.

Eligible Employee Participation Options (check one; creditable service must be in increments of 25%)

- ☐ All current and future eligible employees will participate in the WRS, and this employer will recognize _____% of prior creditable service.
- ☒ This employer will provide a one-time offer to current eligible employees to elect or waive WRS participation as of the above effective date. All eligible employees hired after the above effective date must be enrolled in the WRS. This employer will recognize 0% of prior creditable service. Employees who waive WRS coverage and continue to be employed by this employer will never be eligible for future WRS coverage.
- ☐ Only eligible employees hired by this employer on or after the effective date of this resolution will be enrolled in the WRS.

Eligible Employee Participation Exclusion (applies to all options above; check only if applicable)

- ☐ This employer will exclude employees of a public utility under Wis. Stat. § 196.01 (5) from WRS participation pursuant to Wis. Stat. § 40.21 (7) (b).

Certification

I hereby certify that this resolution is a true, correct and complete copy of the resolution adopted by the above governing body on 11/13/2018.
(MM/DD/YYYY)

I understand that Wis. Stat. § 943.395 provides criminal penalties for knowingly making false or fraudulent statements, and hereby certify that, to the best of my knowledge and belief, the above information is true and correct.

Certifying Officer signature and title: _____
Name Title

Date: _____

Employer Identification Number (EIN) if available: 69-036- 39-6005897



MEMORANDUM

DATE: October 16, 2018
TO: Finance Committee
FROM: Paul Rotzenberg, Director of Finance & Treasurer
COPY: Mark Lubberda, Director of Administration
RE: Consideration of Changing Non-represented Employee Pension Plans

INTRODUCTION: The Common Council recently approved a motion "to support the pursuit of the City of Franklin migrating its general, non-represented employees to the Wisconsin Retirement System for pension purposes effective January 1, 2019 and to direct the Director of Administration to address remaining implementation issues with the Personnel Committee and to return to the Common Council with a "Resolution of Inclusion under WRS" prior to November 15, 2018."

In addition to the Personnel Committee issues, the Director of Finance believes that there are financial considerations to this potential policy change that may warrant clarification or further discussion than the summary information in the "Memorandum on General Employees Joining WRS" as prepared by the Director of Administration. That greater detail can then be provided to the Common Council prior to their final determination on a policy change.

The purpose of this memo is to ensure a understanding of the added financial risks and obligations that come with participation in a Defined Benefit pension plan, such as WRS, as opposed to a Defined Contribution pension plan.

BACKGROUND: The City of Franklin has, to this point in time, maintained three Employee Pension programs.

1. By State law, sworn Public Safety employees are included in the Wisconsin Retirement System, a defined benefit pension program.
2. A Defined Benefit Pension plan for the Public Works, Sewer and Water Utility, and certain custodial employees who were formerly represented.
3. Those eligible employees who are not currently represented by any union and are not part of the Public Works Pension plan are covered under a Defined Contribution pension plan.

It is the second two plans that the City is considering migrating certain active employees away from ongoing participation after January 1, 2019 and promoting, where appropriate, participation in WRS.

The Human Resource arguments of this policy decision were addressed in the October 2, 2018 Council Action sheet. A copy of that Council Action sheet is attached.

A Defined Benefit Pension plan involves the Employer promising a defined benefit to eligible employees upon retirement. Typically, that benefit is expressed as a percentage of final earnings times the number of years of service. Resources for that promise come from two primary sources, annual contributions to the plan (as determined by an Actuary) and investment earnings on those contributions over the life of the employee. Typically the investment earnings provide more than half the resources required to fulfill the promise.

Employers electing Defined Benefit Plans retain financial risk inherent in the plan.

1. The first being the investment performance of the asset pool over the period contributions are made and the period benefits are paid. The Employer retains the investment management responsibility and retains the risk of investment returns. The Employer can transfer investment risk to a third party by the purchase of an annuity at any time.
2. The second risk is the life expectancy of the employees. Life expectancies have been lengthening over time with improvements in health care. Clearly, life expectancies have risen, and one needs to think in terms of decades when considering both these risks. [The City's Public Works plan advisor recommended using an extended mortality table with a recent actuarial report]. As those life expectancies increase, the required asset resource pool to pay future benefits must increase. In a Defined Benefit plan (such as WRS and the City's current DB plan plan), this risk remains with the employer.

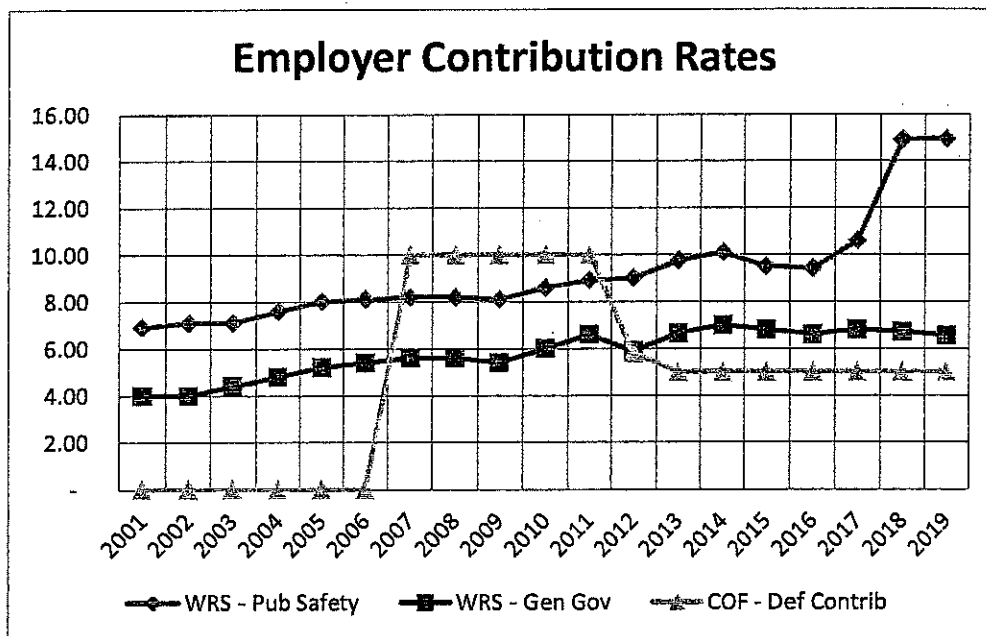
The financial impact of the above two risks can be favorable or unfavorable. Investment returns may exceed or fall short of assumptions included in actuarial evaluations. The same holds true for life expectancy. Unfavorable experience is typically the most painful to react to.

To help place these risks in perspective, the Franklin Public Works Pension plan has 31 active participants, 6 separated, but vested participants, and 22 retirees (as of Dec 31, 2017). The Plan experienced unfavorable investment results over the last three years, \$527,384 unfavorable in 2015, excess earnings of \$460,357 in 2016 and additional unfavorable \$425,998 in 2017, for a net total of \$493,025 unfavorable in just the last three years. These unfavorable investment results will require future contributions. Assumption changes added another \$935,057 during that same time. (see page 90 of 2017 Franklin CAFR). The pool of employees at issue is more than double this size.

The City already has financial obligations for the Public Works plan and would retain those financial obligations related that plan for all years of service already earned prior to any switch to WRS. That estimated liability as of Dec 31, 2016 was \$2.3 million, which does not include the \$900,000 contribution subsequently made in Jan 2017. (see pg 90 of 2017 Franklin CAFR). This is a moving cost, dependent upon risks identified above until all the current participants pass away.

The 2019 cost for adoption of WRS for City Employees is \$123,652, of which \$97,223 relates to - General Fund employees. (Note an additional \$8,371 relates to Library employees, which was partially funded with additional levy support.) The balance of the cost will be borne by the Utilities.

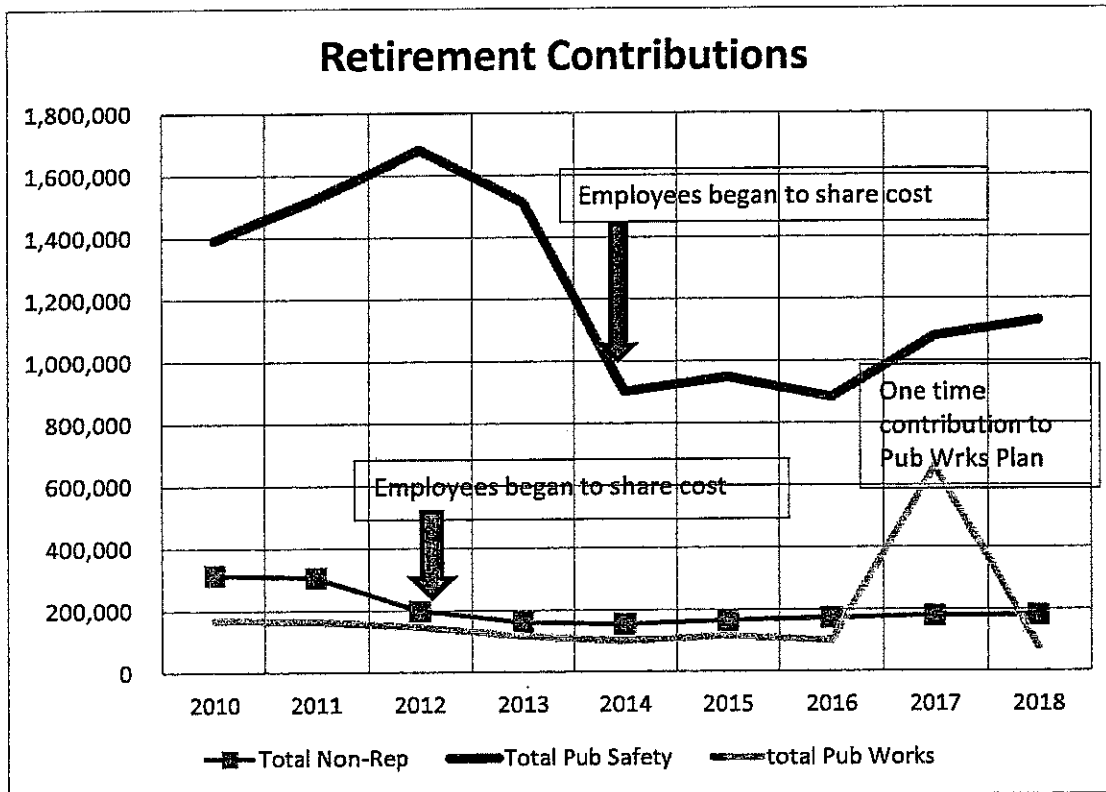
The Director of Administration referenced loss of control over pension costs with WRS. The chart below illustrates contribution rate changes over time. The increases more than doubled the City contributions over that time. One could expect these rates to drop in future years, as the investment losses of the 2008-09 period are absorbed and the investment gains of recent years impact evaluations. See accompanying chart.



The General Government WRS rate, which is the one applicable to the issue at hand was also rising during that time, albeit from a lower level. It rose steadily to 2014, then began to stabilize and fall back slightly for 2019. WRS had matching participant contributions, which took on a different tenor after Act 10. Investment results, assumption changes, and any benefit changes caused changes in the rate.

The City's Defined Contribution plan nearly matched the WRS total rate of 10.6% in 2007 (City rate of 10.0%). Then in 2012 & 2013 the City rate transitioned to 5.0% employer (and 5% employee, for a total of 10.0%), where it remains to this day. The City DC plan existed prior to 2007, however prior records were not immediately available.

These rates translate to employer costs. The General Fund pension cost declined after Act 10, when employees began to share half the cost. But have started to rise again with the rising contribution rates. See chart below



A Defined Contribution plan promises a retirement benefit via a defined contribution during an employee's tenure. The promise defines the contributions to the plan. The risk of investment return and life expectancy transfers to the employee. Typically, responsibility for investment management also transfers to the employee as they own the asset pool. Many plan sponsors provide education opportunities to help manage the investment decisions.

This type of plan fixes the employer's annual costs, and provides predictable planning.

For individuals in the Principal DB plan moving to WRS, allowing their Average Compensation to continue to increase in the Principal DB plan would cause that individual to still have "normal costs" in the DB plan for each year going forward. It is not a new or additional cost but, rather, a retained cost that would remain based on the average-compensation component of current costs. The retained cost occurs because even though each year's "normal cost" takes into consideration the employee's potential future earnings, the actuary currently spreads that cost out over the entire working lifetime of the employee. Therefore, as proposed, there are still some ongoing financial impacts to the DB plan for somebody who moves to WRS, but it is not a new or enhanced cost, but rather a cost that is retained based upon the manner by which the actuary calculates the impact of potential future wage increases.

Note that this cost would go away if the City does not allow the Principal DB plan to consider future earnings, resulting in not allowing average compensation to

continue to increase. Not considering future earnings; however, would ultimately be a direct reduction in the employee's pension value for all service years, which negative impact would continue to grow depending upon how long the employee continued to work for the City.

The Employee Benefit Research Institute (EBRI) was formed in 1978 to review employee benefit issues and provide objective, unbiased information regarding the employee benefit system so that decisions affecting the system may be made based on verifiable facts.

EBRI noted trends in Defined Benefit and Defined Contribution Plans in a 2002 Issues Brief. They were looking at the significant decline in the number of Defined Benefit Plans (re WRS) and covered employees.

The number of Defined Benefit plans nationwide declined between 1975 (the year Congress set the rules for Pension Plans) and 1998. The number of State & local government retirement plans also declined, but only 25% from 1981 to 2001. Defined Contribution plans soared by contrast. See attached graph of plan types. See also EBRI's graphs on pay type, participant and plan asset charts attached.

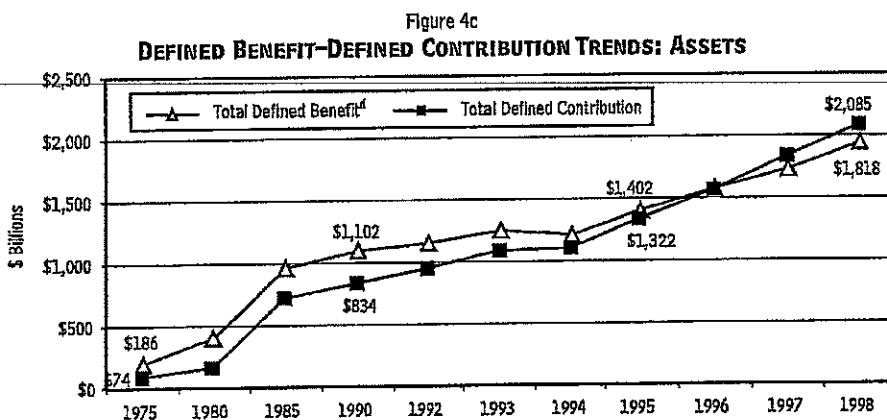
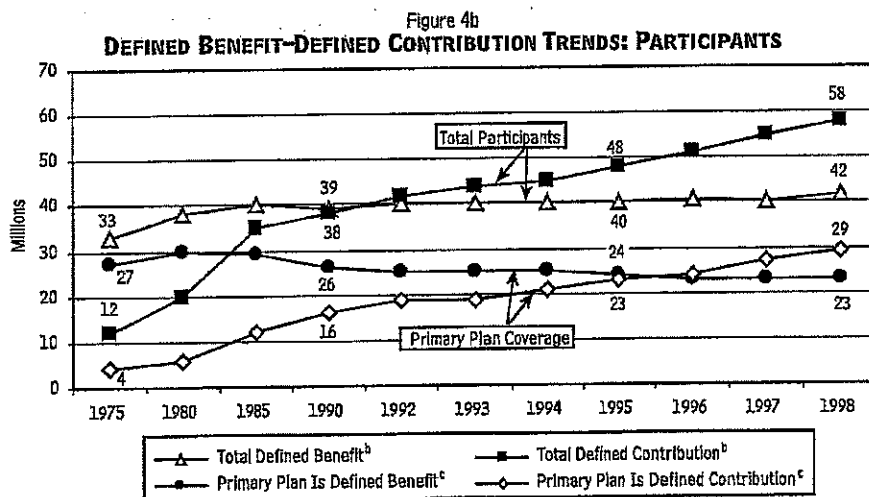
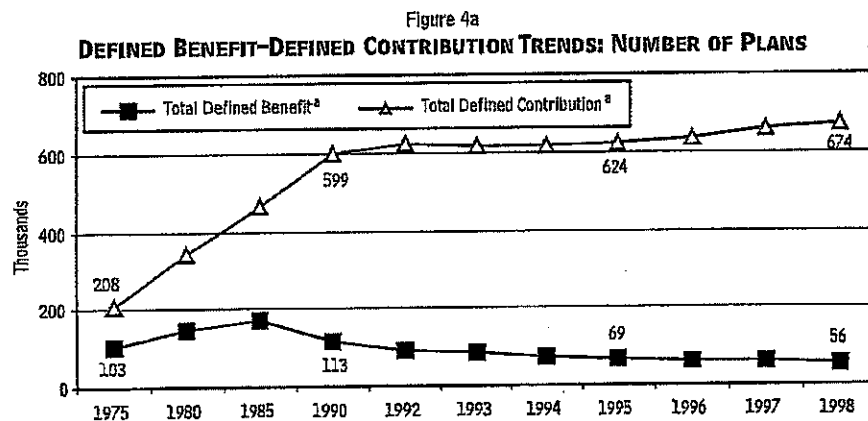
State and local Governments (and large union) employers have retained Defined Benefit plans. The vast majority of other employers have adopted Defined Contribution plans. EBRI noted in 2002 that

'the largest employer (the federal government) in the nation led the redesign trend with its early 1980's reduction of DB [Defined Benefit] generosity and introduction of a 401(k)-type plan [Defined Contribution].

Thus the federal government voted with their dollars to move toward a defined contribution plan and away from a Defined Benefit plan.

Conclusion: The discussion above highlights the ongoing financial risks to the employer with participation in a Defined Benefit plan. These risks do not exist for employees in a defined contribution plan. Once the City makes its contributions, the investment and longevity risks are all borne by the participant. As such, there are no remaining unfunded liabilities for the City's Defined Contribution plan.

Approximately 65 full-time equivalent employees could move from a Defined Contribution Plan, where the City carries no further future obligations or risks, to a Defined Benefit Plan, where the City carries the ongoing obligations and risks. They are risks the City does not currently have for its employees in the Defined Contribution plan.



Source: Employee Benefit Research Institute tabulations based on U.S. Department of Labor, Pension and Welfare Benefits Administration, *Private Pension Plan Bulletin: Abstract of 1994 Form 5500 Annual Reports* (Spring 1998); and *Private Pension Plan Bulletin: Abstract of 1998 Form 5500 Annual Reports* (Winter 2001-2002).

^aExcludes single participant plans.

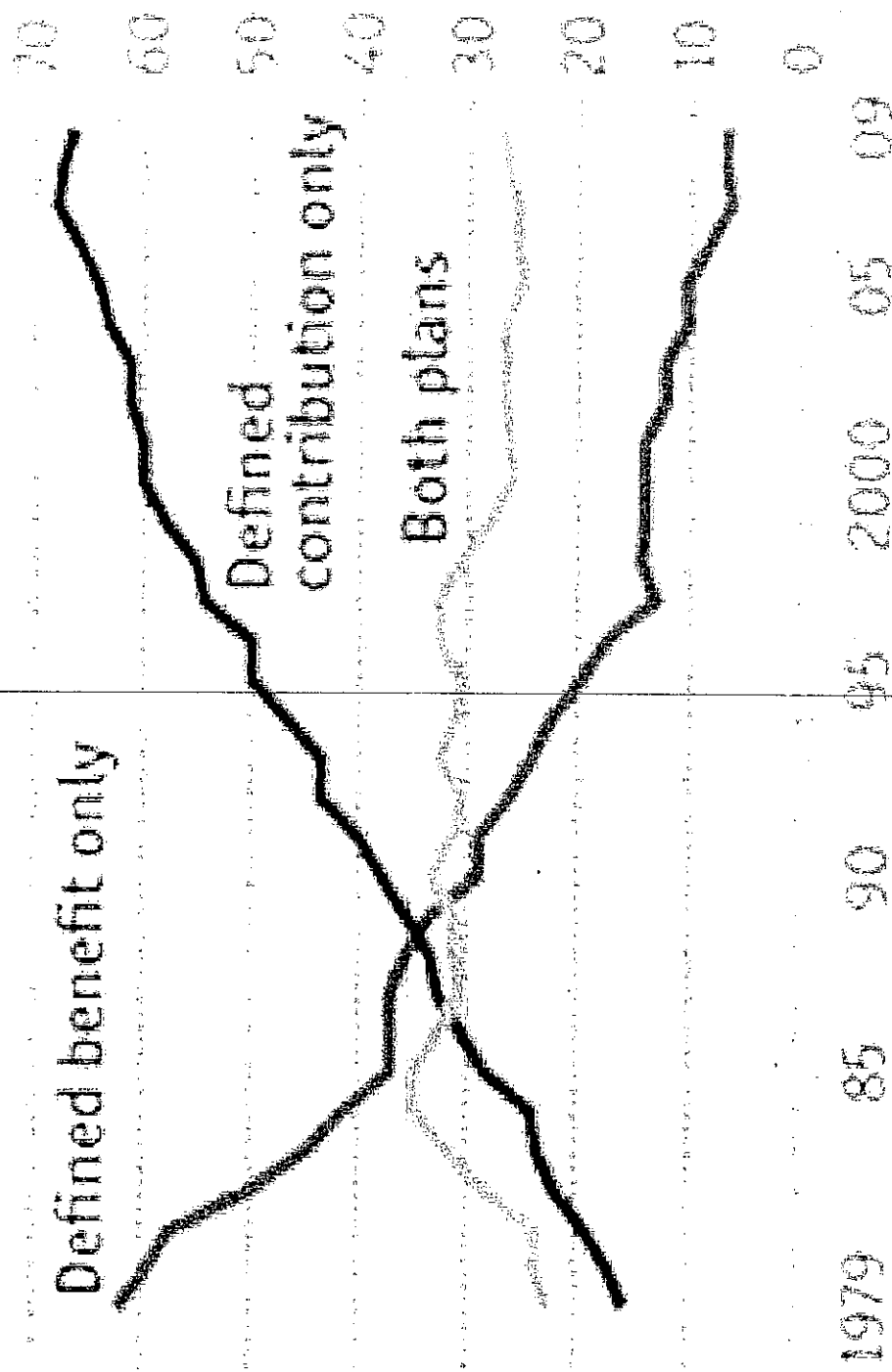
^bIncludes active, retired, and separated vested participants not yet in pay status. Not adjusted for double counting of individuals participating in more than one plan.

^cFor workers covered under both a defined benefit and a defined contribution plan, the defined benefit plan is designated as the primary plan unless the plan name indicates it provides supplemental or past service benefits.

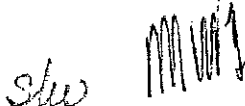
^dExcludes funds held by life insurance companies under allocated group contracts for payment of retirement benefits. These funds make up roughly 10 to 15 percent of total private pension plan assets.

So long, DB

America's retirement plans by type, % of total
Private sector, active participants



Sources: EBR; Department of Labor; J.P. Morgan

APPROVAL 	REQUEST FOR COUNCIL ACTION	MEETING DATE 10/02/2018
REPORTS & RECOMMENDATIONS	City of Franklin Migration of General, Non-represented Employees to the Wisconsin Retirement System for Pension Purposes Effective January 1, 2019	ITEM NUMBER <i>G.14.</i>

The City of Franklin is one of only a handful of communities in the State of Wisconsin that does not participate in the Wisconsin Retirement System (WRS) for its general, non-represented employees. The City currently maintains its own, separate defined benefit and defined contribution plans for non-public safety personnel.

The impact of not being in the WRS is most strongly felt in the hiring and retention of employees. Sun Prairie joined the WRS in 2017 and their human resources staff reports that it has been "incredible" as to how it has impacted recruitment. Joining WRS is arguably the most important step the City can take in impacting overall operations over the long term.

Additionally, beginning the process of moving away from the burden, costs, and fiduciary responsibilities associated with administering its own pension plans would be very advantageous to the City.

Please see the attached memo that addresses consideration of such a move to WRS participation. It covers the benefits, drawbacks, costs, options, and process, as well as identifying issues to be reviewed further.

The Mayor's Proposed 2019 Budget includes sufficient funding to begin the transition to WRS for eligible general employees.

The Director of Administration requests the Common Council approve the motion below. The remaining steps identified in the memo will take a fair bit of work so the Director of Administration is seeking clear guidance from the Common Council as to its intent to pursue participation in the WRS. If the motion is approved, information related to the outstanding issues will be brought to the next Personnel Committee meeting for recommendation. Once those details are resolved or satisfactorily addressed, the issue will then come back to the Common Council, and the City can consider a "Resolution of Inclusion Under WRS."

COUNCIL ACTION REQUESTED

Motion to support the pursuit of the City of Franklin migrating its general, non-represented employees to the Wisconsin Retirement System for pension purposes effective January 1, 2019, and to direct the Director of Administration to address remaining implementation issues with the Personnel Committee and to return to the Common Council with a "Resolution of Inclusion Under WRS" prior to November 15, 2018.

DOA - MWL




City of Franklin

MEMORANDUM

Date: September 28, 2018

To: Mayor Olson
Aldermen

From: Mark W. Luberd 
Director of Administration

RE: General Employees Joining WRS: A summary of issues and impacts

The City of Franklin is one of only a handful of municipalities that do not participate in the WRS for all of their eligible employees. Sun Prairie, who joined last year, was the only other larger community that was not a participant. Per the Department of Employee Trust Funds (ETF), Waterford joined this year. That leaves only communities the likes of Arcadia, Bloomer, Chetek, and Glenwood as not participating. The ETF has no easy way of confirming the number of municipalities that don't participate, but that was all they could come up with. The City of Franklin does participate, as required by statute, for their police officers and firefighters.

The Wisconsin Retirement System (WRS) is administered by the ETF and provides retirement, disability and death benefits, various insurance programs, and a deferred compensation program to employees of any public employer in Wisconsin. A community can participate in the retirement program without participating in the health insurance, disability insurance, or deferred compensation programs.

Primary Benefits: There are two primary benefits of joining WRS.

1) Hiring and retaining employees. Hiring to support City operations is the primary reason for moving to WRS for employees. The City of Franklin has had difficulty attracting and retaining employees with municipal experience. This is particularly evident in senior management positions and positions with little or no private sector comparison, such as building inspection and dispatching. It will also be useful in jobs that have both private and public sector comparables, such as civil engineering (Engineering Technicians), public health nurses, and planners. The City of Sun Prairie mentioned these same concerns in their staff report that led to Sun Prairie joining WRS. A representative for Sun Prairie's human resources office laughed and said the difference in recruitment and drawing experienced municipal workers was "incredible" after they joined WRS. Joining WRS is arguably the most important step the City can take in impacting overall operations over the long term.

2) Eventual elimination of separately administered pension plans. The City's two plans administered through Principal Financial Group create added cost and administrative burden that the City does not need. The City has spent nearly \$83,000 during the last 6 years for legal and IRS fees associated with maintaining these plans. Most of those charges were ultimately charged to the plan administration costs themselves, but such charges to the Defined Benefits plan eventually work their way back as a cost the City must cover. It is fair to note that the majority of those costs were associated with a multi-year effort with the IRS to obtain plan determination letters, and such costs will not repeat for many years. Nonetheless, it is very possible that other administrative issues will rise and cause similar costs. For example, the plans are becoming more burdensome as the IRS adds rules and as the Principal Financial Group slowly reduces their role based upon their interpretations of some of these rules. Beginning this

Memorandum on General Employees Joining WRS

September 28, 2018

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month, for example, Principal will no longer maintain and update the printed form of the plan documents, so the City will have to pay elsewhere for that service. Additionally, a lot of time for the Director of Administration is periodically dedicated to plan administration issues, while even more time could be spent. Although it will likely be a number of years before the City could fully terminate the plans, the eventual elimination of the burden and administrative and fiduciary responsibilities will be very beneficial to the City.

Primary Drawbacks: There are two primary drawbacks or risks to joining WRS.

1) The decision to join WRS is irrevocable (after 11/15, technically); therefore, any potential risks associated with participation in WRS are unavoidable once you have joined. Risks are primarily associated with the ETF's control over the policies for the WRS and the parallel lack of the direct local control that Franklin currently retains. The WRS is a non-profit public trust, so the funds are secured from any State-level fund raiding. Nonetheless, the State can impose statutory changes that impact the WRS, as they did, for example, when they required employees to pay the employee share in association with Act 10, when they increased the WRS formula multipliers in 1999, or when they increased the hours-of-service requirement for eligibility and years-of-service requirement for vesting in 2011. As one can see, the more recent legislative changes have tended to aid municipalities. Other risks would include drops in the economy that reduce WRS earnings, which can then impact the annually-set WRS employer contribution rates. Changes in the accounting rules can also impose certain funding obligations on WRS. These accounting risks are ameliorated by the fact that the WRS is generally considered to be one of the better run and better funded pension systems (USA TODAY and the Tax Foundation indicate the Wisconsin system has the highest percentage of funding of any state-run pension plan at over 99%). Overall the risk associated with loss of local control and abdicating control to the WRS are buffered by the fact the State itself, all counties, nearly every municipality and school district, and many special districts participate in WRS; therefore, if a significant problem with WRS arises, there will be significant pressure for a legislative fix. Additionally, the significant funding ratio increases the ability of WRS to weather any short-term fiscal issues. In summary, although the lack of local control is noted as a drawback, joining the rest of the state is preferred to the burden of administering our own plans.

2) Cost. For each employee in the current plans, the City pays 5% of wage and wage related costs to the defined contribution pension plan and 3.95% to the defined benefit plan. WRS will require employer payments of 6.55% for 2019. Between 1989 and 2010, the WRS Employer Contribution rate was at or below 5% for all but one year. Since 2011 these rates have exceeded 5%, peaking at 7.0% in 2014.

Year	Employer Contribution	Employee** Contribution	Total Rate
2019	6.55	6.55	13.1
2018	6.7	6.7	13.4
2017	6.8	6.8	13.6
2016	6.6	6.6	13.2
2015	6.8	6.8	13.6
2014	7.0	7.0	14.0
2013	6.65	6.65	13.3
2012	5.9	5.9	11.8

If every eligible employee elected to move to WRS, the cost increase is estimated at \$93,800 in the general fund, with an additional \$25,600 in other funds.

Joining WRS Options:

- Option 1: Employers must enroll all eligible employees in the WRS as of the effective date. This would likely cause the termination of both of the City's other existing plans and create some significant issues relative to vesting that negatively impacts very new employees and employees close to their retirement date. This option is not recommended and more information on it can be provided if requested.
- Option 2: Employers provide a one-time offer to all current eligible employees to enroll in the WRS. Employees that waive WRS coverage will never be offered WRS coverage again. This is the option recommended due to its flexibility and is primarily what is discussed below.
- Option 3: Employers enroll all eligible employees hired on or after the effective date of WRS coverage. This option also significantly extends, to as much as 25 to 35 years or more, the period during which the City would retain active participants in its current plans.

Option 2 only became available for new participating organizations effective January 1, 2017. This is the strategy under which Sun Prairie began WRS participation for general employees. Following are some additional facts or circumstances related with Option 2.

- a) If the employee meets eligibility requirements, the employee elects or declines participation. The choice is entirely up to the employee, but this does not preclude the City from taking actions that can significantly influence the choices made by employees. (Influencing decisions is addressed further below.)
- b) All new employees meeting eligibility requirements after 1/1/19 are automatically enrolled. They do not have an option.
- c) The employer cannot limit employee participation to a particular department or a classification of employees, such as by job title or full-time status. There is one exception such that employees of a utility may be excluded; however, given Franklin has shared employees the exemption does not apply to the City.
- d) ~~Purchasing or crediting prior years of service is not an option given that the anticipated participants already participated in a pension plan. If any such option were available it would be very expensive as the contribution differences would substantially increase costs. Similarly, there is very likely an earnings gap between WRS's large, managed pool and employee controlled defined contribution pools.~~
- e) The WRS cannot accept rollovers from other qualified pension plans to purchase prior service.
- f) Elected Officials: In years past, the standard for eligibility was 600 hours worked per year which could cause consideration of eligibility for elected officials. The standard was increased to 1200 which now is sufficient to preclude inclusion of elected officials in participation. This determination is supported by one of WRS's review evidence standards that considers total pay. For example, Franklin Aldermen earning \$7,200 would be below minimum wage at the 1,200-hour minimum. As such, it can be concluded that the elected officials are not eligible.
- g) The five-year vesting requirement is not altered or adjusted for new participants.

Other Related Factors, Issues, or Comments Related to WRS Participation:

- 1) Effect on current pension plans in the event there are no plan design changes:
 - a) Defined Contribution Plan. There would be no dramatic effect on cost to the City as employees who remained in the plan would still have the same cost of participation. Balances would remain for individuals until such time as the employee retired.
 - b) Defined Benefit Plan. Because, in part, the City made a large payment to the fund last year and the covered employees previously supported a larger employee share to retain the plan, the City's cost for current hours worked (3.95%) is less than the WRS 6.55% rate. Additionally, actuarially determined costs have been built into current costs. These added costs are for prior years' service.

Currently, the payments for the large base of employee wages in this plan (new money paid into the plan each year) helps to fund and smooth-out long term obligations of the plan for prior years of service. Therefore, a reduction of a large number of employees from the plan could accelerate the City's need to fund the portions of the unfunded prior years of service. Importantly, however, it will not definitively increase the cost, as the cost is already an obligation of the City. In that respect, reducing the number of defined benefit plan participants has a neutral net effect over time. What it does, however, is increase the potential that the financial risks, both in added costs from poor earnings or in reduced costs from increased earnings, could come into play as total active and retired participants in the plan gradually decline. In other words, potential liabilities become actual, cash liabilities as the plan moves toward closure. The exact impacts on the City's future out-of-pocket costs, positive or negative, could not be estimated without an actuarial review and without knowing which employees were staying in the plan, which were moving to WRS, the long-term state of the economy, and other actuarial factors such as retiree mortality rates. As such, Sun Prairie's staff report and review seemed to ignore this issue altogether and focused the review on the costs for ongoing years of service. That approach makes sense since those other actuarially determined costs are "sunk cost" obligations and ultimately will occur whether or not the City joins WRS.

- 2) If an employee waives WRS coverage and continues to be employed, they will never be offered WRS coverage again. Additionally, if the employer ever enrolls in any of the insurance programs offered by ETF, those employees will not be eligible for those coverages. (See "Other Benefits Offered")
- 3) Employees previously covered by WRS under another community may already have all or a portion of the vesting period completed and will likely have a lower hours-of-service requirement, per statute.
- 4) Other Benefits Offered:
 - a) Group Life Insurance: Employers covering their employees under the WRS may cover their employees under the group life insurance plan(s) provided by the Group Insurance Board and identified under Chapter 40 of the Wisconsin Statutes. This option would need to be evaluated against the City's current provider in the future if WRS is pursued.
 - b) Income Continuation Insurance: WRS also offers participation in an Income Continuation Insurance Program which is sort of a short or long-term disability program. There is an extra fee. The City does not currently participate. Anyone who declined WRS coverage would be prohibited from later participating if the City made it available.
 - c) Group Health Insurance: Employers covering their employees under the WRS may cover their employees for group health insurance purposes through the State of Wisconsin or Wisconsin Public Employers' Group Health Insurance program. As Franklin is self-insured, this is a non-issue initially. It is important to note, however, that should an employee elect NOT to join WRS during the initial enrollment and should the City EVER decide to join the State Health Insurance Plan, that person would not be eligible to be included in the group health insurance program.
 - d) Deferred Compensation: The ETF does offer a deferred compensation plan in which the City could elect to participate in the future.
- 5) Defined Contribution Employees who join WRS will experience an increase in their employee share from 5% to 6.55% which will have the effect of reducing their take home pay.

Memorandum on General Employees Joining WRS

September 28, 2018

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State Required Steps to Join WRS: The steps to join WRS are very straight forward. The City must adopt a "Resolution of Inclusion Under WRS" that designates the option selected. Because the City already participates in WRS for its protective employment categories (police and fire), the other initiation forms are not required. The resolution needs to be adopted and submitted before November 15 for inclusion in the program the subsequent calendar year.

City Action Steps if the City Wants to Pursue Participation in WRS: The Director of Administration requests the Common Council approve the motion below. The following steps will take a fair bit of work and detailed review and will involve some costs from the City's benefits/pension attorney Matt Flanary, which is why the Director of Administration is seeking clear guidance from the Common Council as to its intent to pursue participation in the WRS. The costs for Attorney Flanary are covered within the Department of Administration budgeted appropriations.

If the motion is approved, the steps listed below will be pursued with the ultimate goal of Common Council approval of the Resolution of Inclusion prior to November 15, 2018.

1) The details of vesting accommodations and potential changes to the City's pension plans. Some individuals, for example, may be nearing retirement and may not want to pursue a change in plans or be able to vest under WRS if they switch plans now. Similarly, recently hired employees may be out not-yet-vested benefits in the current plans if they switch to WRS. Methods and strategies need to be devised to attempt to ensure employees don't lose credit for any of their total years of service.

2) A review of part-time employee eligibility needs to be conducted since the WRS eligibility rules differ from current Principal plan rules.


3) Consideration of wage and take-home-pay impacts and how those might play into incentives to join or not join WRS should be considered.

4) Consideration of strategies for driving voluntary participation in the WRS in order to shorten the number of years that the City has to maintain the Principal pension plans.

5) Consideration of appropriate plan design changes to the current pension plans and consideration of changes to the Employee Handbook, Civil Service Manual, and human resources policies as may be required in the light of 1 through 4 above.

Information related to the above will be brought to the next Personnel Committee meeting for recommendation. The issue will then come back to the Common Council. Once those details are resolved or satisfactorily addressed, the City can consider the "Resolution of Inclusion Under WRS."

Recommended Motion: Motion to support the pursuit of the City of Franklin migrating its general, non-represented employees to the Wisconsin Retirement System for pension purposes effective January 1, 2019, and to direct the Director of Administration to address remaining implementation issues with the Personnel Committee and to return to the Common Council with a "Resolution of Inclusion Under WRS" prior to November 15, 2018.

APPROVAL 	REQUEST FOR COUNCIL ACTION	MEETING DATE 11/13/2018
REPORTS & RECOMMENDATIONS	<p>Employment, compensation, and financial and personal histories of specific City of Franklin employees who are retirees under the Wisconsin Retirement System. The Common Council may enter closed session pursuant to Wis. Stats. §19.85(1)(c), to consider employment, promotion, compensation, or performance evaluation data of a public employee over which the Common Council has jurisdiction or exercises responsibility, and §19.85(1)(f), considering financial, medical, social or personal histories or disciplinary data of specific persons,...which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, and may reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.</p>	ITEM NUMBER G.8.
<p>Employees currently working for the City who are already drawing an annuity from WRS have special circumstances. If their termination date for WRS was prior to July 2, 2013, and they are drawing an annuity, they may waive participation and continue to receive their annuity. If their termination date for WRS was after July 2, 2013, and they are receiving an annuity, they can waive new participation but they <u>cannot</u> waive discontinuation of their annuity.</p> <p>Although these policies apply across the state, for a new community joining there may be specific circumstances with a specific employee that warrant discussion as to the specific application. This discussion would effectively consider the employment, promotion, compensation, or performance evaluation data of a public employee over which the Common Council has jurisdiction. Furthermore, the result of the discussion could have substantial adverse effect upon the reputation of said individual. For these reasons, a closed session is allowable by statute and warranted.</p> <p>The Common Council may enter closed session pursuant to Wis. Stats. §19.85(1)(c), to consider employment, promotion, compensation, or performance evaluation data of a public employee over which the Common Council has jurisdiction or exercises responsibility, and may reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.</p> <p>The Common Council may also enter closed session pursuant to Wis. Stats. §19.85(1)(f). The complete text of which is as follows: "Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations."</p> <p style="text-align: center;">COUNCIL ACTION REQUESTED</p> <p>The Common Council may enter closed session pursuant to Wis. Stats. §19.85(1)(c), to consider employment, promotion, compensation, or performance evaluation data of a public employee over which the Common Council has jurisdiction or exercises responsibility and §19.85(1)(f), considering financial, medical, social or personal histories or disciplinary data of specific persons,...which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, and may reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.</p>		

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE November 13, 2018
REPORTS AND RECOMMENDATIONS	Tax Incremental District No. 6 Mixed-Use Industrial, Commercial, Retail, Single-Family Residential and Open Space Uses (of an approximate 164-acre site generally located north and south of West Loomis Road, south of West Ryan Road, west of South 112th Street, east of South 124th Street and north of West Oakwood Road) Project Development Agreement (Bear Development, LLC; Loomis and Ryan, Inc. Developers). The Common Council may enter closed session pursuant to Wis. Stat. § 19.85(1)(e), to deliberate upon a Potential Tax Incremental District No. 6 Mixed-Use Industrial, Commercial, Retail, Single-Family Residential and Open Space Uses Project Development Agreement, the negotiation of Agreement terms and the investing of public funds in relation thereto, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate	ITEM NUMBER <i>G.9.</i>

Attached is a draft development agreement which at the time of this writing remains under review and negotiation by the developer and consultants and City staff and consultants. City professional consultant Ehlers is performing necessary work at this time which may require a change order/services agreement to be brought forward at a future meeting.

COUNCIL ACTION REQUESTED

A motion to enter closed session pursuant to Wis. Stat. § 19.85(1)(e), to deliberate upon a Tax Incremental District No. 6 Mixed-Use Industrial, Commercial, Retail, Single-Family Residential and Open Space Uses Project Development Agreement, the negotiation of Agreement terms and the investing of public funds in relation thereto, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

[ROUGH DRAFT 11/9/18 n.b.: terms and provisions hereof remain under negotiation.]

**TAX INCREMENTAL DISTRICT NO. 6
DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF FRANKLIN AND
LOOMIS AND RYAN, INC.**

**Mixed-Use Development generally located to the north and south of West Loomis Road,
south of West Ryan Road, west of South 112th Street, east of South 124th Street, and
north of West Oakwood Road, Franklin, Wisconsin**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of _____, 2018 by and between **LOOMIS AND RYAN, INC.**, a Wisconsin domestic business corporation, its successors and/or assigns ("Developer"), and the **CITY OF FRANKLIN, WISCONSIN**, a Wisconsin municipal corporation ("City").

RECITALS

City and Developer acknowledge the following:

A. Developer is the Owner of that certain real property legally described in **Exhibit A** attached hereto (the "Property").

B. The Property is located within the boundaries of Tax Incremental District No. 6, City of Franklin, Wisconsin (the "District"). Pursuant to Wis. Stat. § 66.1105 (the "Tax Increment Law"), the City adopted a plan for redevelopment within the District (the "Project Plan"), in which certain costs incurred by the Developer for development of the Property may be reimbursed from the property tax increment as provided by the Tax Increment Law, the details of which are set forth herein.

C. Developer plans on developing and constructing mixed-uses, which shall include without limitation an approximately 168,000 square foot manufacturing facility on approximately 27.47 acres of the Property, with an estimated assessed value of \$20 million; approximately 160,000 square feet of light industrial and commercial use space on approximately 18.5 acres of the Property, with an estimated assessed value of \$13.5 million; three single family lots on approximately 4.76 acres of the Property and a commercial use space lot on approximately 4.75 acres of the Property located north of West Loomis Road; and 76 single family lots on approximately 30.87 acres (the actual residential development of such acreage in part thereof only is in compliance with the residential density or at least 3 units per acre requirement pursuant to Wis. Stat. § 66.1105(2)(f)3.a.) of the Property, with an estimated assessed value of \$30.4 million; all such development for a total of estimated assessed value of \$63.9 million (the "Project"). It is acknowledged that development of the Project as described above will be consistent with the Project Plan.

D. The City desires to encourage economic development, eliminate blight, expand its tax base and create new jobs within the City, the District and upon the Property. The City finds that the development of the Project and the fulfillment of the terms and conditions of this

Agreement will further such goals, are in the vital and best interests of the City and its residents, and will serve a public purpose in accordance with state and local law.

E. The development of the Project would not occur without the financial participation of the City as set forth in this Agreement.

F. The City, pursuant to Common Council action dated _____, 2018, has approved this Agreement and authorized its execution by the proper City officials on the City's behalf and has further approved the issuance of the Bonds described herein.

G. Developer has approved this Agreement and authorized its execution by the appropriate representatives on its behalf.

AGREEMENTS

In consideration of the RECITALS and the terms and conditions set forth herein, the parties agree and covenant as follows:

ARTICLE I DEVELOPER ACTIVITIES AND OBLIGATIONS

A. Developer shall construct or cause the commencement of the construction of the Project in accordance with all applicable City zoning and building codes, ordinances and regulations. Developer warrants and represents to the City that the Project will contain approximately _____ square feet of developed building space and that total development costs expended on the Project (inclusive of personal property) shall be not less than \$_____ million. Developer shall substantially complete construction of the Project in accordance with final plans and specifications (including landscaping plans) approved by the City, including, but not limited to the terms, provisions and conditions of _____ for the Project, and of which this Agreement and its terms and conditions are a condition thereof (the "Plans and Specifications"), on or before _____, 20__ (the "Completion Date"). Copies of the Plans and Specifications will be retained at the offices of the City Economic Development Department. The Project shall be deemed to be substantially complete on the date that the City Building Inspector issues a certificate of occupancy for the Project, which certificate may be subject to completion of landscaping and similar seasonal items and other non-material corrective actions. The City Building Inspector shall not issue the certificate of occupancy if the Project does not conform to the Plans and Specifications, subject to any changes to the Plans and Specifications that may have been approved by the City.

B. To the extent any improvements that will be dedicated to the public are included within the scope of work for the Project (the "Public Improvements"), Developer will complete the installation of the Public Improvements in accordance with City specifications, including the execution of a City standard form development agreement where applicable terms thereof are not specifically set forth in this Agreement, and will dedicate same to the City in accordance with City inspection and acceptance procedures. If required by applicable law, Developer agrees to comply with public bidding requirements under the Wisconsin Statutes for all work involving improvements to public rights of way or public property or that constitutes public

improvements under applicable law (together referred to as the "Public Improvements"). The Public Improvements shall at all times be subject to City inspection and approval and the City or other public entity shall not be required to accept conveyance of the Public Improvements unless the Public Improvements have been constructed in a good and workmanlike manner, in accordance with the City-approved plans for the Public Improvements, and otherwise are in a condition reasonably acceptable to the City. Following approval by the City of the completed Public Improvements, the Public Improvements shall be conveyed to the City or other public entity, to the extent appropriate. The Developer shall provide to the City or other public entity from the Developer and all contractors and consultants involved in connection with the construction and installation of the Public Improvements, a one-year warranty against defects in construction, materials and workmanship, in a form reasonably acceptable to the City.

C. Unless consented to in writing by the City, Developer shall not demolish any existing improvements on the Property prior to the calendar year in which construction of the Project commences and in no event, earlier than six (6) months prior to the start of construction.

D. Developer shall enter into a separate City standard form development agreement to provide for the installation of the "Extension of North / South Roadway" Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than _____, _____, and complete construction of the Extension of North / South Roadway no later than _____, _____. Developer shall deliver to the City, as soon as available but in no event later than sixty (60) days after substantial completion of the Extension of North / South Roadway Public Improvement, an accounting of all its project costs, detailing the actual cost of the project.

E. Developer shall enter into a separate City standard form development agreement to provide for the installation of the "Interior Public Roadway" Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than _____, _____, and complete construction of the Interior Public Roadway no later than _____, _____. Developer shall deliver to the City, as soon as available but in no event later than sixty (60) days after substantial completion of the Interior Public Roadway Public Improvement, an accounting of all its project costs, detailing the actual cost of the project.

F. Developer shall enter into a separate City standard form development agreement to provide for the installation of the "Off-Site Public Water" Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than _____, _____, and complete construction of the Off-Site Public Water no later than _____, _____. Developer shall deliver to the City, as soon as available but in no event later than sixty (60) days after substantial completion of the Off-Site Public Water Public Improvement, an accounting of all its project costs, detailing the actual cost of the project.

G. Developer shall enter into a separate City standard form development agreement to provide for the installation of the "Off-Site Public Water Phase II" Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than _____, _____, and complete construction of the Off-Site Public Water Phase II no later than _____, _____. Developer shall deliver to the City, as soon as available but

in no event later than sixty (60) days after substantial completion of the Off-Site Public Water Phase II Public Improvement, an accounting of all its project costs, detailing the actual cost of the project.

H. Developer shall enter into a separate City standard form development agreement to provide for the installation of the "Off-Site Roadways" Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than _____, _____, and complete construction of the Off-Site Roadways no later than _____, _____. Developer shall deliver to the City, as soon as available but in no event later than sixty (60) days after substantial completion of the Off-Site Roadways Public Improvement, an accounting of all its project costs, detailing the actual cost of the project.

I. The Developer shall arrange for funding for all costs of the Project in excess of the funds provided by its construction lender and the City. Developer will provide evidence to the reasonable satisfaction of the City that Developer has secured sufficient debt and equity financing commitments to enable the Project to proceed.

ARTICLE II CITY ACTIVITIES AND OBLIGATIONS

A. City shall cooperate with Developer throughout the development and construction of the Project and the term of this Agreement and shall reasonably promptly review and/or process all submissions and applications in accordance with applicable City ordinances.

B. Upon Developer's completion of the construction and installation of the Extension of the North / South Roadway Public Improvement, the approval thereof by the City, the approval of the accounting of all the Improvement project costs by the City, and the City's acceptance of the dedication of the Improvement by Developer to the City, the City shall pay to Developer a cash grant in the not-to-exceed amount of \$1,900,000. Should the accounting of project costs amount be less than the aforesaid amount, the cash grant shall be reduced to an amount equal to the actual cost of the project cost.

C. Upon Developer's completion of the construction and installation of the Interior Public Roadway Public Improvement, the approval thereof by the City, the approval of the accounting of all the Improvement project costs by the City, and the City's acceptance of the dedication of the Improvement by Developer to the City, the City shall pay to Developer a cash grant in the not-to-exceed amount of \$4,600,000. Should the accounting of project costs amount be less than the aforesaid amount, the cash grant shall be reduced to an amount equal to the actual cost of the project cost.

D. Upon Developer's completion of the construction and installation of the Off-Site Public Water Public Improvement, the approval thereof by the City, the approval of the accounting of all the Improvement project costs by the City, and the City's acceptance of the dedication of the Improvement by Developer to the City, the City shall pay to Developer a cash grant in the not-to-exceed amount of \$1,300,000. Should the accounting of project costs amount be less than the aforesaid amount, the cash grant shall be reduced to an amount equal to the actual cost of the project cost.

E. Upon Developer's completion of the construction and installation of the Off-Site Public Water Phase II Public Improvement, the approval thereof by the City, the approval of the accounting of all the Improvement project costs by the City, and the City's acceptance of the dedication of the Improvement by Developer to the City, the City shall pay to Developer a cash grant in the not-to-exceed amount of \$200,000. Should the accounting of project costs amount be less than the aforesaid amount, the cash grant shall be reduced to an amount equal to the actual cost of the project cost.

F. Upon Developer's completion of the construction and installation of the Off-Site Roadways Public Improvement, the approval thereof by the City, the approval of the accounting of all the Improvement project costs by the City, and the City's acceptance of the dedication of the Improvement by Developer to the City, the City shall pay to Developer a cash grant in the not-to-exceed amount of \$1,000,000. Should the accounting of project costs amount be less than the aforesaid amount, the cash grant shall be reduced to an amount equal to the actual cost of the project cost.

G. All of the aforesaid Public Improvement project costs, and all Project costs under this Agreement, may include contingency costs specific to and only for the subject individual Improvement project, or the specific project development improvement component to which it applies; contingency costs for the specific item may include engineering, legal, administrative and/or inspection costs, the total of which in combination for the specific item shall not exceed 15% of the entire Improvement or project development improvement component project cost to which it applies.

H. All of the aforesaid in this Article II cash grants to be paid by the City to the Developer are subject to the pre-condition occurrence of Developer's sale of and the closing upon the sale of: i) an industrial use property in the District to a purchaser who has executed and delivered to the City a tax assessment agreement for payments in lieu of taxes to guarantee payments to the City based upon an annual real estate tax assessment for the property with a minimum assessed value for the tax year 2021 of \$10,000,000.00 and \$20,000,000.00 for the tax year 2022 and thereafter until the earlier of 2041 or the year the City general obligation debt and tax increment revenue municipal special, limited revenue obligation debt is paid in full; and ii) a commercial use property(ies) in the District to a purchaser(s) who has/have executed and delivered to the City a tax assessment agreement(s) for payments in lieu of taxes to guarantee payments to the City based upon an annual real estate tax assessment for the property(ies) with a minimum assessed value(s) for the tax year 2021 of \$500,000.00 and \$1,000,000.00 for the tax year 2022 and thereafter until the earlier of 2041 or the year the City general obligation debt and tax increment revenue municipal special, limited revenue obligation debt is paid in full.

I. Developer and City recognize the provisions of the Tax Increment Law pursuant to Wis. Stat. § 66.1105, including the provisions of Wis. Stat. § 66.1105(2)(f)1., that project costs of public works or improvements within a tax incremental district, or subject to terms applicable to the Public Improvements in part hereunder, without the tax incremental district, are to be diminished by any income, special assessments, or other revenues, including user fees or charges, other than tax increments, received or reasonably expected to be received by the City in connection with the implementation of the Project Plan. Developer and City also recognize the provisions of the Municipal Code of the City of Franklin as they pertain to the

costs of construction of public water service extension facilities and public sanitary sewer service extension facilities and the potential reimbursement of the costs of the oversize portions of such facilities to the Developer by the City if funds are available in the City Development or Utility Development Funds, and the potential reimbursement of the costs of the nonoversize portions of such facilities to the Developer by the City as the amount may be recovered by the City from abutting property owners as they connect and receive service for a period of not more than 10 years from the date the facilities are placed into service, pursuant to §207-23.C.(2)(a) and (b), respectively, for water service extension, and §207-26.C.(2)(a) and (b), respectively, for sanitary sewer service extension.

In regard to the foregoing State and City laws, Developer and City note the Project Plan inclusion of and the provisions of this Agreement providing for off-site public water service and off-site public sanitary sewer service public improvements, and Developer and City agree that any reimbursement payments pursuant to the Municipal Code of the costs of the oversize portions of such facilities and any reimbursement payments pursuant to the Municipal Code of the costs of the nonoversize portions of such facilities shall be paid by the City first to reduce the [G.O. bond borrowing], and when the [G.O. bond borrowing] has been paid in full, any further such payments available shall be paid and applied to the [paygo M.R.O. bond] until it is paid in full.

The Developer and the City hereby agree that the cost and value of the Public Improvements within the boundaries of Tax Incremental District No. 6 will become an integral part of the value of the District development and that no future lot assessments or other types of special assessments of any kind will be made against the within the District properties for the Public Improvements within the District in connection with the implementation of the Project Plan by the Developer or by the City for the benefit of the Developer, to recoup or obtain the reimbursement of any improvement costs for the Developer.

J. In consideration of the performance by Developer of its obligations under this Agreement, the City agrees to issue to the Developer a tax increment revenue bond (the "Bond") in a principal amount not to exceed \$_____ million, subject to downward adjustment as set forth in paragraphs F. and G. of this Article II. The City shall issue the Bond to the Developer not later than fifteen (15) days following the date Developer submits to the City a written certification of completion of the Project in the form attached hereto as **Exhibit B**.

K. Interest shall begin to accrue on the Bond on the date that the Project is substantially complete. The Bond shall bear interest at the rate of _____% per annum; provided, however that if the interest rate on the funds borrowed by Developer that are being repaid by proceeds of the Bond is less than _____% per annum (the "Matching Funds Interest Rate"), then the interest rate on the Bond shall be reduced by the difference between _____% and the Matching Funds Interest Rate. (For example, if the Matching Funds Interest Rate is _____%, then the interest rate on the Bond shall be _____%.) Developer shall inform and provide verifiable documentation thereof to the City of the Matching Funds Interest Rate at such time as Developer procures and executes a loan commitment for such funds.

L. The Bond shall be issued in substantially the form attached here to as **Exhibit C**. The Bond shall have a term that extends to March 1, 2038. Installments of interest on the Bond

will be due and payable on March 1 of each year commencing on the March 1 following the year the TID development (including any paid PILOT provisions) exceeds \$45 million. Interest shall be paid from current year 'tax increment' (including any paid PILOT payments) after deducting all City principal and interest payments and City administrative costs (Administrative costs not to exceed \$25,000). Any unpaid interest shall be deferred until sufficient 'tax increment' is available to pay interest. No interest on unpaid interest shall accrue. Principal installments on the Bond will be due and payable on March 1 of each year commencing on March 1 following the retirement of City Bonds (including any refundings thereof) from available 'Tax Increment' after deducting City administrative costs (Administrative costs not to exceed \$25,000). The amount of the annual payment of principal and/or interest due on each Bond Payment Date shall be equal to ninety five percent (95%) of the amount of available 'Tax Increment' including any PILOT as of the date the Bond payment is due. "Tax Increment" shall mean all tax increments (as defined by the Tax Increment Law, including any PILOT payments) collected and retained by the City solely from the real and personal property described on **Exhibit D**, attached hereto (the "Increment Property") in a calendar year. Tax Increment appropriated to make payments on the Bond shall first be applied to accrued interest on the Bond, with any remaining amount being applied toward principal. If on any Bond Payment Date there shall be insufficient Tax Increment to pay the principal or interest due on the Bond, the amount due but not paid shall accumulate and be payable on the next Bond Payment date until the final Bond Payment Date, provided however, that interest shall not compound on any unpaid amounts. The Bond shall be subject to prepayment in whole or in part at any time at the sole option of the City. The amounts and maturities of the installments of principal of the bond which are to be prepaid shall be selected by the City, in its sole discretion, without penalty.

THE BOND SHALL BE A SPECIAL, LIMITED REVENUE OBLIGATION OF THE CITY PAYABLE ONLY FROM TAX INCREMENT THAT IS APPROPRIATED BY THE COMMON COUNCIL OF THE CITY FOR THAT PURPOSE. No property or other asset of the City, except Tax Increment appropriated to make payments with respect to the Bond, is or shall be a source of payment of the City's obligations thereunder. The Bond shall not constitute a debt or obligation of the City, the County in which it is located, the State of Wisconsin or any political subdivision thereof within the meaning of any State constitutional provision, statutory provision or limitation, or charter provision or limitation thereof and shall not be a charge against their general credit or taxing powers.

THE CITY MAKES NO REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, THAT THE TAX INCREMENT, IF APPROPRIATED, WILL BE SUFFICIENT TO PAY, IN WHOLE OR IN PART, THE AMOUNTS WHICH ARE OR MAY BECOME DUE AND PAYABLE UNDER THE BOND. THE CITY'S OBLIGATION TO MAKE PAYMENTS ON THE BOND IS LIMITED TO THE AVAILABILITY OF TAX INCREMENT AND IS FURTHER SUBJECT TO ANNUAL APPROPRIATION BY THE COMMON COUNCIL.

In each year the staff of the City shall include the appropriation of Tax Increment in the City budget as submitted to the Common Council for consideration for the next succeeding fiscal year. If the Common Council determines not to appropriate any portion of such Tax Increment, written notice thereof shall be provided to the Developer within 14 days. The City

agrees that, subject to annual appropriation of said funds, on an annual basis for the years after the receipt by the City of the first \$_____, ____% of all funds in the special fund of the District which constitute Tax Increment will be used first to make the payments due under the Bond and only after such payments have been paid in full for any particular year shall such funds in said special fund be used to pay any other project costs of the District.

IF ON THE FINAL BOND PAYMENT DATE, THERE REMAIN AMOUNTS OUTSTANDING AND UNPAID ON THE BOND, THEN ALL INTEREST ACCRUED BUT UNPAID AND THE REMAINING BALANCE OF PRINCIPAL OF THE BOND SHALL BE DEEMED PAID IN FULL, IT BEING UNDERSTOOD THAT UPON THE FINAL BOND PAYMENT DATE, THE OBLIGATION OF THE CITY TO MAKE ANY FURTHER PAYMENTS ON THE BOND SHALL TERMINATE. THE CITY SHALL HAVE NO OBLIGATION OF ANY KIND WHATSOEVER TO PAY ANY AMOUNT OF PRINCIPAL OR INTEREST ON THE BOND WHICH REMAINS UNPAID AFTER THE FINAL BOND PAYMENT DATE, AND THE DEVELOPER OF THE BOND SHALL HAVE NO RIGHT TO RECEIVE PAYMENT OF SUCH AMOUNTS.

The City shall have no obligation to make payments on the Bond while the Developer is in default of any of its obligations under this Agreement or if no Tax Increment is available.

M. The City agrees that if: (i) the Developer is not in default of any of its obligations hereunder, (ii) there is Tax Increment available on a Bond Payment Date to make a payment on the Bond, and (iii) the Common Council determines not to appropriate all (up to, but not exceeding the amount of the payment then due) or any portion (if the amount available is less than the amount of the payment then due) of such Tax Increment for such year, then:

1. If any other tax increment revenue bonds issued by the City to other parties are then outstanding within the District (the "Other Bonds"), the City shall not appropriate any allocable tax increments and make payments on any of the Other Bonds in a greater proportion than the City has done for the Bond (for example, assume that in a given year, the City appropriates only 25% of the available Tax Increment for payment on the Bond; then as to such year, the City shall not appropriate more than 25% of the amount of any tax increments that, under the terms of any of the Other Bonds, are to be made available for such Other Bonds); and

2. Until such time as the City subsequently makes an annual appropriation for the years after the receipt by the City of the first \$_____, ____% of all Tax Increment available on a Bond Payment Date toward payments due on the Bond, the City shall not issue any new tax increment revenue bonds similar to the Bond to other parties or as related to other properties within the District.

N. Developer shall provide the City with a budget setting forth all of the costs for the Project not later than the earlier of: (i) the date that Developer executes a construction contract for the Project with a general contractor; or (ii) the date the City issues a building permit for the Project. The City shall review and reasonably approve a budget for the Project (as approved, the "Approved Budget"). If for any reason the total costs of completing the Project are less than the total costs set forth in the Approved Budget, the principal amount of the

Bond shall be reduced by _____ percent (____%) of such difference. A final reconciliation of the Project costs shall be performed by the City Engineer or designee at such time as an occupancy permit is issued for the Project. Developer shall make all of its records substantiating the costs of the Project available to the City Engineer or designee, including the monthly construction draws and backup information provided by Developer to its construction lender. Such information shall be held and treated as confidential and shall not be part of the public record associated with the Project, if and as may be permitted under the Wisconsin Open Records Law. If the principal amount of the Bond must be adjusted in accordance with the requirements of this paragraph, Developer shall surrender the Bond to the City and the City shall issue a new Bond in the adjusted amount. All interest shall accrue on the basis of the adjusted principal amount.

O. Upon the earlier of (i) ten years after the Completion Date, or (ii) the date that the Project is sold, the City's financial consultant shall perform an internal rate of return ("IRR") calculation for the Project based upon the Project's historical cash flow and the proceeds of an actual (or deemed) sale. An example of how an IRR is determined is attached hereto as **Exhibit E**. If the IRR calculation is based upon a deemed sale, the parties will make assumptions as to (a) sale price, based upon a then prevailing agreed upon capitalization rate as applied to actual net operating income ("NOI"), and (b) brokerage commissions and closing costs, to arrive at deemed net sale proceeds. (For purposes of calculating deemed sale proceeds, the NOI that is capitalized will not include the few remaining payments due under the Bond.) The deemed net sale proceeds will be aggregated with actual Project cash flows since Project completion and applied against invested equity since Project inception to arrive at the deemed IRR. If the IRR exceeds 11%, then the outstanding principal amount of the Bond shall be reduced by an amount equal to ____% of the Project revenues that cause the IRR to exceed 11%. The IRR calculations under this paragraph will take into account any post-completion contributions of equity and/or member (or partner) loans made by Developer or Developer's affiliates to the Project.

P. If Developer disputes the conclusions of the City's financial or construction consultant or the City Engineer or designee under paragraphs F. and G. of this Article and the parties are unable to reach agreement, then the disputed matter shall be submitted to arbitration before an independent consultant mutually selected by the parties. If the parties are unable to agree upon an arbitrator within fifteen (15) days following a written demand for arbitration submitted by either party, then the selection of an arbitrator shall be submitted to the Chief Judge of the Circuit Courts for Milwaukee County. The costs of all arbitration proceedings shall be split equally between the parties and the decision of the arbitrator shall be final and binding.

ARTICLE III PAYMENT OF TAXES; PAYMENT IN LIEU OF TAXES

Throughout the life of the District, Developer will pay (or cause to be paid) all ad valorem property taxes lawfully assessed against any portion of the Property owned by the Developer before or when due under the law and Developer guarantees that such taxes shall not become delinquent. The foregoing shall not prohibit the Developer from contesting, in good faith, the assessed value of any portion of the Property.

In the event that any portion of the Property becomes exempt from ad valorem taxes during the statutory life of the District and for a period of twenty (20) years thereafter (the "PILOT Term"), then the Developer or any successor Developer of such exempt portion of the Property shall make (or cause to be made) during the PILOT Term annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes would have been for such portion of the Property (as determined by the City assessor) had it not been exempt. Such payment in lieu of taxes shall be due and payable at the same time and in the same manner as the ad valorem taxes would have been due and payable for such year. Developer's obligations under this Article III upon any default shall be collectible as a debt upon an action at law; and shall also be otherwise collectible as are delinquent real estate taxes and any such delinquent amount shall constitute a lien upon the Property, as and in the same method, manner, status and legal existence as levied taxes are a lien against property pursuant to Wis. Stat. § 70.01; and shall also be otherwise collectible as are delinquent special charges pursuant to Wis. Stat. § 66.0627; and in addition to the foregoing, shall also be otherwise collectible by any other available legal and/or equitable remedy and as otherwise provided by law. If the Developer or any successor Developer fails to make a payment in lieu of taxes when due, the City may, in addition to all other remedies available to it, levy a special assessment or special charge against the exempt portion of the Property in the amount of the unpaid payments. Any and all notice and hearing requirements which may be required under the law for such special assessment or special charge are hereby waived by Developer. Notwithstanding and in addition to the levying of such special assessment or special charge, the payment obligation under this Article shall be the personal obligation of the person or entity that is the Developer and/or owner, successors and assigns of the Property at the time that any portion of the Property becomes exempt from ad valorem taxes. The covenant contained in this Article shall be deemed to be a covenant running with the land and shall be binding upon all Developers and/or owners, successors and assigns of any portion of the Property for the duration of the PILOT Term. The City is hereby expressly declared to be a beneficiary of such covenant and entitled to enforce same against all successor Developers and/or owners of the Property.

ARTICLE IV NO PARTNERSHIP OR VENTURE

Developer, its successors and/or assigns and/or owners of the Property, and their contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the City and Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor employed by Developer, its successors and/or assigns and/or owners of the Property, in the construction of the Project.

ARTICLE V CONFLICT OF INTEREST

No member, officer or employee of the City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof, unless such member or officer abstained from any participation in the City review and process of the Project and the Agreement from the point of time when a potential conflict of interest arose and thereafter.

ARTICLE VI WRITTEN NOTICES

All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) upon delivery to an officer or designated representative of the person entitled to such notice, if hand delivered, or (ii) two business days following deposit in the United States mail, postage prepaid, or with a nationally recognized overnight commercial carrier that will certify as to the date and time of delivery, airbill prepaid, or (iii) upon transmission if by facsimile, and each such communication or notice shall be addressed as follows, unless and until any of such parties notifies the other in accordance with this Article of a change of address:

If to the City: City of Franklin
 9229 West Loomis Road
 Franklin, WI 53132
 Attention: Calli Berg, Director of Economic Development
 Facsimile No.: 414-427-7691

With a Copy to: City of Franklin
 9229 West Loomis Road
 Franklin, WI 53132
 Attention: Sandra L. Wesolowski, City Clerk
 Facsimile No.: 414-425-6428

If to the Developer: Loomis and Ryan, Inc.
 4011 80th Street
 Kenosha, Wisconsin 53142
 Attention: Stephen R. Mills
 Facsimile No.:

With a Copy to:

Attention:
Facsimile No.:

ARTICLE VII DEFAULT

A. The occurrence of any one or more of the following events shall constitute a default by Developer hereunder ("Default"):

1. Developer fails to pay any amounts when due under this Agreement and further fails to pay such amounts on or before ten days following written notice of such failure; or

2. Any material representation or warranty made by Developer pursuant to this Agreement proves to have been false in any material respect as of the time when made or given; or

3. Developer materially breaches or fails to perform timely or observe timely any of its covenants or obligations under this Agreement (other than relating to the payment of money), and such failure shall continue for thirty (30) days following notice thereof from the City (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as the Developer has commenced the cure of the default within the thirty (30) day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred twenty (120) days following the notice thereof from the City or such longer period of time as is reasonably agreed to by the City); or

4. Developer's failure to complete or obtain the completion of at least 25% of the public sanitary sewer and public water supply improvements required for the Project on or before that date which is 24 months from the date this Agreement is entered into; or

5. Developer's failure to comply with Subsection I. of Article I, requiring Developer in part to secure sufficient debt and equity financing commitments to enable the Project to proceed, on or before that date which is 6 months from the date this Agreement is entered into; or

6. Developer:

(a) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its/his assets; or

(b) becomes the subject of an "order for relief" within the meaning of the United States Bankruptcy Code, or files a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or

(c) has a petition or application filed against it in bankruptcy or any similar proceeding, or has such a proceeding commenced against it and such petition, application or proceeding shall remain undismissed for a period of ninety (90) days or Developer shall file an answer to such a petition or application, admitting the material allegations thereof; or

(d) applies to a court for the appointment of a receiver or custodian for any of its/his assets or properties, with or without consent, and such receiver shall not be discharged within ninety days after his appointment; or

(e) adopts a plan of complete liquidation of its/his assets; or

(f) shall cease to exist.

B. The City shall be deemed to be in default in the event it materially breaches or fails to perform timely or observe timely any of its covenants or obligations under this Agreement, and such failure shall continue for thirty (30) days following notice thereof from

Developer (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as the City has commenced the cure of the default within the thirty (30) day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred twenty (120) days following the notice thereof from Developer or such longer period of time as is reasonably agreed to by the Developer).

C. Upon the occurrence of any Default by either party, upon ten (10) days notice, without further demand or action of any kind by the nondefaulting party and except as expressly set forth below, the nondefaulting party may, at its option, pursue any or all rights and remedies available at law or in equity. The City's rights shall include, but not be limited to temporary suspension of any payment of the City payments under this Agreement during the continuance of any Default by Developer, or City performance of any Developer obligation under this Agreement. Upon the cure of any such Default on the part of Developer, then, if and to the extent the City suspended any payments of City payments, the City shall promptly distribute to Developer any payments so suspended and promptly resume payments of amounts due with respect to the City payments due under this Agreement and continue such payments so that, subject to available Tax Increment, the cumulative amount paid upon full amortization is equal to that amount contemplated under this Agreement.

No remedy shall be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, and/or now or hereafter existing at law or in equity. No failure or delay on the part of any party in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude other or further exercise thereof or the exercise of any other right or remedy.

Notwithstanding the foregoing, the City shall not terminate this Agreement or pursue, exercise or claim any rights or remedies arising out of a Default by Developer hereunder, except injunctive relief, specific performance or the temporary suspension of City payments unless Developer, its mortgage lender or their designees have not commenced commercially reasonable efforts to cure any such Default within 60 days after receipt of written notice from the City to Developer and its mortgage lender that if such efforts to cure such Default are not so commenced, then the City intends to pursue its other rights and remedies hereunder, including, without limitation, the right to terminate this Agreement.

D. In the event of a Default by either party, all reasonable fees, costs and expenses incurred by the nondefaulting party, including reasonable attorneys fees, in connection with the enforcement of this Agreement shall be paid by the defaulting party, including without limitation the enforcement of the nondefaulting party's rights in any bankruptcy, reorganization or insolvency proceeding.

ARTICLE VIII MISCELLANEOUS

A. Developer shall have in effect at all times, all permits, approvals and licenses as may be required by any governmental authority or, to the extent reasonably prudent or

customary for similarly situated business operations, any non-governmental entity in connection with the development, construction, management and operation of the Project.

B. Developer shall maintain the following insurance policies issued by insurers licensed in the State of Wisconsin, with Best's A ratings and in the financial size category as insurers of similar projects, with such policies (the "Insurance Policies") covering loss by perils, hazards, liabilities and other risks and casualties and in such amounts as may be reasonably required by the City:

(i) Following completion of construction of the Project, "all risks" property insurance insuring against such risks as are insured against by Developers of similar projects, in amounts equal to 100% replacement cost of all buildings, improvements, fixtures, equipment and other real and personal property constituting the Project with an extended replacement cost endorsement; and

(ii) During the construction of the Project, builder's risk insurance in form and amounts reasonably satisfactory to the City; and

(iii) During the term of this Agreement, commercial general liability insurance covered under a comprehensive general liability policy including contractual liability in amounts maintained by Developers of similar projects, and insuring against bodily injury, including personal injury, death and property damage; and

(iv) Such other insurance as may be reasonably requested by the City.

Each Insurance Policy shall require the insurer to provide at least thirty (30) days prior written notice to the City of any material change or cancellation of such policy. The City shall be named as an additional insured/loss payee on all policies of insurance except worker's compensation insurance.

C. Subject to one or more Force Majeure Events as set forth in paragraph F. of this Article, if the Developer does not substantially complete construction of the Project by the Completion Date, then the City may, in its sole discretion, terminate this Agreement upon written notice to the Developer, provided, however, that if Developer substantially completes construction of the Project within thirty (30) days following receipt of such written election to terminate (a "Developer Savings Action"), this Agreement shall not terminate but shall continue in full force and effect. Upon an election to terminate that is not followed by any Developer Savings Action, the City shall thereafter have no further obligations under this Agreement and in addition thereto, the City may, in its sole discretion, terminate Tax Incremental District No. 6, City of Franklin, Wisconsin.

D. The prevailing party shall be entitled to collect all costs and expenses associated with the enforcement of the its rights against the other under this Agreement, including without limitation the enforcement of such rights in any bankruptcy, reorganization or insolvency proceeding involving Developer. Any and all such fees, costs and expenses incurred by the prevailing party which are to be paid by the other, shall be paid by on demand.

E. Developer hereby indemnifies, defends, covenants not to sue and holds the City harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the City in any way in connection with the Project, including without limitation: (a) the failure of Developer or its contractors, subcontractors, agents, employees, or invitees (while under control of Developer) to comply with any environmental law, rule, regulation or ordinance, or any order of any regulatory or administrative authority with respect thereto; (b) any release by Developer or its contractors, subcontractors, agents, employees, or invitees (while under control of Developer) of petroleum products or hazardous materials or hazardous substances on, upon or into the Project; (c) any and all damage to natural resources or real property or harm or injury to persons resulting from any failure by the Developer and/or its contractors, subcontractors and/or agents to comply with any law, rule, regulation or ordinance or any release of petroleum products or hazardous materials or hazardous substances as described in clauses (a) and (b) above; (d) any violation by Developer at the Project of any environmental law, rule, regulation or ordinance; (e) claims arising under the Americans With Disabilities Act or similar laws, rules, regulations or ordinances; (f) the failure by Developer to comply with any term or condition of this Agreement; (g) injury to or death of any person at the Project; injury to any property caused by or at the Project; and (h) the failure of Developer to maintain, repair or replace, as needed, any portion of the Project; except, in each of the foregoing instances described in (a) through (h) above, to the extent negligently or willfully and wrongfully caused by the City or its agents, employees, contractors or representatives.

The terms "hazardous substances" means any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances" under any applicable federal or state or local laws or regulations.

Except as caused, in whole or in part, by negligence or wrongful act or omission of the City, if the persons or property of others sustain loss, damage or injury resulting directly or indirectly from the negligence or wrongful act or omission of Developer or its contractors, subcontractors or materialmen in their performance of this Agreement or from Developer's failure to comply with any of the provisions of this Agreement or of law, Developer shall indemnify and hold the City harmless from any and all claims and judgments for damages, and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason thereof, provided; however, that the City shall provide to Developer promptly, in writing, notice of the alleged loss, damage or injury.

Developer, its successors and/or assigns and/or owners of the Property, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, shall indemnify and save harmless the City, its officers, agents and employees, and shall defend the same, from and against any and all liability, claims, loss, damages, interest, actions, suits, judgments, costs, expenses, and attorneys' fees, to whomsoever owed and by whomsoever and whenever brought or obtained, which in any manner results from or arises in connection with:

(i) The negligent or willfully wrongful performance of this Agreement by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or

subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property;

(ii) The negligent or willfully wrongful construction of Developer Improvements by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property;

(iii) The negligent or willfully wrongful operation of Developer Improvements by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, during Developer Construction Period;

(iv) The violation by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, of any law, rule, regulation, order or ordinance; or

(v) The infringement by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, of any patent, trademark, trade name or copyright.

F. Time is of the essence of each and every obligation or covenant contained in this Agreement; provided, however, that if the Developer is delayed or prevented from timely commencing or completing construction of the Project by reason of fire, earthquake, war, flood, riot, strikes, labor disputes, governmental restrictions, judicial order, public emergency, or other causes beyond the control of the Developer ("Force Majeure Event"), performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

G. Nothing contained in this Agreement is intended to or has the effect of releasing Developer, its successors and/or assigns and/or owners of the Property, from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

H. All financial reports and information required to be provided by Developer to the City under this Agreement shall be provided to the City's outside financial consultant for review on behalf of the City. The Developer warrants and represents the accuracy of all such financial reports and information. At the request of the Developer, all financial reports and information provided to the City or its financial consultant in connection with this Agreement shall be held and treated as confidential and shall not be part of the public record associated with the Project, if and as may be permitted under the Wisconsin Open Records Law. During the life of Tax Incremental District No. 6, City of Franklin, Wisconsin, the Developer shall provide annual income and expense information for the Project as requested by the City Assessor as is customary for the purposes of property valuation, which information shall be maintained in confidence pursuant to laws and other rules.

I. Prior to substantial completion of the Project, this Agreement may not be assigned by the Developer without the City's consent, which may be granted or withheld in the

City's sole discretion, provided, however, Developer may assign this Agreement to an entity that controls, is controlled by, or is under common control with, Developer without the consent of the City. Notwithstanding the foregoing, the Developer may collaterally assign this Agreement [and the Bond] to the Developer's lender for the Project without the consent of the City. In the event that any such lender forecloses on its collateral and succeeds to Developership of the Property, the City shall fulfill its obligations hereunder provided that such lender, or the party purchasing the Property at a foreclosure sale, assumes in writing all of the obligations of the Developer hereunder.

J. Developer shall timely construct and complete the Project as its primary obligation under this Agreement. In the event of fire, damage or any other casualty to any part of the Project, Developer agrees, at its cost and expense, to rebuild, repair and replace the Project to substantially the condition or better than existed immediately prior to the casualty. The fair market value of the Project following reconstruction and/or repair by Developer must be substantially similar to the fair market value of the Project immediately prior to the casualty. Developer shall not be relieved of any of its obligations under the terms of this Agreement as a result of any fire, damage or any other casualty or during the period of repair or rebuilding or replacement of the Project. This obligation to repair, rebuild or replace shall remain in effect for a period expiring upon the later of: (i) the date of the expiration and closure of Tax Incremental District No. 6, City of Franklin, Wisconsin; or (ii) the date which is twenty (20) years after the date this Agreement is executed.

K. If the State laws regarding ad valorem taxation are amended or modified during the term of this Agreement such that the projected Tax Increments from the Property are materially reduced, i.e., seven percent (7%) or more, and there are no corresponding amendments or modifications to the Tax Increment Law to compensate for such reduction, the parties agree to work in good faith to consider amendments to this Agreement toward the end of rendering the respective positions of the parties generally equivalent to the positions set forth herein.

L. In the event that any term or provision of this Agreement is determined to be invalid or unenforceable for any reason, then the other terms and provisions of this Agreement shall not be affected thereby and said terms and provisions shall remain in full force and effect.

M. A Memorandum of Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin, prior to the recording of the mortgages securing any construction loan, or any other mortgage on the Project, it being understood by the parties that this Agreement will run with the land and will be binding upon the Project and any owner of all or any portions of the Project and their successors and assigns in a form in substantial conformance with the attached **Exhibit G**.

N. This Agreement shall be construed pursuant to the laws of the State of Wisconsin. Except as otherwise specifically and expressly set forth in this Agreement, the venue for any disputes arising under this Agreement shall be the Circuit Court for Milwaukee County. The prevailing party shall be entitled to its costs, including its reasonable attorneys' fees, incurred in any litigation.

[Signature page(s) follow.]

IN WITNESS WHEREOF, this Agreement is executed as of the date first above written.

Loomis and Ryan, Inc.:

By: _____
(Name and Title)

Date: _____

STATE OF WISCONSIN)
)ss.
_____ COUNTY)

Personally appeared before me this ____ day of _____, 2018, the above-named _____, the _____ of _____, to me known to be the persons who executed the foregoing agreement on behalf of Loomis and Ryan, Inc. and by its authority.

Notary Public State of Wisconsin
My commission expires: _____

City of Franklin, Wisconsin

By: _____
Stephen R. Olson, Mayor

Date: _____

By: _____
Paul Rotzenberger, Director of Finance and
Treasurer

Date: _____

Attest: _____
Sandra L. Wesolowski, City Clerk

Date: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally appeared before me this ____ day of _____, 2018, the above-named Stephen R. Olson, Paul Rotzenberg and Sandra L. Wesolowski, Mayor, Director of Finance and Treasurer, and City Clerk, respectively, of the City of Franklin, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the City and by its authority.

Notary Public State of Wisconsin
My commission expires: _____

Approved as to form:

Jesse A. Wesolowski, City Attorney
Date: _____

This instrument was drafted by:

EXHIBIT A

Property Legal Description

EXHIBIT B

Form of Certification of Completion

FORM OF CERTIFICATE OF COMPLETION

_____, 20__

City of Franklin

Attn: _____

Re: Certificate of Completion

Ladies & Gentleman,

This Certificate is being delivered pursuant to the Development Agreement dated as of _____, 2018 between the undersigned and the City of Franklin, Wisconsin.

The undersigned hereby certifies the Project has been completed in accordance with the requirements of the terms and conditions of the Development Agreement and that an occupancy certificate for the Project has been issued, a copy of which is attached hereto.

By: _____

Title: _____

EXHIBIT C

UNITED STATES OF AMERICA
STATE OF WISCONSIN
COUNTY OF MILWAUKEE
CITY OF FRANKLIN

TAXABLE TAX INCREMENT PROJECT MUNICIPAL SPECIAL, LIMITED REVENUE
OBLIGATION BOND ("**Bond**")

Number	Date of Original Issuance	Amount
1	_____, 20__	_____

FOR VALUE RECEIVED, the City of Franklin, Milwaukee County, Wisconsin (the "**City**"), promises to pay to _____ (the "**Developer**"), or registered assigns, but only in the manner, at the times, from the source of revenue and to the extent hereinafter provided, the principal amount of _____ Dollars (\$ _____), with interest payable at the rate of _____% per annum, said interest rate and this Bond subject to the terms and provisions of the Development Agreement between the City and _____, dated _____, 2017.

This Bond shall be payable in installments of principal and interest due on March 1 (the "**Payment Dates**") in each of the years and in the amounts set forth on the debt service schedule attached hereto as Schedule 1.

This Bond has been issued to finance a project within the City's Tax Incremental District No. __, pursuant to Article XI, Section 3 of the Wisconsin Constitution and Chapters 66 and 67, as applicable, of the Wisconsin Statutes and acts supplementary thereto, and is payable only from the income and revenues herein described, which income and revenues have been set aside as a special fund for that purpose and identified as the "Special Redemption Fund" provided for under the Resolution adopted on _____, 20__, by the Common Council of the City (the "**Resolution**"). This Bond is issued pursuant to the Resolution and pursuant to the terms and conditions of the Tax Incremental District Development Agreement dated as of _____, 2017 between the City and the Developer ("**Development Agreement**"). This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation or provision. This Bond shall be payable solely from Available Tax Increments generated by the Real Estate and appropriated by the Common Council to the payment of this Bond (the "**Revenues**"). Reference is hereby made to the Resolution and the Development Agreement for a more complete statement of the revenues from which and conditions and limitations under which this Bond is payable and the general covenants and provisions pursuant to which this Bond has been issued. The Resolution and Development Agreement are incorporated herein by this reference. All capitalized terms that are not otherwise defined in this Bond shall take on the meaning given to such terms in the Development Agreement.

If on any Payment Date there shall be insufficient Revenues appropriated to pay the principal due on this Bond, the amount due but not paid shall be deferred. If on any Bond

Payment Date there shall be insufficient Revenues appropriated to pay the interest due on this Bond, the amount due but not paid shall be deferred, provided however, that interest shall not compound on any unpaid amounts. The deferred principal and interest shall be payable on the next Payment Date to the extent the City has Available Tax Increment until the Final Payment Date (as defined below). The City shall have no obligation to pay any amount of this Bond which remains unpaid after the Final Payment Date. The owner of this Bond shall have no right to receive payment of any deferred amounts, unless there are available Revenues which are appropriated by the Common Council to principal payment of this Bond. If, in any calendar year, the Revenues exceed the amount payable in that year on the Bond ("**Surplus Increment**"), the City may, subject to appropriation of such payment by the Common Council, apply the Surplus Increment to prepayment of principal on the Bond. The "**Final Payment Date**" is _____, 20__.

At the option of and in the sole discretion of the City, this Bond is subject to prepayment in whole or in part at any time.

The City makes no representation or covenant, express or implied, that the Tax Increments or other Revenues will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder are subject to appropriation, by the Common Council, of Tax Increments to make principal payments due on this Bond. In addition, as provided in Article II of the Development Agreement, the total principal amount to be paid shall in no event exceed \$_____. When that amount of Revenue has been appropriated and applied to payment of this Bond, the Bond shall be deemed to be paid in full and discharged, and the City shall have no further obligation with respect hereto. Further, as provided in Article II Section D. of the Development Agreement, the City shall have no obligation to make payments on this Bond in the event the Developer is in default under any of the terms and conditions of the Development Agreement.

This Bond is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Bond is not a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal or interest of this Bond. Further, no property or other asset of the City, except the above-referenced Revenues, is or shall be a source of payment of the City's obligations hereunder.

This Bond is issued by the City pursuant to, and in full conformity with, the Constitution and laws of the State of Wisconsin.

This Bond may be transferred or assigned, in whole or in part, only with the consent of the City. Interests in this Bond may not be split, divided or apportioned. In order to transfer or assign the Bond, the transferee or assignee shall surrender the same to the City either in exchange for a new, fully-registered municipal revenue obligation or for transfer of this Bond on the registration records for the Bond maintained by the City. Each permitted transferee or assignee shall take this Bond subject to the foregoing conditions and subject to all provisions stated or referenced herein and in the Development Agreement.

It is hereby certified and recited that all conditions, things and acts required by law to exist or to be done prior to and in connection with the issuance of this Bond have been done, have existed and have been performed in due form and time.

IN WITNESS WHEREOF, the Common Council of the City of Franklin has caused this Bond to be signed on behalf of the City by its duly qualified and acting Mayor and City Clerk, and its corporate seal to be impressed hereon, all as of the date of original issue specified above.

City of Franklin

Stephen R. Olson, Mayor

(CITY SEAL)

Sandra L. Wesolowski, City Clerk

Schedule 1 of Bond Payment Schedule

Subject to the City's actual receipt of Available Tax Increment and the terms and conditions of the Development Agreement, the City shall make the following payments on the Bond to the Developer:

[illegible]

REGISTRATION PROVISIONS

This Bond shall be registered in registration records kept by the City Clerk of the City of Franklin, Milwaukee County, Wisconsin, such registration to be noted in the registration blank below and upon said registration records, and this Bond may thereafter be transferred only upon presentation of this Bond together with a written instrument of transfer approved by the City and duly executed by the Registered Owner or his or her or its attorney, such transfer to be made on such records and endorsed hereon.

Date of Registration

Name of Registered Owner

Signature of City Clerk

EXHIBIT D

Description of Increment Property

[Parcels Tax Key Number

Addresses]

EXHIBIT E

IRR Example

EXHIBIT F

Public Improvements

Memorandum of Development Agreement

Document Number

Document Title

Recording Area

Name and Return Address

PIN:

WHEREAS, this Memorandum is being executed for the purpose of providing notice of the Development Agreement and certain terms thereof in the Office of the Register of Deeds for Milwaukee County, State of Wisconsin in order to place third parties on notice of the Development Agreement and Developer's and the City's rights and obligations thereunder, some of which are hereinafter summarized.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in the Development Agreement, Developer and the City hereby acknowledge as follows:

1. **PROPERTY.** The "**Property**" is land located in the City of Franklin, Milwaukee County, State of Wisconsin, legally described on Exhibit A attached hereto.
2. **TERM.** The Development Agreement shall run with the land pursuant to its terms unless terminated pursuant to its terms.
3. **NO MODIFICATION; DEVELOPMENT AGREEMENT CONTROLLING.** This Memorandum is only a summary of some of the terms and conditions contained in the Development Agreement and this Memorandum is not intended in any way to amend, alter, modify, abrogate, substitute or otherwise affect any of the terms or conditions contained in the Development Agreement, all of which

are hereby incorporated herein in full by this reference. It is hereby understood and agreed that, notwithstanding this Memorandum, the terms and conditions contained in the Development Agreement shall in all events control the relationship between Developer and the City with respect to the subject matter therein contained. This Memorandum is solely for recording and notice purposes.

4. **COUNTERPART SIGNATURES.** This Memorandum may be signed in two or more counterparts, all of which, when taken together, shall constitute one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Developer and the City have executed this Memorandum effective as of the date first written above.

DEVELOPER:

CITY:

LOOMIS AND RYAN, INC.

CITY OF FRANKLIN

By: _____
Name:
Title:

By: _____
Stephen R. Olson, Mayor

By: _____
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN)
)ss.
_____ COUNTY)

Personally appeared before me this ____ day of _____, 2018, the above-named _____, the _____ of _____, to me known to be the person who executed the foregoing agreement on behalf of Loomis and Ryan, Inc. and by its authority.

Notary Public State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally appeared before me this ____ day of _____, 2018, the above-named Stephen R. Olson and Sandra L. Wesolowski, Mayor and City Clerk, respectively, of the City of Franklin, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the City and by its authority.

Notary Public State of Wisconsin
My commission expires: _____

This Document was drafted by:

EXHBIT A

LEGAL DESCRIPTION

[Certified Survey Map No. _____

Tax Key Nos. _____]

APPROVAL <i>Slw</i> <i>PK</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 11/13/18
Bills	Vouchers and Payroll Approval	ITEM NUMBER I. 1

Attached are vouchers dated November 3, 2018 through November 8, 2018 Nos. 170900 through Nos. 170995 in the amount of \$ 2,020,673.67. Included in this listing are EFT's Nos. 3890 through Nos. 3894, Library vouchers totaling \$ 8,285.10 and Water Utility vouchers totaling \$ 883,905.53.

Early release disbursements dated November 3, 2018 through November 7, 2018 in the amount of \$ 107,712.95 is provided on a separate listing and is also included in the complete disbursement listing. These payments have been released as authorized under Resolution 2013-6920.

The net payroll dated November 9, 2018 is \$ 399,618.75 previously estimated at \$ 396,000.00. Payroll deductions dated November 9, 2018 are \$ 213,217.39 previously estimated at \$ 220,000.00.

The estimated payroll for November 23, 2018 is \$ 388,000.00 with estimated deductions and matching payments of \$ 400,000.00.

There were no Property Tax refunds.

Approval to release payment to Knight Barry, Inc for the October 2018 draw from Ballpark Commons not to exceed \$1,750,000.00.

COUNCIL ACTION REQUESTED

Motion approving the following:

- City vouchers with an ending date of November 8, 2018 in the amount of \$ 2,020,673.67 and
- Payroll dated November 9, 2018 in the amount of \$ 399,618.75 and payments of the various payroll deductions in the amount of \$ 213,217.39 plus City matching payments and
- Estimated payroll dated November 23, 2018 in the amount of \$ 388,000.00 and payments of the various payroll deductions in the amount of \$ 400,000.00, plus City matching payments and
- The release of payment to Knight Barry, Inc not to exceed \$1,750,000.00.

ROLL CALL VOTE NEEDED