

CITY OF FRANKLIN  
COMMON COUNCIL MEETING  
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS  
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN  
AGENDA\*  
TUESDAY, OCTOBER 2, 2018 AT 6:30 P.M.

- A. Call to Order and Roll Call.
- B.
  - 1. Citizen Comment Period.
  - 2. Mayoral Announcements:
    - (a) Status of Municipal Referendum at the November 6, 2018 General Election for Increased Police Staffing.
    - (b) South Suburban Chamber's State of the Cities on Friday, October 5, 2018.
- C. Approval of Minutes of Regular Common Council Meeting of September 18, 2018.
- D. Hearings.
- E. Organizational Business.
- F. Letters and Petitions.
- G. Reports and Recommendations:
  - 1. Donation from Franklin Police Citizen Academy Alumni Association in the Amount of \$4,000 to the Police Department K9 Account.
  - 2. An Ordinance to Create §183-30.F. of the Municipal Code Regarding Loitering or Prowling Generally.
  - 3. A Resolution Authorizing Certain Officials to Accept a Conservation Easement for and as Part of the Review and Approval of Lot 2 of a Certified Survey Map for Property Located at 2925 and 2939 West Acre Avenue (David & Rhonda L. Drager, Applicant).
  - 4. A Resolution Imposing Conditions and Restrictions for the Approval of a Special Use for a Gas Station and Convenience Store Use for Property Located at 11123 West Forest Home Avenue (Jujhar, LLC D/B/A Midtown Gas & Liquor, Applicant).
  - 5. A Resolution to Approve the Agreement to Terminate the Capital Projects Agreement Between the City of Franklin and the Franklin Historical Society, Inc. for the Barn Museum Project.
  - 6. Agreement Between the City of Franklin and the Franklin Historical Society, Inc. for the Construction and Donation of a Barn Museum at Lions Legend Park.
  - 7. A Resolution to Sign a Second Amendment to Lease Agreement with American Tower L.P. at 5572 W. Airways Avenue for \$21,000 per Year.
  - 8. Authorize Execution of a Contract for Crowley Construction to Mark Pavement in Various Franklin Locations Not to Exceed \$24,500.
  - 9. Request for Approval to Increase Culvert Installation Costs.

# Common Council Meeting Agenda

October 2, 2018

Page 2

10. Authorize Department of Public Works to Enclose Ditches for Various Properties Along S. North Cape Road.
11. Selection of a Design Concept and Architect for the City Hall Remodeling Project.
12. Renewal of Dissemination Agent Agreement for Issuer Continuing Disclosure Required Under Securities and Exchange Commission Rule 15c2-12.
13. August 2018 Monthly Financial Report.
14. City of Franklin Migration of General, Non-Represented Employees to the Wisconsin Retirement System for Pension Purposes Effective January 1, 2019.
15. Schedule Committee of the Whole and Common Council Meetings for January 2019.
16. Recommendation from the Committee of the Whole Meeting of October 1, 2018: Proposed 2019 Budget.

H. Licenses and Permits.  
Miscellaneous Licenses from License Committee Meeting of October 2, 2018.

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

J. Adjournment.

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

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

## REMINDERS:

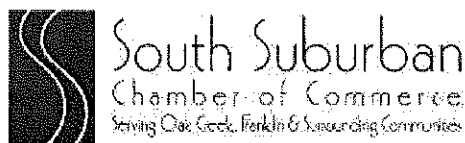
October 4	Plan Commission Meeting	7:00 p.m.
October 16	Common Council Meeting	6:30 p.m.
October 18	Plan Commission Meeting	7:00 p.m.
October 28	Trick-or-Treat	4:00 p.m. to 7:00 p.m.
November 5	Common Council Meeting	6:30 p.m.
November 6	General Election	7:00 a.m.-8:00 p.m.
November 8	Plan Commission Meeting	7:00 p.m.
November 13	Common Council Meeting	6:30 p.m.
November 22 & 23	Thanksgiving Holiday	City Hall Closed

B.2.(b)

**Sandi Wesolowski**

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**From:** South Suburban Chamber of Commerce [bwesener@southsuburbanchamber.com]  
**Sent:** Wednesday, September 12, 2018 8:01 AM  
**To:** Sandi Wesolowski  
**Subject:** Annual State of the Cities - October 5



**Northwestern Mutual  
Presents the  
The South Suburban Chamber's  
State of the Cities**

**Friday, October 5, 2018  
Oak Creek Community Center  
8580 S. Howell Avenue  
7:30-9:30 a.m.**

**Sponsored by AT&T  
and the Chamber's Legislative Committee**

The South Suburban Chamber invites you and the business community in the south suburban area to this special breakfast presentation with Oak Creek Mayor Dan Bukiewicz and Franklin Mayor Steve Olson as they discuss the "State of the Cities."

With all of the business development in Southeastern Wisconsin this will be an insightful look at the economic future

of the cities of Oak Creek and Franklin and the entire region.

The presentation will be moderated by Steve Jagler, Milwaukee Journal Sentinel business editor, with time for questions from the attendees.

This event will be held at the Oak Creek Community Center at 8580 S. Howell Avenue, Oak Creek, WI 53154 from 7:30 - 9:30 a.m.

Breakfast and registration at 7:30 a.m. presentation at 8:00 a.m.

Cost: \$20.

[Register Now](#)

Cost is \$20 per person and includes breakfast!

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South Suburban Chamber of Commerce | 8040 S. 6th St., Oak Creek, WI 53154

[Unsubscribe swesolowski@franklinwi.gov](mailto:Unsubscribe_swesolowski@franklinwi.gov)

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CITY OF FRANKLIN  
COMMON COUNCIL MEETING  
SEPTEMBER 18, 2018  
MINUTES

- |                            |      |  |
|----------------------------|------|--|
| ROLL CALL                  | A.   | The regular meeting of the Common Council was held on September 21, 2018 and called to order at 6:30 p.m. by Mayor Steve Olson in the Franklin City Hall Council Chambers, 9229 W. Loomis Road, Franklin, Wisconsin. On roll call, the following were in attendance: Alderman Mark Dandrea, Alderman Dan Mayer, Alderwoman Kristen Wilhelm, Alderman Steve F. Taylor, Alderman Mike Barber and Alderman John R. Nelson. Also present were City Engineer Glen Morrow, Dir. of Administration Mark Luberda, City Attorney Jesse A. Wesolowski and City Clerk Sandra Wesolowski.  |
| CITIZEN COMMENT            | B.1. | Citizen comment period was opened at 6:31 p.m. and closed at 6:37 p.m.   |
| PROCLAMATION<br>NICK FUCHS | B.2. | Mayor Olson presented a Proclamation in Recognition of Nicholas J. Fuchs.  |
| MINUTES<br>SEPT. 4, 2018   | C.   | Alderman Barber moved to approve the minutes of the regular Common Council Meeting of September 4, 2018 as presented at this meeting. Seconded by Alderman Dandrea. All voted Aye; motion carried.   |
| BD./COMM.<br>APPOINTMENTS  | E.   | <p>Alderman Taylor moved to confirm the following Mayoral appointments:</p> <p>Adam Burckhardt, 7541 S. 72nd St., Community Development Authority, 4 year term expiring 8/30/22.</p> <p>Matt Cool, 4934 W. Forest Hill Ave., Economic Development Commission, 2 year term expiring 6/30/20.</p> <p>Paul Dausman, 4103 W. Minnesota Ct., Economic Development Commission, 2 year term expiring 6/30/20.</p> <p>Alderman Mark Dandrea, Finance Committee, 1 year term expiring 4/16/19.</p> <p>Alderwoman Kristen Wilhelm, Finance Committee, 1 year term expiring 4/16/19.</p> <p>Alderman John Nelson, Finance Committee, 1 year term expiring 4/16/19.</p> <p>Alderman Steve Taylor, License Committee, 1 year term expiring 4/16/19.</p> <p>Alderwoman Kristen Wilhelm, License Committee, 1 year term expiring 4/16/19.</p> <p>Alderman John Nelson, License Committee, 1 year term expiring 4/16/19.</p> |

Alderman John Nelson, Parks Commission, 1 year term expiring 4/16/19.

Alderman Mark Dandrea, Plan Commission, 1 year term expiring 4/16/19.

Rebecca Specht, 3185 W. Yorkshire Cir., Board of Public Works, 3 year term expiring 4/30/21.

Layne Litwin, 7382 S. Hillendale Dr., Technology Committee, 3 year term expiring 4/30/21.

John Farney, 8014 S. 59th St., Technology Committee, 3 year term expiring 4/30/21.

Gary Grobner, 11436 W. Shields Dr., Board of Water Commissioners, 5 year term expiring 9/30/23.

Seconded by Alderman Dandrea. On roll call, all voted Aye.

- |  |         |  |
|--|---------|--|
| CONSENT AGENDA   | G.1.    | Alderwoman Wilhelm moved to approve the following consent agenda items:  |
| POLICE DONATION  | G.1.(a) | Accept a donation of \$100 from Elaine Sievert to be deposited into the Police Citizen Academy; and  |
| FIRE DEPT. DIVE TEAM DONATION  | G.1.(b) | Accept a No-Match Grant in the amount of \$450 from Wal-Mart Community Grants for the support of the Franklin Fire Department Dive Team operations; and  |
| MILW. CO. HAZARD MITIGATION PLAN   | G.1.(c) | Adopt the Milwaukee County Hazard Mitigation Plan as requested by the Fire Department.<br>Approval of the consent agenda was seconded by Alderman Dandrea. All voted Aye; motion carried.  |
| DESIGN AND ARCHTECT FOR CITY HALL REMODELING   | G.2.    | Alderman Nelson moved to table to the October 2, 2018 Common Council meeting the concept development and design services for the City Hall Remodeling Project. Seconded by Alderman Taylor. All voted Aye; motion carried.   |
| DPW SURPLUS VEHICLES AND EQUIPMENT BIDS  | G.10.   | Alderman Taylor moved to accept the bids that were received on September 18, 2018 for the Department of Public Works surplus vehicles and equipment on the Wisconsin Surplus Auction site as presented at this meeting. Seconded by Alderwoman Wilhelm. All voted Aye; motion carried.   |
| RES. 2018-7421<br>CSM<br>ROC VENTURES, LLC/<br>ZIM-MAR PROPERTIES, LLC<br>7220 S. BALLPARK DR. | G.3.    | Alderman Taylor moved to adopt Resolution No. 2018-7421, A RESOLUTION CONDITIONALLY APPROVING A 3 LOT CERTIFIED SURVEY MAP, BEING LOT 3 AND 4 OF CERTIFIED SURVEY MAP NO. 9042 AND LANDS IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN (MICHAEL E. ZIMMERMAN, |

PARTNER, ROC VENTURES, LLC/ZIM-MAR PROPERTIES, LLC, APPLICANTS) (APPROXIMATELY 7220 SOUTH BALLPARK DRIVE). Seconded by Alderman Dandrea. All voted Aye; motion carried.

RES. 2018-7422  
CONDO PLAT FOR  
WOODLAND PRAIRIE  
(RICK & RON DEV., LLC)  
6701-6799 S.  
PRAIRIEWOOD LN.

G.4. Alderman Nelson moved to adopt Resolution No. 2018-7422, A RESOLUTION CONDITIONALLY APPROVING A CONDOMINIUM PLAT (FIRST ADDENDUM) FOR THE WOODLAND PRAIRIE CONDOMINIUM DEVELOPMENT TO INCREASE THE NUMBER OF BUILDINGS FROM 13 BUILDINGS TO 15 BUILDINGS AND TO CHANGE THE NUMBER OF UNITS WITHIN THE BUILDINGS AT 6701-6799 SOUTH PRAIRIEWOOD LANE (RICK & RON DEVELOPMENT, LLC, APPLICANT/PROPERTY OWNER). Seconded by Alderman Dandrea. All voted Aye; motion carried.

RES. 2018-7423  
PUBLIC TRAIL  
CONSTRUCTION  
8000 S. CHAPEL HILL  
DR.

G.5. Alderman Mayer moved to adopt Resolution No. 2018-7423, A RESOLUTION TO AUTHORIZE THE CONSTRUCTION OF A PUBLIC TRAIL UPON LANDS IN PART SUPPORTING NATURAL RESOURCE FEATURES LOCATED WITHIN LAKE ERNIE PARK LOCATED AT 8000 S. CHAPEL HILL DRIVE (CITY OF FRANKLIN, APPLICANT). Seconded by Alderman Barber. All voted Aye; motion carried.

ACCEPTANCE OF LAND  
DONATION

G.6. Alderwoman Wilhelm moved to accept the land donation from Midwest Homes of Wisconsin, Inc. for three parcels located south of West Rawson Avenue, north of West Marquette Avenue, east of South 37th Place and west of Countryside Drive (Tax Key Nos. 760-0168-000, 760-9996-010, and 760-9997-005) and direct legal counsel to ready the necessary documents to effectuate the transfer and further to direct staff to proceed with disposing of Tax Key No. 760-0168-000 to the abutting property owners for a nominal fee. Seconded by Alderman Barber. All voted Aye; motion carried.

SPECIAL USE  
GAS STATION AND  
CONVENIENCE STORE  
11123 W. FOREST HOME  
AVE., JUJHAR, LLC

G.7. Alderman Nelson moved to adopt a Resolution Imposing Conditions and Restrictions for the Approval of a Special Use for a Gas Station and Convenience Store for Use Property Located at 11123 West Forest Home Avenue (Jujhar, LLC, d/b/a Midtown Gas & Liquor, Applicant), as amended at Item 5. Seconded by Alderman Mayer. Alderman Nelson withdrew his motion with no objections from the Common Council.

Alderman Nelson then moved to refer back to staff the Resolution Imposing Conditions and Restrictions for the Approval of a Special Use for a Gas Station and Convenience

Store for Use Property Located at 11123 West Forest Home Avenue (Jujhar, LLC, d/b/a Midtown Gas & Liquor, Applicant). Seconded by Alderwoman Wilhelm. On roll call, Alderman Nelson, Alderman Barber, Alderwoman Wilhelm, and Alderman Mayer voted Aye; Alderman Taylor and Alderman Dandrea voted No. Motion carried.

MODEL HOME PERMITS     G.8.  
ASPEN WOODS PHASE 1

Alderman Taylor moved to approve requests from Veridian Homes to allow 2 model home permits and phasing development for 11 lots in Aspen Woods Phase 1 (S. 51st Street and W. Puetz Road) with the stipulations detailed in Option A on the Common Council Action Sheet provided in the packet for this meeting. Seconded by Alderwoman Wilhelm. All voted Aye; motion carried.

PLEASANT VIEW     G.11.  
PAVILION BIDS

Alderman Barber moved to reject all bidders for the Pleasant View Pavilion in Pleasant View Park, 4901 W. Evergreen Street (Project 2018-7) and further that staff be directed to continue to work with the Architect to review design component costs in preparation for rebidding in the winter. Seconded by Alderman Taylor. Alderman Barber withdrew his motion with no objections from the Common Council.

Alderwoman Wilhelm then moved to reject the single bid that was received for the Pleasant View Pavilion in Pleasant View Park, 4901 W. Evergreen Street (Project 2018-7) based on fiscal responsible construction needs, and further to direct staff to research prefab facilities and work with the architect to review design component costs in preparation for rebidding in the winter, and bring the prefab and redesign components back to the Common Council prior to rebidding. Seconded by Alderman Taylor. All voted Aye; motion carried.

EMPLOYEE HEALTH     G.12.  
INSURANCE PLAN  
BENEFITS

Alderman Barber moved to establish the primary health insurance plan benefits, effective January 1, 2019, as per HDHP (HSA) Option #2, and a second plan alternative as per "Traditional Plan Option #2", both on the "2019 Alternative Plan Designs" handout and to direct the Director of Administration to proceed with implementation of the plans, to develop necessary implementation steps and contracts, and to authorize the Director of Administration to make such related changes to the Employee Handbook as he determines is necessary. Seconded by Alderman Taylor. On roll call, Alderman Dandrea, Alderwoman Wilhelm, Alderman Taylor, and Alderman Barber voted Aye; Alderman Mayer and Alderman Nelson voted No. Motion carried.



2019 MAYOR'S  
RECOMMENDED  
BUDGET

- G.9. Alderman Dandrea moved to forward consideration of the Mayor's 2019 Recommended Budget to the Committee of the Whole. Seconded by Alderman Barber. All voted Aye; motion carried.

LICENSES AND  
PERMITS

- H. Alderman Taylor moved to approve the following:  
Grant Operators' licenses to Todd P. Kalmerton, 5881 Tower Rd., Greendale, pending proof of schooling; Troy M. Bittenbender, 1274 Knollwood Cir., Crystal Lake IL 60014; Mary E. Furey, 3333 5th Ave., South Milwaukee; Peter S. Gulowski, 7368 Brunn Dr., Franklin; Sally A. Schroeder, 12152 W. Woodcrest Cir., Franklin; Ann M. Thaler, 9044 W. Elm Ct., Franklin; and  
Hold for appearance the Operator's license application of Heather L. Stornello, 1509 Nicholson Ave., South Milwaukee;  
Grant Change of Agent for Mega Marts, LLC, Jennifer A. Weed, 4118 Washington Rd., Kenosha.  
Seconded by Alderman Nelson. All voted Aye; motion carried.

VOUCHERS AND  
PAYROLL

- I. Alderman Dandrea moved to approve the following: City vouchers with an ending date of September 13, 2018 in the amount of \$920,218.55; and payroll dated September 14, 2018 in the amount of \$387,480.64 and payments of the various payroll deductions in the amount of \$207,172.63 plus City matching payments; and estimated payroll dated September 28, 2018 in the amount of \$404,000.00 and payments of the various payroll deductions in the amount of \$455,000.00 plus City matching payments; and property tax payments and settlements with an ending date of September 13, 2018 in the amount of \$12,943.07. Seconded by Alderman Barber. On roll call, all voted Aye. Motion carried.

CLOSED SESSION  
POTENTIAL  
ACQUISITION OF  
PROPERTIES FOR  
PUBLIC PARK  
PURPOSES

- G.13. Alderman Mayer moved to enter closed session at 9:26 p.m. pursuant to Wis. Stat. § 19.85(1)(e), for market competition and bargaining reasons, to consider the potential acquisition of properties to be used for public park purposes in the City pursuant to the May 1, 2018 Common Council action upon the Parks Commission recommendation to move forward Council action also changed the status of the Neighborhood Park Land Acquisition project in the 2018 Capital Improvement Fund to an "approved project", and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate. Seconded by Alderman Barber. On roll call, Alderman Dandrea, Alderman Mayer, Alderwoman Wilhelm, Alderman Barber, and Alderman Nelson voted Aye; Alderman Taylor Abstained. Motion carried.

Alderman Taylor left the meeting at 9:27 p.m.

Upon reentering open session at 9:50 p.m., Alderman Nelson moved to direct the City Attorney to proceed as discussed in closed session. Seconded by Alderman Mayer. Alderman Mayer, Alderwoman Wilhelm, Alderman Barber, and Alderman Nelson voted Aye; Alderman Dandrea voted No. Motion carried.

ADJOURNMENT

- J. Alderman Nelson moved to adjourn the regular meeting of the Common Council at 9:52 p.m. Seconded by Alderman Dandrea. All voted Aye; motion carried.

<b>APPROVAL</b>  <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <i>10/02/2018</i>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>FRANKLIN POLICE DEPARTMENT DONATIONS</b>	<b>ITEM NUMBER</b>  <i>G. I.</i>
<p>The Franklin Police Department has received the following donation:</p> <p><u>K9 Donation</u> Franklin Police Citizen Academy Alumni Association - \$4,000</p> <p><b>COUNCIL ACTION REQUESTED</b></p> <p>Respectfully request that this donation be approved for deposit into the Police K9 Donation Account.</p>		

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STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

*Draft 9/27/18*

ORDINANCE NO. 2018-\_\_\_\_\_

AN ORDINANCE TO CREATE §183-30.F. OF THE MUNICIPAL CODE REGARDING  
LOITERING OR PROWLING GENERALLY

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WHEREAS, Chapter 183. Orderly Conduct, Article XI. Loitering, of the Municipal Code, having been reviewed by the Chief of Police and the Chief having considered further provisions to regulate a process requiring compliance by a person in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity; and

WHEREAS, the Chief of Police and Police Department staff having recommended an amendment to the Municipal Code to provide further protection for the health, safety and welfare of the community.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1:           §183-30.F. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

F. Loitering or prowling generally. No person shall loiter or prowl in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself/herself or manifestly endeavors to conceal himself/herself or any object. Unless flight by the actor or other circumstances makes it impracticable, a peace officer shall prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him/her to identify himself/herself and explain his/her presence and conduct. No person shall be convicted of an offense under this section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.

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

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

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

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

APPROVED:

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

ATTEST:

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

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

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<b>APPROVAL</b> <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> 10/02/18
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A CONSERVATION EASEMENT FOR AND AS PART OF THE REVIEW AND APPROVAL OF LOT 2 OF A CERTIFIED SURVEY MAP FOR PROPERTY LOCATED AT 2925 AND 2939 WEST ACRE AVENUE (DAVID &amp; RHONDA L. DRAGER, APPLICANT)</b>	<b>ITEM NUMBER</b>  <i>G. 3.</i>

At its April 4, 2016 meeting, the Common Council approved Resolution No. 2016-7185 approving a 2 lot Certified Survey Map for the subject property. Condition #6 of that Resolution required that a Conservation Easement be submitted for review and approval by the Common Council and recorded with the Milwaukee County Register of Deeds Office.

The applicant has now submitted the Conservation Easement for Lot 2 of the subject Certified Survey Map. It can be noted that Lot 1 of the subject Certified Survey Map has been sold, and that owner and Mr. and Mrs. Drager are working on the Conservation Easement for that lot separately, which should be submitted shortly.

City Development staff recommends approval of a resolution authorizing certain officials to accept a conservation easement for and as part of the review and approval of Lot 2 of a certified survey map for property located at 2925 and 2939 West Acre Avenue (David & Rhonda L. Drager, Applicant), subject to technical corrections by staff.

#### **COUNCIL ACTION REQUESTED**

A motion to adopt Resolution No. 2018-\_\_\_\_\_, authorizing certain officials to accept a conservation easement for and as part of the review and approval of Lot 2 of a certified survey map for property located at 2925 and 2939 West Acre Avenue (David & Rhonda L. Drager, Applicant), subject to technical corrections by the staff.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2018-\_\_\_\_\_

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO  
ACCEPT A CONSERVATION EASEMENT FOR AND AS PART  
OF THE REVIEW AND APPROVAL OF LOT 2 OF A CERTIFIED SURVEY MAP FOR  
PROPERTY LOCATED AT 2925 AND 2939 WEST ACRE AVENUE (DAVID &  
RHONDA L. DRAGER, APPLICANT)

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WHEREAS, the Plan Commission having recommended approval a Certified Survey Map upon the application of David & Rhonda L. Drager, on April 4, 2016, and the Plan Commission having conditioned approval thereof in part upon Common Council approval of a Conservation Easement to protect the woodland grove on the site; and

WHEREAS, §15-7.0702Q. and §15-9.0309D. of the Unified Development Ordinance requires the submission of a Natural Resource Protection Plan in the Certified Survey Map review process and the Unified Development Ordinance requires conservation easements to be imposed for natural resource features identified within such Plan to protect such features, all as part of the approval process for a Certified Survey Map; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Conservation Easement submitted by David & Rhonda L. Drager, in the form and content as annexed hereto, be and the same is hereby approved; and the Mayor and City Clerk are hereby authorized to execute such Easement as evidence of the consent to and acceptance of such easement by the City of Franklin.

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

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS  
TO ACCEPT A CONSERVATION EASEMENT  
DAVID & RHONDA L. DRAGER  
RESOLUTION NO. 2018-\_\_\_\_\_

Page 2

APPROVED:

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

ATTEST:

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

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

## CONSERVATION EASEMENT

Lot 2 of Certified Survey Map No. 8794

This Conservation easement is made by and between the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "Grantee," and David & Rhonda L. Drager, owners of Lot 2 of Certified Survey Map No. 8794, hereinafter referred to as "Grantor," and shall become effective upon the recording of this Grant of Conservation Easement, together with the Acceptance following, with the Office of the Register of Deeds for Milwaukee County, pursuant to §700.40(2)(b) of the Wisconsin Statutes.

### WITNESSETH

WHEREAS, Grantor is the owner of Lot 2 in fee simple of certain real property, located within the City of Franklin, Milwaukee County, Wisconsin, being a part of the Southeast ¼ of the Southeast ¼ of Section 13, Township 5 North, Range 21 East, described in Exhibit A attached hereto and hereby made a part hereof (protected property); and

WHEREAS, the Grantor desires and intends that the natural elements and the ecological and aesthetic values of the protected property including, without limitation, mature woodland grove and refer to Natural Resource Investigation by Tina Myers of RA National Smith, Inc., dated June 9th 2015, with all applicable revision dates, which is located in the office of the Department of City Development, be preserved and maintained by the continuation of land use that will not interfere with or substantially disrupt the natural elements or the workings of natural systems; and

WHEREAS, Grantee is a "holder", as contemplated by §700.40(0)(b)1. of the Wisconsin Statutes, whose purposes include, while exercising regulatory authority granted to it, *inter alia*, under §62.23 and §236.45 of the Wisconsin Statutes, the conservation of land, natural areas, open space, and water areas; and

WHEREAS, the Grantor and Grantee, by the conveyance to the Grantee of the conservation easement on, over, and across the protected property, desire to conserve the natural values thereof and prevent the use or development of the protected property for any purpose or in any manner inconsistent with the terms of this conservation easement; and

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

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

Grantee's rights hereunder shall consist solely of the following:

1. To view the protected property in its natural, scenic, and open condition;
2. To enforce by proceeding at law or in equity the covenants subsequently set forth, including, and in addition to all other enforcement proceedings, proceedings to obtain all penalties and remedies set forth under Division 15-9.0500 of the Unified Development Ordinance of the City of Franklin, as amended from time to time, any violation of the covenants subsequently set forth being and constituting a violation of such Unified Development Ordinance, as amended from time to time, or such local applicable ordinance as may be later adopted or in effect to enforce such covenants or the purposes for which they are made, it being agreed that there shall be no waiver or forfeiture of the Grantee's right to insure compliance with the covenants and conditions of this grant by reason of any prior failure to act; and
3. To enter the protected property at all reasonable times for the purpose of inspecting the protected property to determine if the Grantor is complying with the covenants and conditions of this grant.

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

1. Construct or place buildings or any structure;
2. Construct or make any improvements, unless, notwithstanding Covenant 1 above, the improvement is specifically and previously approved by the Common Council of the City of Franklin, upon the advice of such other persons, entities, and agencies as it may elect; such improvements as may be so approved being intended to enhance the resource value of the protected property to the environment or the public and including, but not limited to animal and bird feeding stations,

park benches, the removal of animal blockage of natural drainage or other occurring blockage of natural drainage, and the like;

3. Excavate, dredge, grade, mine, drill, or change the topography of the land or its natural condition in any manner, including any cutting or removal of vegetation, except for the removal of dead or diseased trees;
4. Conduct any filling, dumping, or depositing of any material whatsoever, including, but not limited to soil, yard waste, or other landscape materials, ashes, garbage, or debris;
5. Plant any vegetation not native to the protected property or not typical wetland vegetation;
6. Operate snowmobiles, dune buggies, motorcycles, all-terrain vehicles or any other types of motorized vehicles.

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

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

To Grantor:  
David & Rhonda L. Drager  
5640 S. 92nd Street  
Hales Corner, WI 53130

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

In witness whereof, the grantor has set its hand and seals this on this date of 21<sup>st</sup> September, 2018.

David & Rhonda L. Drager

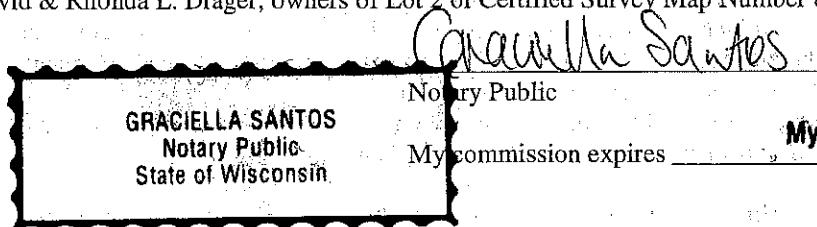
By: David & Rhonda L. Drager  
David & Rhonda L. Drager, Property Owners

STATE OF WISCONSIN )  
) ss  
COUNTY OF MILWAUKEE )

This instrument was acknowledged before me on the 21<sup>st</sup> day of September, A.D. 2018 by

David & Rhonda L. Drager

To me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said David & Rhonda L. Drager, owners of Lot 2 of Certified Survey Map Number 8794



My commission expires

My Commission Expires  
October 16, 2020

### Acceptance

The undersigned does hereby consent to and accepts the Conservation Easement granted and conveyed to it under and pursuant to the foregoing Grant of Conservation Easement. In consideration of the making of such Grant Of Conservation Easement, the undersigned agrees that this acceptance shall be binding upon the undersigned and its successors and assigns and that the restrictions imposed upon the protected property may only be released or waived in writing by the Common Council of the City of Franklin, as contemplated by §236.293 of the Wisconsin Statutes.

In witness whereof, the undersigned has executed and delivered this acceptance on the \_\_\_\_ day of \_\_\_\_\_, A.D.20\_\_.

#### CITY OF FRANKLIN

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

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

STATE OF WISCONSIN       )  
  ) ss  
COUNTY OF MILWAUKEE    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_, the above named Stephen R. Olson, Mayor and Sandra L. Wesolowski, City Clerk, of the above named municipal corporation, City of Franklin, to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they executed the foregoing instrument as such officers as the Deed of said municipal corporation by its authority and pursuant to Resolution No. \_\_\_\_\_, adopted by its Common Council on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

This instrument was drafted by the City of Franklin.

Approved as to contents:

\_\_\_\_\_  
Joel Dietl, Planning Manager  
Department of City Development

\_\_\_\_\_  
Date

Approved as to form only:

\_\_\_\_\_  
Jesse A. Wesolowski  
City Attorney

\_\_\_\_\_  
Date

## MORTGAGE HOLDER CONSENT

The undersigned, (name of mortgagee), a Wisconsin banking corporation ("Mortgagee"), as Mortgagee under that certain Mortgage encumbering the Property and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin, on \_\_\_\_\_, 20\_\_\_\_, as Document No. \_\_\_\_\_, hereby consents to the execution of the foregoing easement and its addition as an encumbrance title to the Property.

IN WITNESS WHEREOF, Mortgagee has caused these presents to be signed by its duly authorized officers, and its corporate seal to be hereunto affixed, as of the day and year first above written.

Name of Mortgagee  
a Wisconsin Banking Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

STATE OF WISCONSIN )

)ss

COUNTY OF MILWAUKEE )

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally appeared name of officer of mortgagee, the (title of officer, i.e.: VP) of (name of mortgagee), a Wisconsin banking corporation, and acknowledged that (s)he executed the foregoing instrument on behalf of said corporation, by its authority and for the purposes therein contained.

Name: \_\_\_\_\_

Notary Public, State of Wisconsin

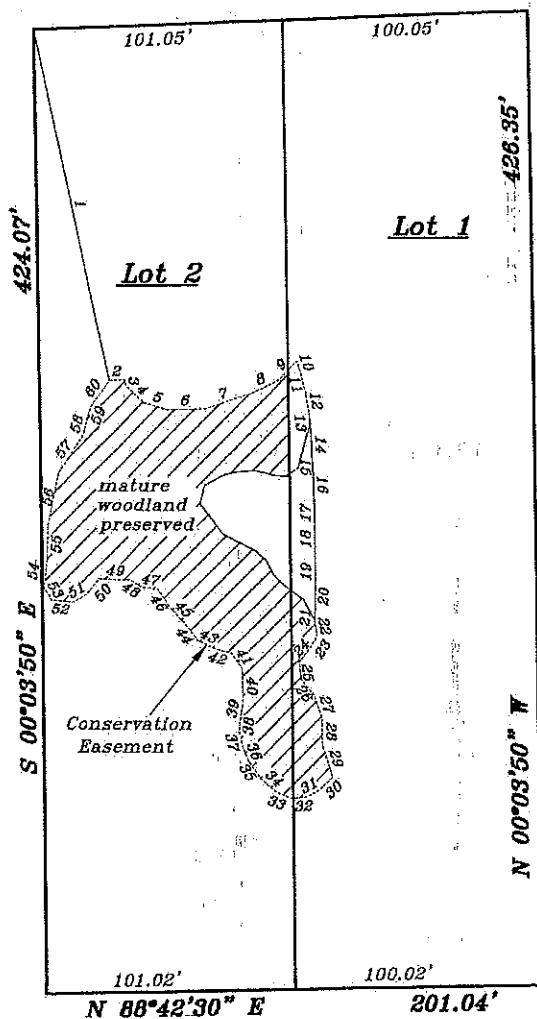
My commission expires \_\_\_\_\_

# Conservation Easement

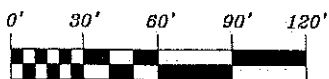
## Exhibit A

Being a part of the Southeast 1/4 of the Southeast 1/4 of Section 13, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

### Conservation Easement



Scale:  
1"=60'



Graphic Scale  
Scale: 1"=60'

### Conservation Easement

LINE	LENGTH	BEARING
1	146.40	S11°18'51"E
2	6.21	N88°18'31"E
3	2.15	S09°47'26"E
4	10.21	S46°29'55"E
5	9.77	S72°46'39"E
6	15.23	N89°18'48"E
7	19.02	N71°24'46"E
8	13.47	N64°52'25"E
9	10.52	N43°14'46"E
10	3.54	S17°39'46"E
11	9.12	S14°07'33"E
12	9.23	S08°42'05"E
13	7.83	S05°43'37"E
14	9.82	S01°07'17"E
15	6.95	S00°55'20"E
16	11.33	S03°10'12"E
17	10.75	S00°04'45"E
18	10.75	S00°23'14"W
19	15.91	S00°14'10"W
20	5.16	S01°51'50"W
21	7.35	S00°16'32"W
22	4.91	S09°07'17"E
23	5.95	S30°40'34"W
24	6.89	S37°24'13"W
25	7.31	S06°52'24"E
26	8.72	S36°37'45"E
27	9.10	S18°21'19"E
28	10.58	S00°21'37"E
29	13.87	S17°19'33"E
30	7.31	S47°02'32"W
31	6.63	S60°39'31"W
32	5.90	S87°49'15"W
33	6.33	N88°50'54"W
34	9.09	N48°10'43"W
35	8.08	N33°14'47"W
36	5.07	N22°28'30"W
37	7.23	N13°19'46"W
38	5.96	N05°14'23"E
39	5.49	N11°31'19"E
40	14.26	N00°39'18"W
41	7.74	N34°55'28"W
42	7.78	N73°35'12"W
43	7.04	N62°01'30"W
44	8.35	N34°18'56"W
45	9.34	N41°37'24"W
46	8.43	N32°58'32"W
47	6.52	N83°14'29"W
48	5.56	N57°09'01"W
49	12.62	N88°07'09"W
50	8.17	S38°30'29"W
51	6.26	S60°11'43"W
52	9.18	N85°45'59"W
53	5.65	N31°21'45"W
54	13.88	N05°59'26"E
55	11.74	N01°51'46"E
56	22.30	N11°46'19"E
57	18.75	N34°13'43"E
58	7.26	N13°58'04"E
59	4.90	N20°58'24"E
60	12.62	N34°31'37"E



<b>APPROVAL</b> <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> 10/02/18
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>RESOLUTION IMPOSING CONDITIONS AND RESTRICTIONS FOR THE APPROVAL OF A SPECIAL USE FOR A GAS STATION AND CONVENIENCE STORE USE FOR PROPERTY LOCATED AT 11123 WEST FOREST HOME AVENUE (JUHAR, LLC D/B/A MIDTOWN GAS &amp; LIQUOR, APPLICANT)</b>	<b>ITEM NUMBER</b>  <i>G.4.</i>

At the July 19, 2018 meeting of the Plan Commission, following a properly noticed public hearing, the following action was approved: move to postpone and continue the subject matter and public hearing to September 6, 2018.

At the September 6, 2018 meeting of the Plan Commission, following the continuation of a properly noticed public hearing, the following action was approved: move to recommend approval of a resolution imposing conditions and restrictions for the approval of a Special Use for a gas station and convenience store use upon property located at 11123 West Forest Home Avenue, striking "and outside parking and storage area for semi-tractor trailers and other vehicles" from Condition No. 3, removing Condition Nos. 4, 5, 6, 7, 8, 9 and 11, and adding a condition stating that no truck parking or outdoor storage shall be allowed onsite.

Per the above motion, Staff struck "and outside parking and storage area for semi-tractor trailers and other vehicles" from Condition Nos. 1 and 3, removed Condition Nos. 4, 5, 6, 7, 8, 9 and 11, and added the following condition to the draft resolution: "No overnight truck parking or outdoor storage shall be allowed onsite".

At the September 18, 2018 meeting of the Common Council, the following action was approved: move to refer back to staff the Resolution Imposing Conditions and Restrictions for the Approval of a Special Use for a Gas Station and Convenience Store for Use Property Located at 11123 West Forest Home Avenue (Jujhar, LLC, d/b/a Midtown Gas & Liquor, Applicant).

#### **COUNCIL ACTION REQUESTED**

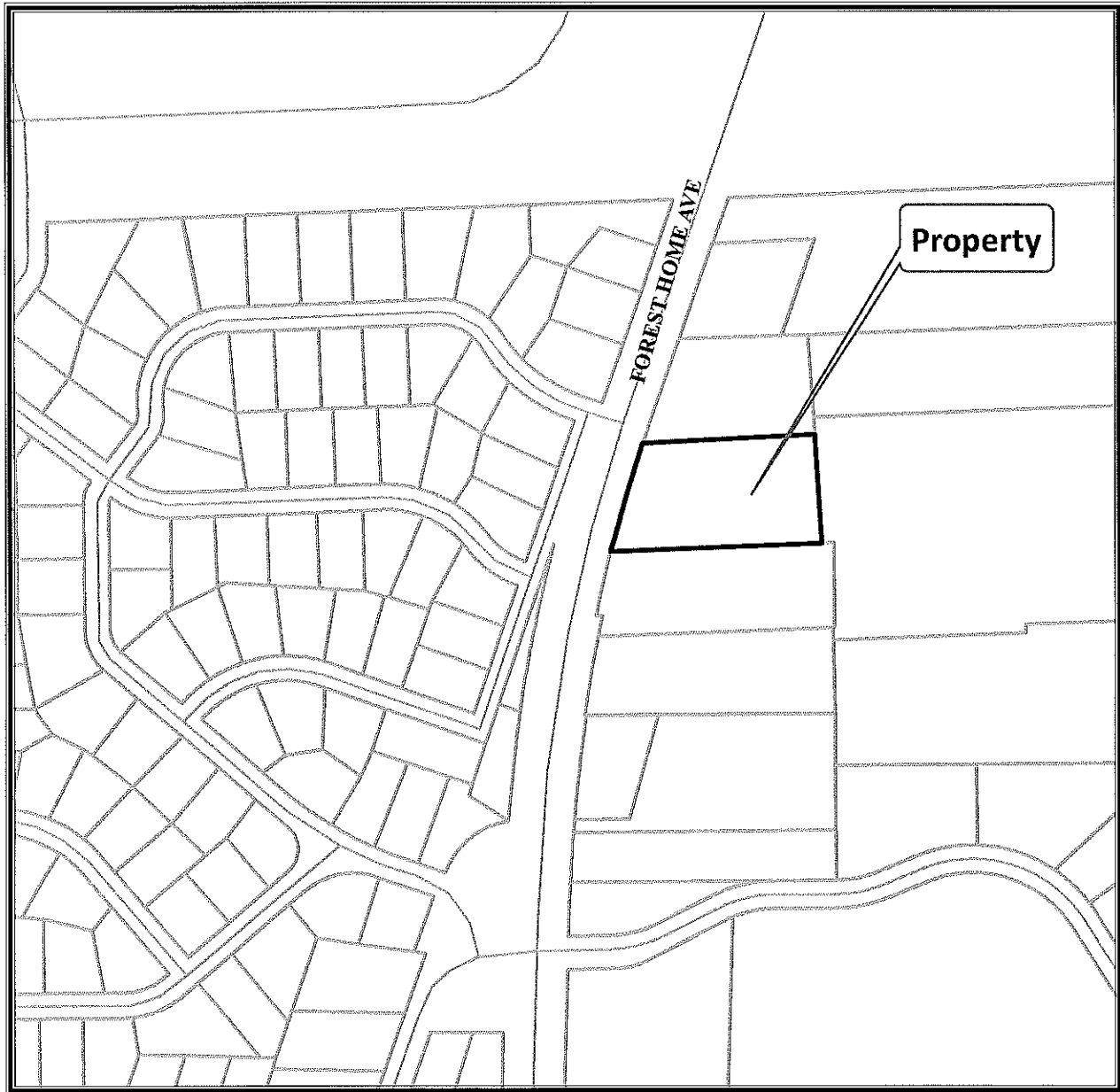
A motion to adopt Resolution No. 2018-\_\_\_\_\_, a resolution imposing conditions and restrictions for the approval of a Special Use for a gas station and convenience store for use property located at 11123 West Forest Home Avenue (Jujhar, LLC d/b/a Midtown Gas & Liquor, Applicant).

Or

Action on the above item as the Common Council deems appropriate.



11123 W. Forest Home Ave.  
TKN 704 9978 003



**Planning Department**  
**(414) 425-4024**

0 230 460 920 Feet

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



STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2018-\_\_\_\_\_

A RESOLUTION IMPOSING CONDITIONS AND RESTRICTIONS  
FOR THE APPROVAL OF A SPECIAL USE FOR A GAS STATION AND  
CONVENIENCE STORE USE UPON PROPERTY LOCATED AT  
11123 WEST FOREST HOME AVENUE  
(JUJHAR, LLC D/B/A MIDTOWN GAS & LIQUOR, APPLICANT)

---

WHEREAS, Jujhar, LLC d/b/a Midtown Gas & Liquor, having petitioned the City of Franklin for the approval of a Special Use within an M-1 Limited Industrial District and C-1 Conservancy District under Standard Industrial Classification Title No. 5541 "Gasoline Service Stations", to allow for an existing gas station and convenience store use [the existing gas station and convenience store is a legal non-conforming use and the proposed Special Use approval will make the use conforming] and for an outside parking and storage area for semi-tractor trailers and other vehicles over 8,000 pounds rated Gross Vehicle Weight use, upon property located at 11123 West Forest Home Avenue, bearing Tax Key No. 704-9978-003, more particularly described as follows:

Parcel 2 of Certified Survey Map No. 3988, being a part of the Northeast 1/4 of the Northeast 1/4 of Section 6, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin; and

WHEREAS, such petition having been duly referred to the Plan Commission of the City of Franklin for a public hearing, pursuant to the requirements of §15-9.0103D. of the Unified Development Ordinance, and a public hearing having been held before the Plan Commission on the 19th day of July, 2018, and the Plan Commission thereafter having determined to recommend that the proposed Special Use be approved, subject to certain conditions, and the Plan Commission further finding that the proposed Special Use upon such conditions, pursuant to §15-3.0701 of the Unified Development Ordinance, will be in harmony with the purposes of the Unified Development Ordinance and the Comprehensive Master Plan; that it will not have an undue adverse impact upon adjoining property; that it will not interfere with the development of neighboring property; that it will be served adequately by essential public facilities and services; that it will not cause undue traffic congestion; and that it will not result in damage to property of significant importance to nature, history or the like; and

WHEREAS, the Common Council having received such Plan Commission recommendation and also having found that the proposed Special Use, subject to conditions, meets the standards set forth under §15-3.0701 of the Unified Development Ordinance.

JUJHAR, LLC D/B/A MIDTOWN GAS & LIQUOR – SPECIAL USE  
RESOLUTION NO. 2018-\_\_\_\_\_

Page 2

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the petition of Jujhar, LLC d/b/a Midtown Gas & Liquor, for the approval of a Special Use for the property particularly described in the preamble to this Resolution, be and the same is hereby approved, subject to the following conditions and restrictions:

1. That this Special Use is approved only for the use of the subject property by Jujhar, LLC d/b/a Midtown Gas & Liquor, successors and assigns, as a gas station and convenience store use, which shall be developed in substantial compliance with, and operated and maintained by Jujhar, LLC d/b/a Midtown Gas & Liquor, pursuant to those plans City file-stamped July 9, 2018 and annexed hereto and incorporated herein as Exhibit A.
2. Jujhar, LLC d/b/a Midtown Gas & Liquor, successors and assigns, shall pay to the City of Franklin the amount of all development compliance, inspection and review fees incurred by the City of Franklin, including fees of consults to the City of Franklin, for the Midtown Gas & Liquor gas station and convenience store and outside parking and storage area for semi-tractor trailers and other vehicles, within 30 days of invoice for same. Any violation of this provision shall be a violation of the Unified Development Ordinance, and subject to §15-9.0502 thereof and §1-19. of the Municipal Code, the general penalties and remedies provisions, as amended from time to time.
3. The approval granted hereunder is conditional upon Jujhar, LLC d/b/a Midtown Gas & Liquor and the gas station and convenience store use for the property located at 11123 West Forest Home Avenue: (i) being in compliance with all applicable governmental laws, statutes, rules, codes, orders and ordinances; and (ii) obtaining all other governmental approvals, permits, licenses and the like, required for and applicable to the project to be developed and as presented for this approval.
4. A dumpster enclosure in accordance with Section 15-3.0803I. of the Unified Development Ordinance shall be installed on the property to screen the dumpster being stored in the open on the south side of the building.
5. No overnight truck parking or outdoor storage shall be allowed onsite.

BE IT FURTHER RESOLVED, that in the event Jujhar, LLC d/b/a Midtown Gas & Liquor, successors or assigns, or any owner of the subject property, does not comply with one or any of the conditions and restrictions of this Special Use Resolution, following a ten (10) day notice to cure, and failure to comply within such time period, the Common Council, upon notice and hearing, may revoke the Special Use permission granted under this Resolution.

JUJHAR, LLC D/B/A MIDTOWN GAS & LIQUOR – SPECIAL USE  
RESOLUTION NO. 2018-\_\_\_\_\_

Page 3

BE IT FURTHER RESOLVED, that any violation of any term, condition or restriction of this Resolution is hereby deemed to be, and therefore shall be, a violation of the Unified Development Ordinance, and pursuant to §15-9.0502 thereof and §1-19. of the Municipal Code, the penalty for such violation shall be a forfeiture of no more than \$2,500.00, or such other maximum amount and together with such other costs and terms as may be specified therein from time to time. Each day that such violation continues shall be a separate violation. Failure of the City to enforce any such violation shall not be a waiver of that or any other violation.

BE IT FURTHER RESOLVED, that this Resolution shall be construed to be such Special Use Permit as is contemplated by §15-9.0103 of the Unified Development Ordinance.

BE IT FURTHER RESOLVED, pursuant to §15-9.0103G. of the Unified Development Ordinance, that the Special Use permission granted under this Resolution shall be null and void upon the expiration of one year from the date of adoption of this Resolution, unless the Special Use has been established by way of the issuance of an occupancy permit for such use.

BE IT FINALLY RESOLVED, that the City Clerk be and is hereby directed to obtain the recording of a certified copy of this Resolution in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

APPROVED:

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

ATTEST:

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

JUJHAR, LLC D/B/A MIDTOWN GAS & LIQUOR – SPECIAL USE  
RESOLUTION NO. 2018-\_\_\_\_\_

Page 4

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

## Orrin Sumwalt

---

**From:** stackgroup@aol.com  
**Sent:** Thursday, September 27, 2018 4:00 PM  
**To:** Orrin Sumwalt  
**Subject:** 11123 W Forest Home  
**Attachments:** 11123 W Forest Home Avenue\_Site Plan\_09-27-18.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Mr. Sumwalt,

Attached is a PDF of the Site Plan for the proposed alterations and parking approval for the property located at 11123 W. Forest Home Avenue. The owner is requesting the approval to allow the outdoor parking of 12 trucks, including 10 semi-trailer trucks and 2 box trucks. The areas to receive new landscape screening are noted, including a very large green space that provides a heavy landscape buffer between the street and the proposed parking area. A new trash enclosure is also proposed to be constructed with this plan.

We will be submitting full required documentation of this proposal prior to the deadline for the meeting to be held on October 12th.

Please let me know if there are any questions.

Tom Stachowiak

Stack Design Group  
Direct: 414-807-8033

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S I T E   P L A N  
1-10-0



WEST FOREST HOME AVENUE

266.32

PLANTING/SCREENING:



PROPOSED  
LANDSCAPE  
PLANTER

## Existing Building

### Existing Building

480.04

EXISTING  
ELECTRIC  
TOWER

EXISTING  
PAVED  
SURFACE

NOT TO BE USED FOR  
TRUCK PARKING

**500.08'**

259.35'

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# CITY OF FRANKLIN

## REPORT TO THE PLAN COMMISSION

Meeting of July 19, 2018

### Special Use

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**RECOMMENDATION:** City Development Staff recommends the Plan Commission postpone and continue the subject matter and public hearing to the September 6, 2018 Plan Commission meeting.

---

<b>Project Name:</b>	Midtown Gas & Liquor Special Use
<b>Project Address:</b>	11123 West Forest Home Avenue
<b>Applicant:</b>	Jujhar, LLC
<b>Owners (property):</b>	Jujhar, LLC
<b>Current Zoning:</b>	M-1 Limited Industrial District
<b>2025 Comprehensive Master Plan</b>	Industrial
<b>Use of Surrounding Properties:</b>	Industrial (to the north, south, and east) and single-family residential (to the west).
<b>Applicant Action Requested:</b>	Recommendation of approval for the proposed Special Use for Jujhar, LLC to operate at 11123 West Forest Home Avenue.

---

#### **INTRODUCTION:**

On May 22, 2018, Hardip Bhatti submitted a Special Use application on behalf of Jujhar, LLC requesting approval for an existing gas station and convenience store under Standard Industrial Classification (SIC) Title No. 5541, which is allowed as a Special Use in the M-1 Limited Industrial District. The existing gas station and convenience store is a legal non-conforming use and the proposed Special Use approval will make the use conforming.

The applicant is also requesting approval for an outside parking and storage area for semi-tractor trailers and other commercial and industrial equipment including other vehicles over 8,000 lbs. rated Gross Vehicle Weight. According to Section 15-5.0202(G)(3) of the City of Franklin Unified Development Ordinance, any overnight parking of any vehicle over 8,000 pounds rated Gross Vehicle Weight, in conjunction with a commercial or industrial use, shall be allowed only with a Special Use.

#### **HISTORY:**

Midtown Gas & Liquor has had overnight parking of semi-tractors and trailers and unscreened outdoor storage at 11123 W. Forest Home Avenue since September of 2017, without any approvals from the City of Franklin. In order to address this situation, Staff has been working with Jujhar, LLC dba Midtown Gas & Liquor on obtaining Special Use approval.

**PROJECT DESCRIPTION AND ANALYSIS:**

Staff recommends the item be tabled to allow the applicant additional time to work with Staff and the District Alderman to revise their plans as necessary, prior to submitting for Plan Commission and Common Council review.

**STAFF RECOMMENDATION:**

City Development Staff recommends the Plan Commission postpone and continue the subject matter and public hearing to the September 6, 2018 Plan Commission meeting.

# Project Summary

Proposed parking lot for tractor trailers utilizing A T C easement and vehicle and trailer storage behind proposed fence. (green line on Natural Resource Map)

Whole parking area to be covered by gravel. Berm to be constructed at buffer zone for creek protection

Construction cost for berm  
\$2500. dollars.

Construction cost for eight foot tall wooden fence with six foot tall sliding chain link gates  
11,500 dollars.

Franklin

JUL 09 2018

City Development

**DIVISION 15-3.0700**

**SPECIAL USE STANDARDS AND REGULATIONS**

**SECTION 15-3.0701**

**GENERAL STANDARDS FOR SPECIAL USES**

- A. **General Standards.** No special use permit shall be recommended or granted pursuant to this Ordinance unless the applicant shall establish the following:

1. **Ordinance and Comprehensive Master Plan Purposes and Intent.** The proposed use and development will be in harmony with the general and specific purposes for which this Ordinance was enacted and for which the regulations of the zoning district in question were established and with the general purpose and intent of the City of Franklin Comprehensive Master Plan or element thereof.

*Response: Agreed.*

2. **No Undue Adverse Impact.** The proposed use and development will not have a substantial or undue adverse or detrimental effect upon or endanger adjacent property, the character of the area, or the public health, safety, morals, comfort, and general welfare and not substantially diminish and impair property values within the community or neighborhood.

*Response: Agreed. Fencing to block view of trailer storage*

3. **No Interference with Surrounding Development.** The proposed use and development will be constructed, arranged, and operated so as not to dominate the immediate vicinity or to interfere with the use and development of neighboring property in accordance with the applicable zoning district regulations.

*Response: Truck parking and storage for trailers*

4. **Adequate Public Facilities.** The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities including public water supply system and sanitary sewer, police and fire protection, refuse disposal, public parks, libraries, schools, and other public facilities and utilities or the applicant will provide adequately for such facilities.

*Response: Restrooms available in gas station.  
Plenty of refuse (garbage) containers available at pumps.*

5. **No Traffic Congestion.** The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through residential streets. Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

*Response: Agreed.*

6. **No Destruction of Significant Features.** The proposed use and development will not result in the destruction, loss, or damage of any natural, scenic, or historic feature of significant importance.

*Response: Agreed.*

7. **Compliance with Standards.** The special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the Common Council pursuant to the recommendations of the Plan Commission. The proposed use and development shall comply with all additional standards imposed on it by the particular provision of this Division and Ordinance authorizing such use.

*Response: Agreed.*

- B. **Special Standards for Specified Special Uses.** When the zoning district regulations authorize a special use in a particular zoning district and that special use is indicated as having special standards, as set forth in Section 15-3.0702 and 15-3.0703 of this Division, a Special Use Permit for such use in such zoning district shall not be recommended or granted unless the applicant shall establish compliance with all such special standards.

*Response: Agreed.*

- C. **Considerations.** In determining whether the applicant's evidence establishes that the foregoing standards have been met, the Plan Commission and the Common Council shall consider the following:

1. **Public Benefit.** Whether and to what extent the proposed use and development at the particular location requested is necessary or desirable to provide a service or a facility that is in the interest of the public convenience or that will contribute to the general welfare of the neighborhood or community.

*Response: Truckers would like to park closer to home.*

2. **Alternative Locations.** Whether and to what extent such public goals can be met by the location of the proposed use and development at some other site or in some other area that may be more appropriate than the proposed site.

*Response: Land has been vacant for some time.*

3. **Mitigation of Adverse Impacts.** Whether and to what extent all steps possible have been taken to minimize any adverse effects of the proposed use and development on the immediate vicinity through building design, site design, landscaping, and screening.

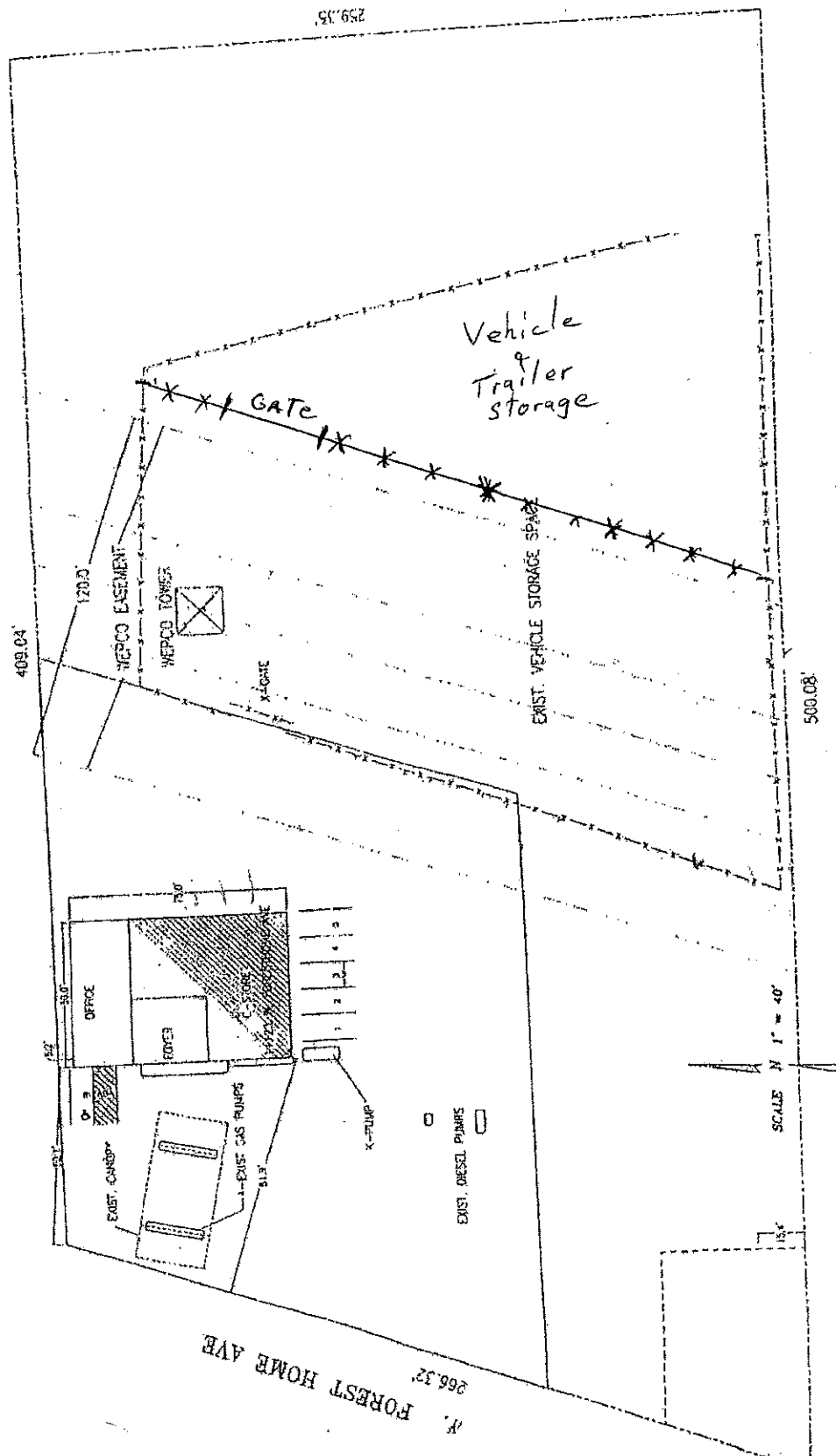
*Fence for vehicle and Trailer storage  
8 feet high.*

**Response:**

4. **Establishment of Precedent of Incompatible Uses in the Surrounding Area.** Whether the use will establish a precedent of, or encourage, more intensive or incompatible uses in the surrounding area.

**Response:** We are already a gas station/convenient store trying to at least stay competitive with National based Stores.



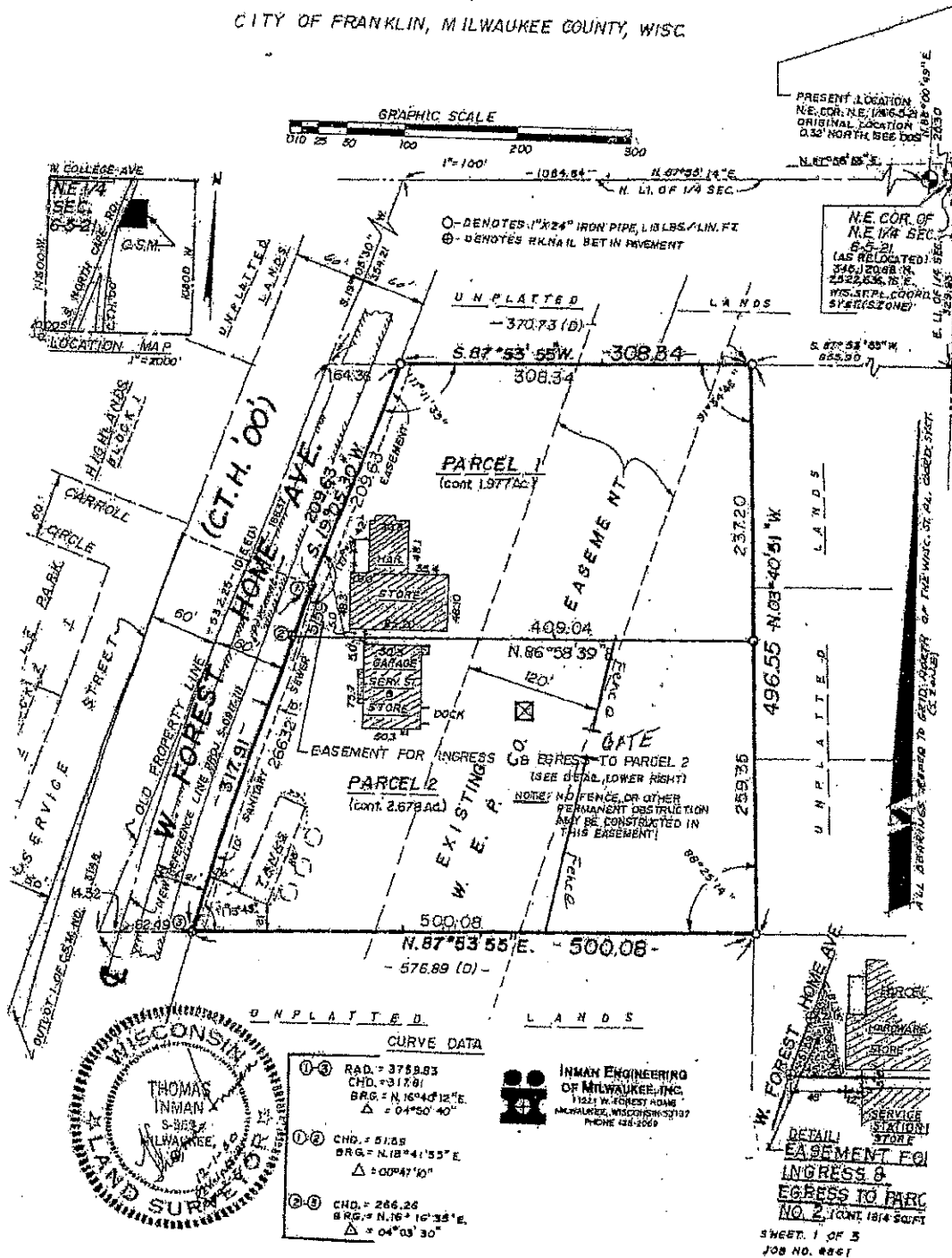


CERTIFIED SURVEY MAP NO. 3988

OF A PART OF THE N.E. 1/4 OF SECTION 6,

T. 5 N., R. 21 E., IN THE

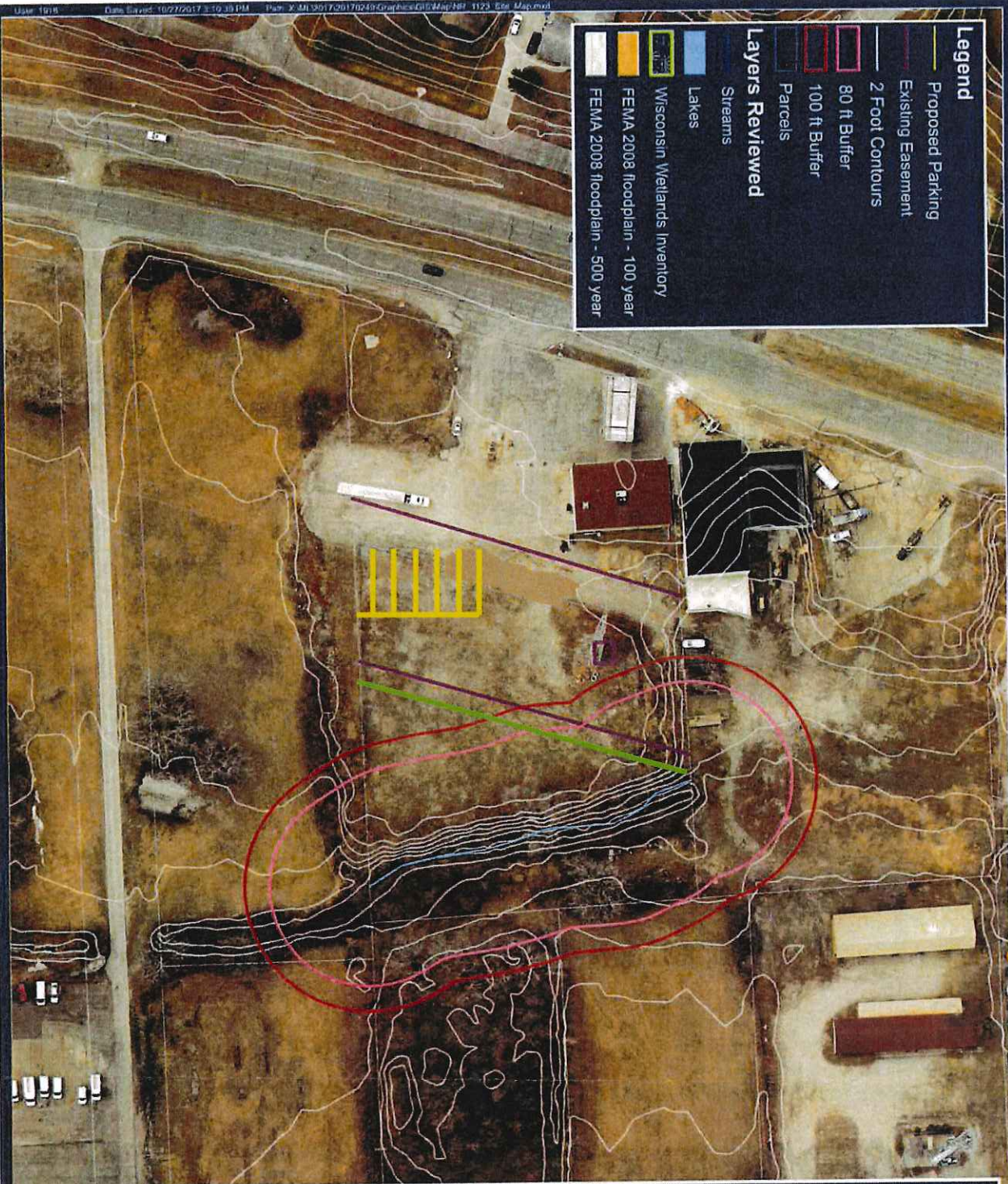
CITY OF FRANKLIN, MILWAUKEE COUNTY, WISC



**Legend**

- Proposed Parking
- Existing Easement
- 2 Foot Contours
- 80 ft Buffer
- 100 ft Buffer
- Parcels
- Streams
- Lakes
- Wisconsin Wetlands Inventory
- FEMA 2008 floodplain - 100 year
- FEMA 2008 floodplain - 500 year

**Layers Reviewed**



**FIGURE 1**  
**GREEN**

**NATURAL RESOURCE MAP**  
**11123 W FOREST HOME AVE**  
CITY OF FRANKLIN  
MILWAUKEE COUNTY, WI

1 in = 100 ft

0 20 40 80  
Feet

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Document No.

AGREEMENT REGARDING INTEREST IN LAND

AGREEMENT made this 13 day of March, 2018 by and between American Transmission Company LLC, a Wisconsin limited liability company, hereinafter referred to as "ATC", and JUJHAR LLC, hereinafter referred to as "Permittee" and/or Owner.

WHEREAS, Permittee is the owner of a portion of the Northeast Quarter of Northeast Quarter (NE ¼ of NE ¼), Lot 2 – CSM 3988, Section 6, T5N-R21E, City of Franklin, Milwaukee County, Wisconsin.

WHEREAS, ATC is the owner of electric line easement rights affecting said land. Said easement rights arise by virtue of that certain easement dated Feb. 1958, granted to Wisconsin Electric Power Company, a Wisconsin corporation, its successors and assigns, which easement rights are set forth in that certain document recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin, on the 24th day of Feb. 1958, as Document No. 3639855, and whereas such easement was assigned to American Transmission Company LLC, a Wisconsin limited liability company, its successors and assigns, in that certain Easement Assignment document recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin, on the 17th day of January 2001, as Document No. 8013166, and

WHEREAS, Permittee desires to erect and maintain fence and parking area (hereinafter "Permittee's Improvement") subject to the above described easement rights owned by ATC, and

WHEREAS, the location of Permittee's Improvement shall be kept in accordance with provisions provided in paragraph 2 below and easement rights described above.

NOW THEREFORE, ATC grants permission to Permittee to erect and maintain Permittee's Improvement as described herein. This permission is given subject to and limited by the following conditions, agreements and stipulations and only insofar as ATC's interests are concerned in said lands.

1. The permission herein granted extends only to the extent of ATC's interests in said easement area and does not relieve Permittee from the responsibility of obtaining permission for the installation of Permittee's Improvement from the owners of other interests in said easement area including but not limited to, the property owners and the owners of other structures, facilities or improvements within said easement area.

2. Permittee agrees that all work performed in proximity to the electric transmission facilities shall comply with all applicable laws, rules and regulations, including but not limited to the O.S.H.A. Construction Industry Standards applicable to safe work practices and the operation of equipment near electrical lines and equipment, and the provisions of the Wisconsin State Electrical Code and any amendments thereto. Permittee further agrees to the following conditions:

The following Guidelines apply:

- No stockpiling or staging of equipment/materials within the easement at any time other than movable parking vehicles and trailers.
- Unobstructed 24/7 ATC access to the easement area must be maintained at all times.
- Exercise caution when working and driving near transmission line structures to avoid damaging the steel members.
- No excavation within 20 feet of the face of any ATC structure.
- Maintain a minimum clearance distance around the face of any ATC of 20 feet.
- No Structures, including street lighting and dumpsters within the easement.
- Electric fields under 138 kV & 230 kV transmission lines can cause induced voltages on ungrounded equipment that is under the line such as larger vehicles). This can be uncomfortable to persons who come in contact with it. Grading field crews are responsible for installing any grounding necessary on their equipment to minimize this issue.

Franklin

JUL 09 2018

City Development

Record this document with the Register of Deeds

Name and Return Address:  
American Transmission Company LLC  
PO Box 6113  
De Pere, WI 54115  
ATTN: Matt Ernst

Tax Parcel Number  
7049978003

- Plans must be submitted to ATC prior to any landscaping, additional, etc. within the easement are reviewed. Only low growing shrubs will be allowed within the easement.
- Maintain a Safe Working Clearance from the 138 kV & 230 kV conductors based on the latest OSHA requirements.
- During snow removal operations, snow shall not be piled under the conductors or near the tower. Piles of snow can create a code violation or create a danger by providing a climbing surface.
- In the event that an ATC field representative needs to be contacted please call Maintenance at: 262-506-6884. Owner agrees to allow ATC onto the property for all repair and maintenance operations 24/7.
- It is understood that there is no new pavement at this time. Any grade changes of +/- one foot within the easement will need to be approved by ATC. New plans must be submitted clearly showing all grade changes before approval can be granted.
- ATC will need access to the easement at all times and any concrete or asphaltic pavement installed must be road rated to withstand the weight of heavy maintenance vehicles. ATC will not be responsible for damage to pavement within it easement.

3. Permittee shall protect, indemnify, save and hold harmless ATC and its affiliated corporations along with its officers, agents and employees from any and all claims, demands, actions, liabilities, costs and expenses (including attorney's fees), which may be made or brought against or incurred by ATC and its affiliated corporations or its officers, agents or employees caused by, arising out of or in any way connected with Permittee's Improvement or use of ATC's easement area, whether or not such injury or damage was caused in part by ATC.

4. In the event it is necessary for ATC to reconstruct, protect, modify, adjust, replace or relocate the electrical transmission facilities located within said easement area due to the construction, operation, maintenance or existence of Permittee's Improvement, Permittee agrees, at its sole discretion, either to remove Permittee's Improvement, or to promptly reimburse ATC for the costs and expenses incurred by ATC as a result thereof.

5. Permittee shall contact Diggers Hotline at (800) 242-8511 at least 3 days prior to any work, excavation or construction within ATC's easement area in order to determine the location of electric, telephone and gas facilities within ATC's easement area and the applicable clearance requirements for work performed in proximity to such facilities.

6. There shall be no interference by Permittee and/or Permittee's contractors or agents with any of ATC's overhead electric transmission facilities located in the easement area. Access shall be maintained to ATC's electrical transmission facilities at all times. ATC shall not, under any circumstances, be liable to Permittee for any damage to Permittee's Improvement occurring during ATC's reconstruction, protection, modification, adjustment, replacement or relocation of the electrical transmission facilities. Placement of Permittee's Improvement in the easement area is at Permittee's sole risk.

7. This permission is given subject to the superior and paramount rights of ATC for the operation, construction, replacement and maintenance of its facilities.

In consideration of the sum of one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ATC does hereby permit and consent to the joint use and occupancy with ATC of the electric line easement described herein so as to enable **JUJHAR LLC** to maintain the one **fence and parking area** within the confines of said electric line easement.

This agreement is binding upon the heirs, successors and assigns of the parties hereto, and shall run with the lands described herein.

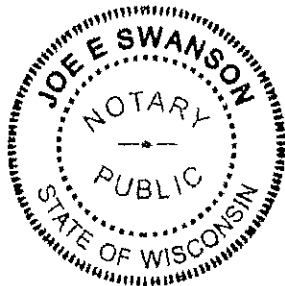
IN WITNESS WHEREOF, this Agreement has been executed the day and date first written above.

By: Hardip Bhatti (SEAL)  
Signature

By: Hardip Bhatti (SEAL)  
Print Name

STATE OF WISCONSIN )  
COUNTY OF Waukesha ) ss  
Milwaukee )


Personally came before me this 14 day of March, 2018, the above named Hardip Bhatti, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.



[Signature]  
Signature of Notary  
Joe E Swanson  
Printed Name of Notary  
Notary Public, State of Wisconsin  
My commission expires: 4-14-2020

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<b>APPROVAL</b> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>10/02/2018</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>A Resolution to Approve the Agreement to Terminate the Capital Projects Agreement Between the City of Franklin and the Franklin Historical Society, Inc. for the Barn Museum Project</b>	<b>ITEM NUMBER</b>  G.5.

In August 2018 the Common Council again rejected all bids for construction of a Historical Barn Reconstruction Project. At their meeting of September 4, 2018, the Common Council approved a motion "to direct the Director of Administration to prepare a new Capital Projects Agreement, in consultation with the Franklin Historical Society, that provides for the Franklin Historical Society to construct and donate to the City a Historical Barn and to return the Agreement to the Common Council in October for consideration".

Upon further evaluation, the Director of Administration recommends that the desired goal be achieved in two steps. First, terminating the existing Capital Projects Agreement for the Barn Museum Project (approved as to form July 11, 2016). Second, approving an Agreement Between the City and the Franklin Historical Society (FHS) for the Construction and Donation of a Barn Museum at Lions Legend Park.

Given the FHS's desire to move forward with the project with all haste, this item is being brought before the Common Council in a draft form that is still subject to review by the FHS and the City Attorney. That review could lead to some minor changes which will be brought to the Common Council at the meeting. If upon review of the draft the FHS or the City Attorney want additional time or substantially substantive changes, the Director of Administration will request the item be laid over.

This first item has the primary effects of terminating the existing construction agreement, authorizing the return of remaining FHS funds held by the City for that project, and confirming the City's sole ownership in the portion of the project completed to date.

Upon termination of the agreement, should the FHS not move forward with or complete construction of a historical barn to donate to the City, the City shall remain with a foundation in Lions Legend Park and will not have any of the added funds in hand that could be used by the City to eventually help complete the project. As such, there is some risk, and the Common Council may wish to consider the degree to which they have confidence that the FHS will be able to complete the construction and donation of a Barn Museum as they have indicated. On this point, it can be noted that the FHS has shown significant effort and dedication to the project and have continued to increase the resources acquired for the project as a whole.

Based largely upon the Common Council's historical support to see a historical barn completed and the multiple efforts to work with the FHS to make the project happen, the Director of Administration recommends approval.

### **COUNCIL ACTION REQUESTED**

Motion to adopt Resolution No. 2018-\_\_\_\_, A Resolution to Approve the Agreement to Terminate the Capital Projects Agreement Between the City of Franklin and the Franklin Historical Society, Inc. for the Barn Museum Project.

A STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY:

RESOLUTION NO. 2018-\_\_\_\_\_

A RESOLUTION TO APPROVE THE AGREEMENT TO TERMINATE THE  
CAPITAL PROJECTS AGREEMENT BETWEEN THE CITY OF FRANKLIN  
AND THE FRANKLIN HISTORICAL SOCIETY, INC. FOR THE  
BARN MUSEUM PROJECT

-----

WHEREAS, the Franklin Historical Society (FHS) and the City of Franklin (City) previously entered into a Capital Projects Agreement for the Barn Museum Project (approved as to form July 11, 2016); and

WHEREAS, multiple attempts have been made to bid the project, with the first efforts resulting in bids significantly in excess of available funds and the most recent bid process resulting in no bids having been received for the construction; and

WHEREAS, the City has determined it is no longer practicable or reasonable to pursue the project further under the terms of the Capital Projects Agreement; and

WHEREAS, the FHS has indicated that it no longer desires to pursue the project under the terms of the Capital Projects Agreement.

NOW, THEREFORE, be it resolved that the Mayor and Common Council of the City of Franklin, Wisconsin, approves the Agreement to Terminate the Capital Projects Agreement Between the City of Franklin and the Franklin Historical Society, Inc. for the Barn Museum Project and authorizes the Mayor and City Clerk to execute the same.

Introduced at a regular meeting of the Common Council of the City of Franklin this 2nd day of October, 2018, by \_\_\_\_\_.

Passed and adopted by the Common Council of the City of Franklin this 2nd day of October, 2018.

APPROVED:

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

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, Director of Clerk Services

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

An Agreement to Terminate the Capital Projects Agreement  
Between the City of Franklin and the Franklin Historical Society, Inc.  
for the Barn Museum Project

Whereas the City of Franklin, a municipal corporation, 9229 W. Loomis Road, Franklin, Wisconsin 53132 (hereinafter "City") and the Franklin Historical Society, a Wisconsin non-profit corporation, 8050 S. Legend Drive, Franklin, Wisconsin 53132 (hereinafter "FHS") previously entered into a Capital Projects Agreement for the Barn Museum Project (approved as to form July 11, 2016); and

Whereas multiple attempts have been made to bid the project, with the first efforts resulting in bids significantly in excess of available funds and the most recent bid process resulting in no bids having been received for the construction; and

Whereas the FHS and the City have both independently and mutually determined it is no longer practicable or reasonable to pursue the project further under the terms of the Capital Projects Agreement;

Now, therefore, the City and FHS agree to terminate the Capital Projects Agreement for the Barn Museum Project, effective upon execution of this Agreement, subject to the following:

1. The parties agree that the foundation constructed during the term of the Capital Projects Agreement was, is, and shall remain the sole property of the City, with the FHS having no ownership or equity share of the foundation and no property interest in the foundation.
2. The City shall return to the FHS \$78,914.98, which comprises the entire remaining balance from funds paid to the City by the FHS under the terms of the Capital Projects Agreement. Upon receipt of this amount, the FHS and the City agree that the City is not in possession of any additional funds that belong to or are being held in trust from the FHS.
3. The parties agree that no other rights or obligations expressed and established in the Capital Projects Agreement remain following the termination of said Agreement.

In witness whereof, the said parties have hereunto set their hands this \_\_\_\_ day of \_\_\_\_\_, 2018.

FRANKLIN HISTORICAL SOCIETY, INC.

CITY OF FRANKLIN

BY:

BY:

\_\_\_\_\_  
Name

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

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Paul Rotzenberg, Director of Finance

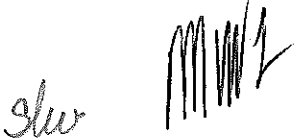
\_\_\_\_\_  
Title

As to form \_\_\_\_\_, 2018:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Jesse A. Wesolowski, City Attorney

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<b>APPROVAL</b> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>10/02/2018</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Agreement Between the City of Franklin and the Franklin Historical Society, Inc. for the Construction and Donation of a Barn Museum at Lions Legend Park</b>	<b>ITEM NUMBER</b>  <b>G.6.</b>

This Common Council item is to approve an agreement between the City of Franklin and the Franklin Historical Society (FHS) for the construction and donation of barn museum at Lions Legend Park. It is offered in conjunction with a separate Council item that terminates an existing Capital Projects Agreement with the FHS.

The following items are noted in the attached agreement:

- The City was unsuccessful in securing reasonable and appropriate bids for construction of a Museum Barn that fit within the funding capabilities committed to by the FHS.
- The FHS, in furtherance of its mission and purpose, desires to construct a Barn Museum on the foundation already in place and to donate to the City said constructed Barn Museum.
- Construction and donation of a public works project is allowed and provided for by Wisconsin Statutes 62.15 (1e).

The agreement is written from a risk management perspective and is intended to ensure that the City's rights and interests are protected in the event the FHS or any contractor for FHS should do anything that puts at risk the City's rights or interests. Please note that this protective, unilateral tone should not be taken as a lack of trust in the FHS and is simply the City executing its due diligence in allowing a construction project, over which it will have limited control, to occur on its property.

The agreement is also written to ensure that it is clearly understood that the construction project would be an FHS project occurring in accordance with Wisconsin Statutes 62.15 (1e). To that end, portions of the Agreement help ensure there is no confusion as to the rights and responsibilities of the parties for a project moving forward within the scope of this statutory provision. To be clear, projects occurring under this statutory provision do not require public bidding and are not public construction or public works projects, because, per statute, they are not a direct project of the municipality.

Given the Franklin Historical Society's desire to move forward with the project with all haste, this item is being brought before the Common Council in a draft form that is still subject to review by the FHS and the City Attorney. That review could lead to some minor changes which will be brought to the Common Council at the meeting. If upon review of the draft the FHS or City Attorney want additional time or substantially substantive changes, the Director of Administration will request the item be laid over.

### **COUNCIL ACTION REQUESTED**

Motion to approve the Agreement Between the City of Franklin and the Franklin Historical Society, Inc. for the Construction and Donation of a Barn Museum at Lions Legend Park.

An Agreement Between the  
City of Franklin and the Franklin Historical Society, Inc.  
for the Construction and Donation of a Barn Museum at Lions Legend Park

Whereas the City of Franklin, a municipal corporation, 9229 W. Loomis Road, Franklin, Wisconsin 53132 (hereinafter "City") and the Franklin Historical Society, a Wisconsin non-profit corporation, 8050 S. Legend Drive, Franklin, Wisconsin 53132 (hereinafter "FHS") desire to enter into an agreement for the FHS to construct and donate to the City a Barn Museum at Lions Legend Park.

Whereas the FHS is aware that the City was unsuccessful in securing reasonable and appropriate bids for a similar project recently undertaken and has subsequently discontinued efforts on the project.

Whereas the FHS, in furtherance of its mission and purpose, desires to construct a Barn Museum on the foundation already in place and to donate to the City said constructed Barn Museum.

Whereas the parties agree that the nature and intent of the project and donation addressed herein is to comply with the provisions of Wisconsin Statutes 62.15 (1e) that allows a private entity to complete construction of a project and to subsequently donate said project to the City.

Therefore, for the mutual benefits received as a result of construction and donation of such a Barn Museum to the City, the parties hereby enter into this Agreement for the Construction and Donation of a Barn Museum at Lions Legend Park, made this \_\_\_\_ day of \_\_\_\_\_, 2018, with the following terms:

1. The City shall grant access to Lions Legend Park and to an area as approved by the Director of Administration, which area may be modified from time to time at his discretion, to the FHS for the purposes of staging and construction of a Barn Museum upon a foundation previously constructed in Lions Legend Park.
2. The City reserves the right to stop the project, at its sole discretion, should the City determine that any structure or tree, which includes all areas within and under the dripline of the tree, is or may be damaged, also at the City's sole discretion, by the actions of FHS or its representatives or contractors. In the event of such a stoppage, the City shall have no liability for its actions and the FHS shall hold the City harmless against claims resulting from or related to such stoppage.
3. In order to preserve and protect its property and prior investments,
  - a. Construction of the Barn Museum shall occur on the foundation previously constructed, and
  - b. The City reserves the right to approve, reject, or demand alteration to the construction plans prior to commencement of construction, which construction shall not commence without such approval. The City, however, shall not unreasonably reject or significantly alter plans that are substantially in compliance with similar construction plans previously and most recently used by the City, except as may be required by Number 6 below.
4. The construction project shall be a FHS project, and the City shall not be a partner in the project or in any contract that the FHS may enter into related to the project. As such, the FHS is responsible for all fiduciary aspects of the project and shall be required to provide the City a lien waiver for any contractor the FHS uses on the project. As an FHS project, the FHS acknowledges the following:
  - a. The FHS shall construct the project in compliance with all State and local codes and administrative rules pertaining to construction of a building of this nature.
  - b. The FHS is responsible and liable for all permit and plan review fees that may be associated with this project.
  - c. The FHS shall be responsible for all construction insurance and any other such insurance it shall determine is necessary and appropriate for the project. The FHS and the primary

contractor selected by the FHS shall both provide the City with a copy of an insurance certificate listing the City as an additional insured or otherwise indemnifying the City.

- d. City staff shall have no role and will provide no assistance with this project, which restriction shall not prevent the City from delivering to the project site project pieces that are in its possession or from taking actions to preserve and protect its rights and property.
- e. The FHS shall ensure that all contractors participating in the project are insured for at least liability and workers compensation.

#### 5. Additional Agreements

- a. Ownership Agreement: Prior to completion of the Barn Museum, the FHS and the City agree to negotiate, prepare, and enter into an Ownership Agreement that stipulates that the City owns each of the structures of the historic complex and that mutually terminates the current lease, executed in 1993, of land for the buildings of the historic complex. That document will also indicate that to the extent that the FHS may have an ownership interest in any of the structures, based upon prior investments by FHS or upon documents as may be determined to exist, the FHS is donating that interest to the City at no cost. The Ownership Agreement will also address which contents are inherent to each of the historic structures of the historic complex and are transferred to City ownership, as well as which contents remain or become the property of the FHS.
- b. Prior to completion of the Barn Museum, the FHS and the City agree to negotiate, prepare, and enter into an Operating and Maintenance Agreement that would provide the FHS access to the historic structures of the historic village, including the Barn Museum, and the surrounding grounds, as defined therein, for their programming and organizational operations. It will also define and allocate certain maintenance and operating requirements and costs to the parties. The parties acknowledge that the intent is that the resulting functional arrangement would be very similar to the current operating arrangement. The Operating and Maintenance Agreement would address items such as, but not limited to, the following:
  - FHS access to the structures and area around the structures for programming and organizational functions and acknowledgement that the organization and its members are operating the facility as volunteers to City.
  - FHS's responsibility for routine and regular maintenance and upkeep, except mowing as is currently being performed by the City.
  - The City's control over the structures and a requirement that the FHS obtain approval for modifications to the buildings or grounds.
  - FHS's operational role in making the facilities available to the public for programming, special events, and fundraising.
  - FHS's primary role in fundraising to ensure long-term capital maintenance responsibilities while acknowledging the City's ability to determine whether or not to financially participate in such projects.
  - FHS's role in recommending long-term site plan development for the area and the City's ultimate, unilateral control over the grounds and structures, except as that control is delegated by the terms of the agreement.
  - Acknowledgment that all capital projects must be in compliance with State statutes on public works projects, will require Common Council authorization, and will, generally, be managed in accordance with a separate Capital Projects Agreement that will set forth the operating and fiscal responsibilities of both parties relative to the capital project.
  - Identify the steps and associated timelines should the FHS fail to uphold or complete their responsibilities and duties under the Agreement or should the FHS effectively become defunct as an organization.

6. The parties acknowledge that the City's Building Inspection Department has duties and responsibilities for oversight and enforcement of construction activities within the City and that the actions of the Department for these statutory purposes are not covered, addressed, or limited by the terms of this Agreement.
7. Except as noted herein, it is the FHS's intent and responsibility to fully construct the Barn Museum in accordance with the approved plans prior to donating the structure to the City. Upon completion of construction, the FHS shall provide the City a letter documenting the donation of the structure to the City. The City acknowledges that completion may occur prior to installation of the limited electrical work anticipated for the interior of the structure and may not include all final site work and restoration in the area around the foundation.
8. The City may unilaterally terminate this Agreement if construction of the Barn is not completed and the donation of the structure has not occurred by June 1, 2019, subject to providing 15 days written notice. Upon expiration of the notice period, any portion of the project completed and any supplies or construction materials remaining on site shall become the property of the City. The City reserves the right to extend this deadline at its sole discretion.
9. FHS agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, and representatives from and against any and all liability for injuries or damages to persons or property as a result of this Agreement or the provision of services under this Agreement. This indemnification applies to, but is not limited to, the City's liability to FHS or third parties in contract, in tort or under federal or state law arising or resulting from performance or failure to perform under this Agreement, and in addition, for any related expenses, including defense costs and attorney's fees. This indemnity provision shall survive the termination or expiration of this Agreement.

In witness whereof, the said parties have hereunto set their hands the date first above written.

FRANKLIN HISTORICAL SOCIETY, INC.

CITY OF FRANKLIN

BY:

BY:

\_\_\_\_\_  
Name

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

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Paul Rotzenberg, Director of Finance

\_\_\_\_\_  
Title

As to form \_\_\_\_\_, 2018:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Jesse A. Wesolowski, City Attorney

\_\_\_\_\_  
Title



<b>APPROVAL</b> <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>10/02/2018</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>RESOLUTION TO SIGN SECOND AMENDMENT TO LEASE AGREEMENT WITH AMERICAN TOWER L.P. AT 5572 W. AIRWAYS AVENUE FOR \$21,000 PER YEAR</b>	<b>ITEM NUMBER</b>  <i>G, 7.</i>

### **BACKGROUND**

At the April 17, 2018, Common Council meeting, a discussion regarding a lease agreement with American Tower, L.P. at 5572 West Airways Avenue for \$5,132.16 was tabled. Staff was directed to renegotiate the terms and conditions. See attached Common Council action item G.16 from the April 17, 2018, meeting.

An update to Common council was provided on June 5, 2018. The update was that staff was continuing to study it. The Common Council directed Staff to continue analysis of best option for City's consideration and return to Common Council with a recommendation.

### **ANALYSIS**

The \$5,132.16 offer was computed as an equivalent price/foot that they currently pay for the existing space. The proposed space is roughly 25% of the current space. The current space yields an annual payment of \$20,552.

Staff met with American Tower representatives on August 22, 2018, and negotiated terms with a monthly payment of \$1,750 (\$21,000 annually) for this new space. American Tower provided a draft amendment and Franklin legal staff provided comments which were incorporated by American Tower. Staff supports this amendment.

### **FISCAL NOTE**

American Tower is offering an additional \$21,000 to be paid yearly in addition to the annual rent. American Tower paid \$20,552 in 2017 for tower rents at Airways Avenue, split evenly between the City and Water Utility.

### **OPTIONS**

- A. Sign the rental agreement with American tower for \$21,000 per year. Or,
- B. Refer back to Staff with further direction.

### **COUNCIL ACTION REQUESTED**

(OPTION A) Motion to approve Resolution 2018-\_\_\_\_\_ a resolution to sign Second Amendment To Lease Agreement with American Tower L.P. at 5572 W. Airways Avenue for \$21,000 per year.

ENG-GM

APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 04/17/2018
REPORTS AND RECOMMENDATIONS	RESOLUTION TO SIGN RENTAL AGREEMENT WITH AMERICAN TOWER AT 5572 W. AIRWAYS AVENUE FOR \$5,132.16	ITEM NUMBER <i>Gille</i>

### **BACKGROUND**

The City has an antenna/ tower with several tenants located on the tower behind the utility building 5550 W. Airways Avenue. Address for the tower is 5572 W. Airways Avenue.

Verizon Wireless through American Tower, L.P. is a current tenant and is requesting an additional 800 square feet outside of the current fenced area. This is a 33% increase in ground space. They are preparing to submit site plan applications to City Planning.

### **ANALYSIS**

Verizon Wireless has discussed addition of the facilities with utility staff and the enclosed diagram is a result of those discussions and is acceptable to staff. The proposed configuration leaves ample room for future city/utility needs and should not inconvenience City operations.

### **FISCAL NOTE**

Verizon Wireless (American Tower) is offering an additional \$5,132.16 to be paid yearly in addition to the annual rent. American Tower paid \$20,552.000 in 2017 for tower rent at Air Ways Ave, this was split evenly between the City and Water Utilities.

### **COUNCIL ACTION REQUESTED**

A resolution to authorize staff to finalize and sign agreement with American Tower, LP at 5572 W. Airways Avenue for \$5,132.16 pending legal review and technical corrections.

## **SECOND AMENDMENT TO LEASE AGREEMENT**

**THIS SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT** ("**Second Amendment**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the "**Effective Date**") by and between **City of Franklin, Wisconsin**, ("**Landlord**"), and **American Tower, L.P.**, a Delaware limited partnership ("**Tenant**") as successor in interest to PrimeCo Personal Communications, L.P. (The Landlord and Tenant are collectively referred to herein as the "**Parties**").

### **RECITALS**

- A. Landlord is the owner of that certain parcel of land (the "**Parent Parcel**") situated at or around 5572 W Airways Avenue, Franklin, in Milwaukee, Wisconsin and the Parties entered into that certain Site Agreement dated October 1, 1999 (the "**Original Lease**"), and further amended by the First Amendment to Lease Agreement dated December 29, 2016 (the "**First Amendment**", collectively the "**Lease**") whereby, among other things, Tenant leases from Landlord a portion of the Landlord's property (the "**Leased Premises**") for the operation of a telecommunications facility. The Parent Parcel and Leased Premises are described, designated, and/or depicted at or on **Exhibit A** attached hereto and incorporated herein. **Exhibit A** may, with Landlord's approval, be replaced by Tenant with a survey or surveys
- B. Landlord and Tenant desire to amend the terms of the Lease as provided herein.

**NOW THEREFORE**, in consideration of the mutual covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Ratification of the Leased Premises.** Landlord and Tenant hereby ratify and agree that the Landlord leases and/or grants to Tenant, and the Tenant Leases and/or receives from Landlord, the Leased Premises as described, designated and/or depicted at or on **Exhibit A** attached hereto.
2. **Additional Ground Space.**
  - a. Effective as of the Expansion Commencement Date (as defined below), Landlord hereby leases to Tenant approximately an additional eight hundred (800) square feet of land the "**Additional Area**") as described, designated and/or depicted at or on **Exhibit B** attached hereto and incorporated herein. The Tenant may use Additional Area in the same manner that Tenant is permitted to use the Leased Premises, including the right to install additional shelters, subject to all applicable building, zoning and/or other land use regulations and/or approvals. Landlord agrees to permit Tenant to use portions of the Parent Parcel immediately surrounding the Additional Area on a temporary basis provided that such use does not unreasonably interfere with Landlord's use of those portions and that such use shall only be for the access to the Additional Area and/or the construction and/or installation of equipment and other personal property at, on, or within the Additional Area, as may be reasonably necessary. Upon the Expansion Commencement Date, the Additional Area is hereby included as part of the Leased Premises leased and/or granted under the Lease as amended hereby. **Exhibit B** may, with Landlord's approval, be replaced by Tenant with a survey describing, designating and/or depicting the actual legal description of the Additional Area.

- b. The "Expansion Commencement Date" shall be the earlier of: (i) the date Tenant notifies Landlord in writing that Tenant elects to commence leasing the Additional Area; (ii) the date Tenant issues a written "Notice To Proceed" or similar document to a customer of the Tenant for the purpose of commencing such customer's installation of equipment at or on all or a portion of the Additional Area; (iii) the date that a customer of the Tenant actually commences to install, occupy and/or use such customer's equipment or other personal property at or on the Additional Area; or (iv) eighteen (18) months after the Effective Date of this Second Amendment.
- c. The Expansion Commencement Date shall be contingent on:
- (i) Tenant entering into a binding lease with a customer of the Tenant for such customer's occupation of all or a portion of the Additional Area and Tenant and/or such customer obtaining all necessary certificates, permits, licenses, and other approvals that may be required by any federal, state, or local authority for such customer to occupy and operate on the Additional Area and Leased Premises; and
  - (ii) Tenant determining, at its sole discretion, that the status of title of Landlord as to the Additional Area is reasonably acceptable to Tenant; and
  - (iii) Tenant determining at its sole discretion that the Additional Area, Leased Premises and Parent Parcel are clear of any hazardous substances, which include any material or substance which is or becomes defined as a hazardous substance, pollutant, or contaminant, subject to reporting, investigation, or remediation pursuant to any federal, state, or local governmental authority, and any oil, or petroleum products or their by-products.

If any one of the above contingencies shall not be satisfied, then Tenant may, at any time prior to the Expansion Commencement Date, by written notice to Landlord, terminate this Second Amendment in its entirety and this Second Amendment shall then be null and void and of no further force and effect, provided however that this Subsection 2(d), along with Sections 1, 3, 4, 5, 7, 8 and 9 of this Second Amendment will otherwise survive and continue in full force and effect.

- d. Commencing on the Expansion Commencement Date the total rent payable under the Lease as amended hereby shall be increased by a sum of Twenty-One Thousand Dollars (\$21,000.00) per year. The Parties hereby acknowledge and agree that all applicable increases and escalations to the rent authorized pursuant to the Lease shall continue in full force and effect.

3. **Approvals**. Without limiting any of Tenant's other rights under the Lease, Landlord shall cooperate with Tenant, at no out-of-pocket expense to Landlord, in Tenant's efforts to obtain, maintain, renew and reinstate any and all of the certificates, permits, licenses, zoning, variances and other approvals which may be required from any federal, state or local authority for Tenant or Tenant's sublessees, licensees, and/or customers' occupation and/or use of the Leased Premises and/or Additional Area (collectively, the "**Approvals**"). Landlord agrees to execute within fifteen (15) days after receipt of a written request from Tenant any and all documents necessary, in Tenant's reasonable judgment, and in a form reasonably

acceptable to Tenant to allow Tenant and its sublessees, licensees, and/or customers to obtain, maintain, renew or reinstate the Approvals.

4. **Signage.** Without limiting any of Tenant's rights under the Lease, Tenant shall have the right, subject to all applicable building, zoning and/or other land use regulations and/or approvals, to install and maintain identifying signs and/or other signs required by any governmental authority on or about the Leased Premises and/or Additional Area, including any access road to the Leased Premises and/or Additional Area.

5. **Documentation.** Upon any permitted transfer or assignment of the Landlord's interest in this Lease, prior to Tenant's being obligated to make any rent or other payments to the successor Landlord, Landlord's successor will provide Tenant with a completed Internal Revenue Form W-9, or then equivalent form, and any other reasonably necessary documentation requested by Tenant in order to confirm such transfer of the Lease.

6. **Memorandum of Lease.** Upon request by Tenant, Landlord shall execute and deliver to Tenant a Memorandum(s) of Lease, reflecting this Second Amendment, in a form reasonably acceptable to Tenant and which is recordable in the jurisdiction in which the Parent Parcel situated. Landlord shall also complete and execute any other document required by the recording authority to be submitted in conjunction with the recording of any Memorandum(s) of Lease, including but not limited to transfer tax documents and sale disclosure forms. No executed Memorandum(s) of Lease entered into pursuant to this Section 6 shall be construed to control or govern this Second Amendment and/or the Lease nor shall it be construed to be evidence of the intent of the Parties in relation to this Second Amendment and/or the Lease.

7. **Ratification/Estoppel.** Tenant and Landlord each hereby ratifies and confirms that the Lease is in full force and effect. Landlord represents and warrants that, as of the Effective Date, Tenant is not in default in the payment or performance of its obligations under the Lease and, to the best of Landlord's current knowledge, there is no existing condition that, although not presently a default, may result in a default under the Lease. Except as modified herein, the Lease and all the covenants, Leases, terms, provisions and conditions thereof remain in full force and effect and are hereby ratified and affirmed.

8. **Waiver of Certain Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL LANDLORD OR TENANT BE LIABLE TO THE OTHER FOR, AND LANDLORD AND TENANT HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE OR LOSS OR BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY, AND SIMILAR DAMAGES EXCEPT IN THE CASE OF THOSE DAMAGES RESULTING FROM AN INTENTIONAL ACT OF TENANT..

9. **Entirety; Modification; Counterparts.** This Second Amendment, together with the Lease, constitutes the entire agreement among the Parties regarding the Leased Premises and the Additional Area. Any amendment to this Second Amendment and/or the Lease must be in writing and signed and delivered by authorized representatives of the Parties in order to be effective. This Second Amendment will be governed by the laws of the state in which the Parent Parcel is situated. If any inconsistency exists or arises between the terms of the Lease and the terms of this Second Amendment, the terms of this Second Amendment shall prevail. This Second Amendment may be executed in any number of counterparts, each of which shall be an original, and which may be delivered via electronic means

including but not limited to email, but all of which taken together shall constitute one instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Second Amendment bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Second Amendment notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Second Amendment and without the requirement that the unavailability of such original, executed counterpart of this Second Amendment first be proven.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Second Amendment as of the Effective Date written above.

**LANDLORD:**

**WITNESSES:**

**City of Franklin**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE/Commonwealth of \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year of 201\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the individual or the entity upon behalf of which the individual acted, executed the instrument.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_

**TENANT:**

**WITNESSES:**

**American Tower, L.P.**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

On \_\_\_\_\_ before me, Robert Batiste, a Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



## EXHIBIT A

### DESCRIPTION, DESIGNATION AND/OR DEPICTION OF PARENT PARCEL AND LEASED PREMISES\*

#### PARENT PARCEL

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MILWAUKEE, CITY OF FRANKLIN, STATE OF WISCONSIN AND IS DESCRIBED AS FOLLOWS: PARCEL 2 AS SHOWN ON PLAT ENTITLED "CERTIFIED SURVEY MAP NO. 6167," PREPARED BY GARY J. SMITH, L.S. 2195, DATED JULY 26, 1995, RECORDED NOVEMBER 16, 1995, IN BOOK 3673 PAGE 897. AND PARCEL 1 AS SHOWN ON PLAT ENTITLED "CERTIFIED SURVEY MAP NO. 5511," PREPARED BY RANDOLPH L. RAFALSKI, L.S. 1758, DATED JULY 31, 1990, RECORDED JANUARY 18, 1991, IN BOOK 2531 PAGE 1313. PARCEL ID #899-9990-068 THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO THE CITY OF FRANKLIN, A WISCONSIN MUNICIPAL CORPORATION FROM THE UNITED STATES OF AMERICA, IN A DEED DATED MAY 6, 1969, RECORDED MAY 28, 1969, IN BOOK 481 PAGE 326. AND THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO THE CITY OF FRANKLIN, A WISCONSIN MUNICIPAL CORPORATION FROM KRONES, INC., A WISCONSIN CORPORATION IN A DEED DATED SEPTEMBER 30, 2010 AND RECORDED OCTOBER 11, 2010 AS INSTRUMENT NO. 09924706.

#### LEASED PREMISES

PART OF PARCEL TWO (2) OF CERTIFIED SURVEY MAP NO 6167, REEL 3673, IMAGE 897 OF MILWAUKEE COUNTY RECORDS LOCATED IN THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION TWENTY-SIX (26), TOWNSHIP FIVE (5) NORTH, RANGE TWENTY-ONE (21) EAST. CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN CONTAINING 2400 SQUARE FEET (0.055 ACRES) OF LAND AND BEING DESCRIBED BY: COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 26, THENCE ALONG THE EAST-WEST 1/4 SECTION LINE, N88°-31'-21" E A DISTANCE OF 1164.11 FEET TO A POINT; THENCE, N00°-21'-57" W A DISTANCE OF 652.43 FEET TO THE SOUTHEAST CORNER OF PARENT PARCEL 2; THENCE N00°-21'-57"W 221.74 FEET ALONG THE EAST LINE OF SAID PARCEL 2, THENCE S89°-35'-36"W 32.10 FEET TO THE POINT OF BEGINNING; THENCE, ALONG THE SOUTH LINE OF SAID LEASE, S89°-35'-36" W FOR A DISTANCE OF 60.00 FEET TO THE SOUTHWEST CORNER OF SAID LEASE; THENCE, ALONG THE WEST LINE OF SAID LEASE, N00°-24'-24" W FOR A DISTANCE OF 40.00 FEET TO THE NORTHWEST CORNER OF SAID LEASE; THENCE, ALONG THE NORTH LINE OF SAID LEASE, N89°-35'-36" E FOR A DISTANCE OF 60.00 FEET TO THE NORTHEAST CORNER OF SAID LEASE; THENCE, ALONG THE EAST LINE OF SAID LEASE, S00°-24'-24" E A DISTANCE OF 40.00 FEET TO THE SOUTHEAST CORNER OF SAID LEASE AND THE POINT OF BEGINNING, BEING SUBJECT TO ANY AND ALL EASEMENTS AND RESTRICTIONS OF RECORD.

along with an Access and Utility Easement which is described as follows:

A 12 FEET WIDE INGRESS/EGRESS EASEMENT BEING PART OF PARCEL TWO (2) OF CERTIFIED SURVEY MAP NO 6167, REEL 3673, IMAGE 897, MILWAUKEE COUNTY RECORDS, AND PART OF THE NORTHWEST 1/4 OF SECTION 26, TOWN 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, HAVING A CENTERLINE DESCRIBED AS: COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION; THENCE N88°31'21"E A DISTANCE OF 1164.11 FEET; THENCE N00°21'57"W A DISTANCE OF 652.43 FEET TO THE SOUTHEAST CORNER OF PARENT PARCEL 2 AND THE NORTHERLY RIGHT OF WAY OF WEST AIRWAYS AVENUE (PUBLIC); THENCE S88°20'10"W ALONG THE SAID RIGHT OF WAY A DISTANCE OF 108.64 FEET TO THE POINT OF BEGINNING; THENCE N01°37'50"W A DISTANCE OF 154.19 FEET; THENCE N20°14'37"E A DISTANCE OF 68.36 FEET; THENCE N89°35'36"E A DISTANCE OF 55.85 FEET THE EAST LINE OF THE ABOVE DESCRIBED LEASE AREA AND THE SOUTHERLY EXTENSION THEREOF AND THE POINT OF ENDING. THE SIDELINES OF SAID EASEMENT ARE LENGTHENED AND/OR SHORTENED TO BEGIN AT THE NORTHERLY RIGHT OF WAY OF WEST AIRWAYS AVENUE AND TERMINATE EAST LINE OF THE ABOVE DESCRIBED LEASE AREA AND THE SOUTHERLY EXTENSION THEREOF.

and

AN EASEMENT FOR INGRESS/EGRESS AND THE INSTALLATION AND MAINTENANCE OF UTILITIES OVER/UNDER AND ACROSS ALL THAT PART OF PARCEL TWO (2) OF CERTIFIED SURVEY MAP NO 6167, REEL 3673, IMAGE 897, MILWAUKEE COUNTY RECORDS, AND PART OF THE NORTHWEST 1/4 OF SECTION 26, TOWN 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, DESCRIBED AS: COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION; THENCE N88°31'21"E A DISTANCE OF 1164.11 FEET; THENCE N00°21'57"W A DISTANCE OF 652.43 FEET TO THE SOUTHEAST CORNER OF PARENT PARCEL 2 AND THE NORTHERLY RIGHT OF WAY OF WEST AIRWAYS AVENUE (PUBLIC); THENCE CONTINUING N00°21'57"W ALONG THE EAST LINE OF SAID PARCEL A DISTANCE OF 221.74 FEET; THENCE S89°35'36"W A DISTANCE OF 32.10 FEET TO THE SOUTHEAST CORNER OF ATC LEASE AREA; THENCE CONTINUING S89°35'36"W ALONG THE SOUTH LINE A DISTANCE OF 60.00 FEET TO THE SOUTHWEST CORNER OF SAID ATC LEASE AREA AND THE POINT OF BEGINNING; THENCE S20°14'37"W A DISTANCE OF 21.37 FEET; THENCE S89°35'36"W A DISTANCE OF 12.46 FEET; THENCE N00°24'24"W A DISTANCE OF 20.00 FEET; THENCE N89°35'36"E A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING. SAID LEASE CONTAINS 325 SQUARE FEET OR 0.007 ACRES.

\* The Parties agree that the headings used to denote the various portions of land described herein shall not restrict or otherwise indicate the intention of the parties in relation to the use of said various portions of land.

[END OF EXHIBIT A]

## EXHIBIT B

### DESCRIPTION AND DEPICTION OF ADDITIONAL AREA

#### Additional Area

BEING PART OF PARCEL TWO (2) OF CERTIFIED SURVEY MAP NO 6167, REEL 3673, IMAGE 897, MILWAUKEE COUNTY RECORDS, AND PART OF THE NORTHWEST 1/4 OF SECTION 26, TOWN 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, DESCRIBED AS: COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION; THENCE N88°31'21"E A DISTANCE OF 1164.11 FEET; THENCE N00°21'57"W A DISTANCE OF 652.43 FEET TO THE SOUTHEAST CORNER OF PARENT PARCEL 2 AND THE NORTHERLY RIGHT OF WAY OF WEST AIRWAYS AVENUE (PUBLIC); THENCE CONTINUING N00°21'57"W ALONG THE EAST LINE OF SAID PARCEL A DISTANCE OF 221.74 FEET; THENCE S89°35'36"W A DISTANCE OF 32.10 FEET TO THE SOUTHEAST CORNER OF ATC LEASE AREA; THENCE CONTINUING S89°35'36"W ALONG THE SOUTH LINE A DISTANCE OF 60.00 FEET TO THE SOUTHWEST CORNER OF SAID ATC LEASE AREA AND THE POINT OF BEGINNING; THENCE CONTINUING S89°35'36"W A DISTANCE OF 20.00 FEET; THENCE N00°24'24"W A DISTANCE OF 40.00 FEET; THENCE N89°35'36"E A DISTANCE OF 20.00 FEET TO THE NORTHWEST CORNER OF SAID ATC LEASE AREA; THENCE S00°24'24"E ALONG THE WEST LINE OF SAID LEASE A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING. SAID LEASE CONTAINS 800 SQUARE FEET OR 0.018 ACRES.

[END OF EXHIBIT B]



**Prepared by and Return to:**

Attorney Robert Batiste  
American Tower  
10 Presidential Way  
Woburn, MA 01801  
ATC Site #50469  
ATC Site Name: Nike  
Assessor Parcel # 899-9990-068

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(Recorder's Use Above This Line)

**AMENDED MEMORANDUM OF LEASE**

This **AMENDED MEMORANDUM OF LEASE** ("**Memorandum**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Effective Date**"), by and between the **City of Franklin, Wisconsin** (hereinafter referred to as the "**Landlord**"), and **American Tower, L.P.**, a Delaware limited partnership (hereinafter referred to as "**Tenant**").

**NOTICE** is hereby given of the following described Lease as amended, for the purpose of recording and giving notice of the existence of said Lease.

1. **Lease:** Landlord's Site Agreement dated October 1, 1999, as amended from time to time (collectively, the "**Lease**") whereby Tenant leases from Landlord a portion of that certain parcel of land (the "**Parent Parcel**") located at or around 5572 W Airways Avenue, Franklin, in Milwaukee, Wisconsin.
2. **Expiration of Term:** Subject to the terms, provisions and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease (if applicable), the final expiration date of the Lease will be September 30, 2064. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.
3. **Leased Premises:** That or those portion(s) of the Parent Parcel as described in Exhibit "A," attached hereto, together with any access and utility easements.

4. **Addresses:** The principal addresses of the appropriate parties are as follows

**Lessor:** 9229 W. Loomis Rd.  
Franklin, WI 53132-9630

**Lessee:** c/o American Tower  
10 Presidential Way  
Woburn, MA 01801

**With a copy to:** 116 Huntington Avenue  
Boston, MA 02116

5. **Incorporation:** The terms and conditions of the Lease, as amended, are hereby incorporated into this Memorandum.
6. **Effect:** This Memorandum is not a complete summary of the terms and conditions contained in the Lease. Provisions in the Memorandum should not be used in interpreting the Lease provisions. In the event of a conflict between this Memorandum and the Lease, the Lease will control.

*[SIGNATURE PAGES FOLLOWS]*

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Memorandum of Lease.

**LANDLORD:**

**City of Franklin**

**Witnesses:**

By: \_\_\_\_\_

Signature \_\_\_\_\_

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

Print Name:

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

Signature \_\_\_\_\_

Print Name:

**Acknowledgment**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name),  
a Notary Public, personally appeared \_\_\_\_\_, personally  
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)  
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed  
the instrument.

WITNESS my hand and official seal.

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

Notary Public

My Commission Expires: \_\_\_\_\_

{Seal}

**TENANT:**

**American Tower, L.P.**

**Witnesses:**

By: \_\_\_\_\_

Signature \_\_\_\_\_

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

Print Name:

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

Signature \_\_\_\_\_

Print Name:

**Acknowledgment**

**LESSEE**

Commonwealth of Massachusetts )

County of Middlesex )

On \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name),  
a Notary Public, personally appeared \_\_\_\_\_, personally  
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)  
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed  
the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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

My commission expires: \_\_\_\_\_

{Seal}



## **EXHIBIT A**

### **EXISTING LEASE AREAS**

PART OF PARCEL TWO (2) OF CERTIFIED SURVEY MAP NO 6167, REEL 3673, IMAGE 897 OF MILWAUKEE COUNTY RECORDS LOCATED IN THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION TWENTY-SIX (26), TOWNSHIP FIVE (5) NORTH, RANGE TWENTY-ONE (21) EAST. CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN CONTAINING 2400 SQUARE FEET (0.055 ACRES) OF LAND AND BEING DESCRIBED BY: COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 26, THENCE ALONG THE EAST-WEST 1/4 SECTION LINE, N88°-31'-21" E A DISTANCE OF 1164.11 FEET TO A POINT; THENCE, N00°-21'-57" W A DISTANCE OF 652.43 FEET TO THE SOUTHEAST CORNER OF PARENT PARCEL 2; THENCE N00°-21'-57"W 221.74 FEET ALONG THE EAST LINE OF SAID PARCEL 2, THENCE S89°-35'-36"W 32.10 FEET TO THE POINT OF BEGINNING; THENCE, ALONG THE SOUTH LINE OF SAID LEASE, S89°-35'-36" W FOR A DISTANCE OF 60.00 FEET TO THE SOUTHWEST CORNER OF SAID LEASE; THENCE, ALONG THE WEST LINE OF SAID LEASE, N00°-24'-24" W FOR A DISTANCE OF 40.00 FEET TO THE NORTHWEST CORNER OF SAID LEASE; THENCE, ALONG THE NORTH LINE OF SAID LEASE, N89°-35'-36" E FOR A DISTANCE OF 60.00 FEET TO THE NORTHEAST CORNER OF SAID LEASE; THENCE, ALONG THE EAST LINE OF SAID LEASE, S00°-24'-24" E A DISTANCE OF 40.00 FEET TO THE SOUTHEAST CORNER OF SAID LEASE AND THE POINT OF BEGINNING, BEING SUBJECT TO ANY AND ALL EASEMENTS AND RESTRICTIONS OF RECORD.

### **ADDITIONAL LEASE AREAS**

BEING PART OF PARCEL TWO (2) OF CERTIFIED SURVEY MAP NO 6167, REEL 3673, IMAGE 897, MILWAUKEE COUNTY RECORDS, AND PART OF THE NORTHWEST 1/4 OF SECTION 26, TOWN 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, DESCRIBED AS: COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION; THENCE N88°31'21"E A DISTANCE OF 1164.11 FEET; THENCE N00°21'57"W A DISTANCE OF 652.43 FEET TO THE SOUTHEAST CORNER OF PARENT PARCEL 2 AND THE NORTHERLY RIGHT OF WAY OF WEST AIRWAYS AVENUE (PUBLIC); THENCE CONTINUING N00°21'57"W ALONG THE EAST LINE OF SAID PARCEL A DISTANCE OF 221.74 FEET; THENCE S89°35'36"W A DISTANCE OF 32.10 FEET TO THE SOUTHEAST CORNER OF ATC LEASE AREA; THENCE CONTINUING S89°35'36"W ALONG THE SOUTH LINE A DISTANCE OF 60.00 FEET TO THE SOUTHWEST CORNER OF SAID ATC LEASE AREA AND THE POINT OF BEGINNING; THENCE CONTINUING S89°35'36"W A DISTANCE OF 20.00 FEET; THENCE N00°24'24"W A DISTANCE OF 40.00 FEET; THENCE N89°35'36"E A DISTANCE OF 20.00 FEET TO THE NORTHWEST CORNER OF SAID ATC LEASE AREA; THENCE S00°24'24"E ALONG THE WEST LINE OF SAID LEASE A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING. SAID LEASE CONTAINS 800 SQUARE FEET OR 0.018 ACRES.

### ACCESS & UTILITIES EASEMENT

A 12 FEET WIDE INGRESS/EGRESS EASEMENT BEING PART OF PARCEL TWO (2) OF CERTIFIED SURVEY MAP NO 6167, REEL 3673, IMAGE 897, MILWAUKEE COUNTY RECORDS, AND PART OF THE NORTHWEST 1/4 OF SECTION 26, TOWN 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, HAVING A CENTERLINE DESCRIBED AS: COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION; THENCE N88°31'21"E A DISTANCE OF 1164.11 FEET; THENCE N00°21'57"W A DISTANCE OF 652.43 FEET TO THE SOUTHEAST CORNER OF PARENT PARCEL 2 AND THE NORTHERLY RIGHT OF WAY OF WEST AIRWAYS AVENUE (PUBLIC); THENCE S88°20'10"W ALONG THE SAID RIGHT OF WAY A DISTANCE OF 108.64 FEET TO THE POINT OF BEGINNING; THENCE N01°37'50"W A DISTANCE OF 154.19 FEET; THENCE N20°14'37"E A DISTANCE OF 68.36 FEET; THENCE N89°35'36"E A DISTANCE OF 55.85 FEET THE EAST LINE OF THE ABOVE DESCRIBED LEASE AREA AND THE SOUTHERLY EXTENSION THEREOF AND THE POINT OF ENDING. THE SIDELINES OF SAID EASEMENT ARE LENGTHENED AND/OR SHORTENED TO BEGIN AT THE NORTHERLY RIGHT OF WAY OF WEST AIRWAYS AVENUE AND TERMINATE EAST LINE OF THE ABOVE DESCRIBED LEASE AREA AND THE SOUTHERLY EXTENSION THEREOF.

and

AN EASEMENT FOR INGRESS/EGRESS AND THE INSTALLATION AND MAINTENANCE OF UTILITIES OVER/UNDER AND ACROSS ALL THAT PART OF PARCEL TWO (2) OF CERTIFIED SURVEY MAP NO 6167, REEL 3673, IMAGE 897, MILWAUKEE COUNTY RECORDS, AND PART OF THE NORTHWEST 1/4 OF SECTION 26, TOWN 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, DESCRIBED AS: COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION; THENCE N88°31'21"E A DISTANCE OF 1164.11 FEET; THENCE N00°21'57"W A DISTANCE OF 652.43 FEET TO THE SOUTHEAST CORNER OF PARENT PARCEL 2 AND THE NORTHERLY RIGHT OF WAY OF WEST AIRWAYS AVENUE (PUBLIC); THENCE CONTINUING N00°21'57"W ALONG THE EAST LINE OF SAID PARCEL A DISTANCE OF 221.74 FEET; THENCE S89°35'36"W A DISTANCE OF 32.10 FEET TO THE SOUTHEAST CORNER OF ATC LEASE AREA; THENCE CONTINUING S89°35'36"W ALONG THE SOUTH LINE A DISTANCE OF 60.00 FEET TO THE SOUTHWEST CORNER OF SAID ATC LEASE AREA AND THE POINT OF BEGINNING; THENCE S20°14'37"W A DISTANCE OF 21.37 FEET; THENCE S89°35'36"W A DISTANCE OF 12.46 FEET; THENCE N00°24'24"W A DISTANCE OF 20.00 FEET; THENCE N89°35'36"E A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING. SAID LEASE CONTAINS 325 SQUARE FEET OR 0.007 ACRES.

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2018 - \_\_\_\_\_

RESOLUTION TO SIGN SECOND AMENDMENT TO LEASE AGREEMENT WITH  
AMERICAN TOWER L.P. AT 5572 W. AIRWAYS AVENUE FOR \$21,000 PER YEAR

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WHEREAS, the City has an antenna/tower with several tenants located at 5572 W. Airways Avenue; and

WHEREAS, Verizon Wireless through American Tower, L.P. is a current tenant and is requesting an additional 800 square feet outside of the current fenced area; and

WHEREAS, the City may obtain additional annual lease payments in the amount of \$21,000.00, to be split evenly between the City and Water Utilities.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that a Second Amendment To Lease Agreement with American Tower, LP be signed for a lease at 5572 W. Airways Avenue in the amount of \$21,000.00 per year.

Introduced at a regular meeting of the Common Council of the City of Franklin the  
\_\_\_\_\_ day of \_\_\_\_\_, 2018, by Alderman \_\_\_\_\_.

PASSED AND ADOPTED by the Common Council of the City of Franklin on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2018.

APPROVED:

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

ATTEST:

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

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

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 10/02/2018
REPORTS & RECOMMENDATIONS	AUTHORIZE EXECUTION OF A CONTRACT FOR CROWLEY CONSTRUCTION TO MARK PAVEMENT IN VARIOUS FRANKLIN LOCATIONS FOR NOT TO EXCEED \$24,500	ITEM NUMBER <i>G. 8.</i>

### **BACKGROUND**

Staff prepared bid documents for the 2018 Pavement Marking for the City of Franklin. The work was advertised and the bids were due on August 30th, 2018. Two (2) sets of specifications were distributed and zero (0) bidders submitted bids. State statutes and local ordinances are unclear as to how to award projects that are legally advertised and receive no bidders.

### **ANALYSIS**

Staff contacted three (3) vendors to get quotes for line painting so that some pavement marking can be done this year. The vendors were Century Pavement Marking, Guidelines Pavement Marking, and Crowley Construction. Century Pavement Marking and Guidelines Pavement Marking were no longer taking on work for the water-based paint as requested by Franklin.

Crowley Construction is interested in doing line painting for Franklin and has availability. Crowley has been the successful bidder in previous years and is familiar with the City's specifications and streets. They were able to keep their price the same as last year. When asked why they did not bid, they stated they were having issues with their paint truck and did not know how long the truck would be down. Their truck has since been repaired and is working.

Staff is recommending that Crowley Construction provide approximately \$24,000 of the needed centerlines and fog lines. If all locations specified in the bid documents were performed using prices from 2017, the cost would be in excess of \$27,000. Since \$25,000 is the threshold for this advertising requirement, a not to exceed amount of \$24,500 is recommended. There is sufficient funding in the operating budget to cover this project.

### **OPTIONS**

- A. Authorize execution of contract with Crowley Construction to perform approximately \$24,000 (not to exceed \$24,500) of needed pavement marking. Or
- B. Refer back to Staff with further direction. Note that warm days suitable for pavement marking in 2018 are disappearing.

### **FISCAL NOTE**

There is adequate funding available in the DPW operating budget.

### **COUNCIL ACTION REQUESTED**

(OPTION A) Motion to authorize execution of a contract for Crowley Construction to mark pavement in various Franklin locations for not to exceed \$24,500 at same unit prices and in a form substantially similar to 2017 pavement marking contract. Also a motion to authorize publication of a first-class notice of an intent to award a contract for pavement marking to Crowley Construction for an amount not to exceed \$24,500 and to authorize the Director of Public Works to execute a purchase order for such services following publication of the notice.

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 10/02/2018
REPORTS & RECOMMENDATIONS	APPROVAL TO UPDATE CULVERT INSTALLATION COSTS	ITEM NUMBER <i>6.9.</i>

### **BACKGROUND**

City of Franklin Municipal Code Chapter 222, "Streets and Sidewalks," Section 2, "Culverts," Subsection D, "Installation," reads: (1) "Installation of culverts shall be made by City street employees so as to ensure maintenance of proper grades and uniformity of depth and cover," and (2) "The cost of all culvert installations shall be in accordance with the ***schedule approved by the Board of Public Works and on file in the City Engineer's office.***" Accordingly, when City property owners request installation or replacement of driveway culverts, the work is performed by the City Department of Public Works (DPW) staff at a cost borne by the property owner. The cost sheet was last updated in 2015.

### **ANALYSIS**

The City is currently using the attached "Culvert Installation Costs" sheet, with a date of August 2015. Bill Dudash, Superintendent of the DPW, has calculated the current actual costs to the City for typical culvert installations. Please note that these are simply pass-through costs and are not intended to have the City profit off of the fees.

Current practice is that asphalt surfacing is provided free of charge when requested. In efforts to reevaluate limited budgets, Staff observed that the entire City is essentially subsidizing asphalt driveway approaches for individual property owners. Per Franklin municipal code, a property owner with a concrete approach is responsible for re-installation of the concrete driveway. The proposed 2018 prices include prices if asphalt is needed. Note that like concrete driveway approaches, property owners may elect to have a private contractor install asphalt at the property owner's expense.

The 2015 prices are also difficult to interpret because some prices are by linear foot and some prices are lump sum with a 20-foot minimum (typical driveway width) and 22-foot minimum (driveway width with larger pipes). For driveways wider than 20/22-feet, lump sum prices are converted to prices per foot. The proposed 2018 chart attempts to simplify the calculation by listing all items as prices per foot and then also listing the total prices for 20-foot minimum lengths.

For larger pipe diameters of 36", 42", and 48", 2018 methodology will be similar to 2015 in that labor, stone, and asphalt will be as computed for a 30" pipe. The materials for stone, asphalt, and all labor will be computed per the 30" prices.

Any bands will be computed as one foot of pipe. This is the same methodology as 2015.

Resetting a pipe, regardless of size, will be computed differently than in the 2015 methodology. It will be computed as labor of a new 12" pipe and labor/materials for asphalt if applicable.

For a full comparison of the proposed 2018 driveway culvert prices to the 2015 driveway culvert prices, note the enclosed table. The minimum price increase for a 20-foot wide installation without asphalt is 34% and the maximum price increase is 49%. While these price increases over 3 years are significant, the adjustment is needed because current practice is allowing residents to have their driveway installed/replaced for prices that are subsidized by the general budget.

Most notably, the comparison of proposed to current driveway culvert prices including asphalt has a minimum price increase for a 20-foot wide installation of 88% and the maximum price increase is 153%. Part of these price increases are the same as the without asphalt comparisons but also considers that current prices are providing asphalt for free. Again, in an effort to cover actual costs to the City, Staff proposes to charge for the asphalt.

The Board of Public Works (BOPW) considered this issue at the September 11, 2018, meeting. Since this price schedule is 1) such a large increase in prices, 2) represent some changes in practice and policy, and 3) has impacts on the highway budget, the BOPW motion included a recommendation for the Common Council to approve the presented cost schedule.

#### **OPTIONS**

- A. Approve the attached price schedule for DPW culvert work- dated September 2018). Or
- B. Refer back to Staff and Board of Public Works with further direction.

#### **FISCAL NOTE**

As presented, this will have a positive impact on the highway budget since both DPW labor and materials costs will be fully reimbursed with the fees charged for services.

#### **COUNCIL ACTION REQUESTED**

(OPTION A) Motion to approve the update of culvert installation costs per "Culvert Installation Costs" (September 2018).



**CULVERT INSTALLATION COSTS  
CITY OF FRANKLIN**

**ROUND PIPE**

SIZE	LENGTH	COST OF PIPE	STONE	LABOR W/EQUIPMENT	TOTAL
12"	20'	\$180.00	\$100.00	\$150.00	\$430.00
15"	20'	224.00	100.00	\$150.00	\$474.00
18"	20'	266.00	125.00	\$150.00	\$541.00
21"	20'	310.00	125.00	\$150.00	\$585.00
24"	22'	385.00	150.00	\$150.00	\$685.00
30"	22'	587.40	150.00	\$150.00	\$887.40

**ARCH PIPE**

SIZE	LENGTH	COST OF PIPE	STONE	LABOR W/EQUIPMENT	TOTAL
12" (15 x 9)	20'	\$205.00	\$100.00	\$150.00	\$455.00
15" (17 x 13)	20'	248.00	100.00	\$150.00	\$498.00
18" (21 x 15)	20'	283.00	125.00	\$150.00	\$558.00
21" (24 x 18)	20'	330.00	125.00	\$150.00	\$605.00
24" (28 x 20)	22'	411.40	150.00	\$150.00	\$711.40
30" (35 x 24)	22'	613.80	150.00	\$150.00	\$913.80

- Larger diameter pipe 36", 42" and 48" to be computed with stone and labor as indicated above for 30".
- For replacement of existing culvert - deduct \$50.00 from cost of stone.
- BAN shall cost the price of one lineal foot of pipe.
- Reset pipe in gravel \$100.00  
     Pipe with asphalt patch \$150.00  
     Additional asphalt \$50.00/ton

August 2015

RJR/sg

**CULVERT INSTALLATION COSTS  
CITY OF FRANKLIN**

**ROUND PIPE**

SIZE	COST / FOOT W/O ASPHALT	COST / FOOT WITH ASPHALT
12"	\$32.00	\$54.50
15"	\$34.90	\$57.40
18"	\$37.75	\$60.25
21"	\$40.60	\$63.10
24"	\$43.35	\$65.85
30"	\$55.60	\$78.10

**ARCH PIPE**

SIZE	LENGTH	COST OF PIPE
12" (15 x 9)	\$33.65	\$56.15
15" (17 x 13)	\$36.50	\$59.00
18" (21 x 15)	\$38.85	\$61.35
21" (24 x 18)	\$42.00	\$64.50
24" (28 x 20)	\$43.35	\$65.85
30" (35 x 24)	\$55.60	\$78.10

- Minimum 20 foot culvert lengths
- Maximum 34 foot culvert length unless approved by City Engineer
- Larger diameter pipe 36", 42" and 48" to be computed with stone and labor as indicated above for 30".
- Prices are for Corrugated Metal Pipes. Other materials will be adjusted per actual price of materials
- For replacement of existing culvert - deduct \$50.00 from cost
- Band shall cost the price of one lineal foot of pipe.
- Resetting Existing Pipe:
  - No surface restoration = \$100.00
  - Asphalt surface restoration for minimal trench = \$250

### Comparison of Proposed 2018 Driveway Culvert Prices to 2015 Driveway Culvert Prices

	Required						Optional				
	Pipe Material / LF	Pipe Labor / LF	Stone Material / LF	Total Price / LF Without Asphalt	Minimum 20 LF Without Asphalt	Percent Increase	Asphalt Material / LF	Asphalt Labor / LF	Total Price / LF With Asphalt	Minimum 20 LF With Asphalt	Percent Increase
2015 12" Round	\$ 9.00	\$ 7.50	\$ 5.00	\$ 21.50	\$ 430.00		\$ -	\$ -	\$ 21.50	\$ 430.00	
2018 12" Round	\$ 12.00	\$ 15.00	\$ 5.00	\$ 32.00	\$ 640.00	49%	\$ 7.50	\$ 15.00	\$ 54.50	\$ 1,090.00	153%
2015 15" Round	\$ 11.20	\$ 7.50	\$ 5.00	\$ 23.70	\$ 474.00		\$ -	\$ -	\$ 23.70	\$ 474.00	
2018 15" Round	\$ 14.90	\$ 15.00	\$ 5.00	\$ 34.90	\$ 698.00	47%	\$ 7.50	\$ 15.00	\$ 57.40	\$ 1,148.00	142%
2015 18" Round	\$ 13.30	\$ 7.50	\$ 6.25	\$ 27.05	\$ 541.00		\$ -	\$ -	\$ 27.05	\$ 541.00	
2018 18" Round	\$ 17.75	\$ 15.00	\$ 5.00	\$ 37.75	\$ 755.00	40%	\$ 7.50	\$ 15.00	\$ 60.25	\$ 1,205.00	123%
2015 21" Round	\$ 15.50	\$ 7.50	\$ 6.25	\$ 29.25	\$ 585.00		\$ -	\$ -	\$ 29.25	\$ 585.00	
2018 21" Round	\$ 20.60	\$ 15.00	\$ 5.00	\$ 40.60	\$ 812.00	39%	\$ 7.50	\$ 15.00	\$ 63.10	\$ 1,262.00	116%
2015 24" Round	\$ 17.50	\$ 6.82	\$ 6.82	\$ 31.14	\$ 622.76		\$ -	\$ -	\$ 31.14	\$ 622.76	
2018 24" Round	\$ 23.35	\$ 15.00	\$ 5.00	\$ 43.35	\$ 867.00	39%	\$ 7.50	\$ 15.00	\$ 65.85	\$ 1,317.00	111%
2015 30" Round	\$ 26.70	\$ 6.82	\$ 6.82	\$ 40.34	\$ 806.76		\$ -	\$ -	\$ 40.34	\$ 806.76	
2018 30" Round	\$ 35.60	\$ 15.00	\$ 5.00	\$ 55.60	\$ 1,112.00	38%	\$ 7.50	\$ 15.00	\$ 78.10	\$ 1,562.00	94%
2015 12" Arch	\$ 10.25	\$ 7.50	\$ 5.00	\$ 22.75	\$ 455.00		\$ -	\$ -	\$ 22.75	\$ 455.00	
2018 12" Arch	\$ 13.65	\$ 15.00	\$ 5.00	\$ 33.65	\$ 673.00	48%	\$ 7.50	\$ 15.00	\$ 56.15	\$ 1,123.00	147%
2015 15" Arch	\$ 12.40	\$ 7.50	\$ 5.00	\$ 24.90	\$ 498.00		\$ -	\$ -	\$ 24.90	\$ 498.00	
2018 15" Arch	\$ 16.50	\$ 15.00	\$ 5.00	\$ 36.50	\$ 730.00	47%	\$ 7.50	\$ 15.00	\$ 59.00	\$ 1,180.00	137%
2015 18" Arch	\$ 14.15	\$ 7.50	\$ 6.25	\$ 27.90	\$ 558.00		\$ -	\$ -	\$ 27.90	\$ 558.00	
2018 18" Arch	\$ 18.85	\$ 15.00	\$ 5.00	\$ 38.85	\$ 777.00	39%	\$ 7.50	\$ 15.00	\$ 61.35	\$ 1,227.00	120%
2015 21" Arch	\$ 16.50	\$ 7.50	\$ 6.25	\$ 30.25	\$ 605.00		\$ -	\$ -	\$ 30.25	\$ 605.00	
2018 21" Arch	\$ 22.00	\$ 15.00	\$ 5.00	\$ 42.00	\$ 840.00	39%	\$ 7.50	\$ 15.00	\$ 64.50	\$ 1,290.00	113%
2015 24" Arch	\$ 18.70	\$ 6.82	\$ 6.82	\$ 32.34	\$ 646.76		\$ -	\$ -	\$ 32.34	\$ 646.76	
2018 24" Arch	\$ 23.35	\$ 15.00	\$ 5.00	\$ 43.35	\$ 867.00	34%	\$ 7.50	\$ 15.00	\$ 65.85	\$ 1,317.00	104%
2015 30" Arch	\$ 27.90	\$ 6.82	\$ 6.82	\$ 41.54	\$ 830.76		\$ -	\$ -	\$ 41.54	\$ 830.76	
2018 30" Arch	\$ 35.60	\$ 15.00	\$ 5.00	\$ 55.60	\$ 1,112.00	34%	\$ 7.50	\$ 15.00	\$ 78.10	\$ 1,562.00	88%

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 10/02/2018
REPORTS & RECOMMENDATIONS	AUTHORIZE DPW TO ENCLOSE DITCHES FOR VARIOUS PROPERTIES ALONG S. NORTH CAPE ROAD	ITEM NUMBER <i>G.10.</i>

### **BACKGROUND**

With Resolution 2016-7221 the City accepted a jurisdictional transfer of S. North Cape Road from Milwaukee County. Staff had received numerous complaints and concerns about the roadside open ditches that were designed and constructed by the County prior to the road's transfer from the County to the City. This item has been discussed extensively at the Board of Public Works (BOPW)- see detailed information contained in attached BOPW action sheet.

In November 2016, the BOPW decided that the circumstances warranted special assistance to property owners along this section of road. Specifically, the City DPW should provide assistance to owners for the open ditch portions as is provided for driveway culverts. Current practice per Franklin Municipal Code Chapter 222-2-D is that DPW provides labor and material for driveway culverts at prices established by the BOPW. The property owner pays for this service before work is performed. Staff did discuss with the City Attorney and he concurred that this work in the public right of way could be structured like the driveway culvert installations.

Following direction from the BOPW, the Engineering Department sent a letter to all property owners along the construction area of S. North Cape Road. The Engineering Department received 34 calls from property owners who received the letter. Twenty-five property owners requested a survey of their ditches. Several of those who asked for a survey said they do not think they will be enclosing their ditches but since the survey was to be done at no cost they wanted their property included. The rest of the owners either rejected the offer or never called back after initial phone communication. The attached Overview identifies the properties that asked for surveys.

Staff reviewed each location for eligibility and if applicable, designed a ditch enclosure. The final determinations and costs were presented to the Board of Public Works on September 11, 2018.

Since this situation is unique to past and current practice, the BOPW approved mailing the offer to affected residents contingent upon Common Council to concur that this work is appropriate for DPW to perform.

### **ANALYSIS**

If all properties elected to pay DPW to enclose their ditches (highly unlikely), then the value of DPW supplied materials and labor would be approximately \$125,000. This value is determined using recently updated numbers for materials and labor that were developed to cover actual costs to DPW. The 2019 budget would need to be adjusted accordingly to accommodate the purchase of materials. However, the increased revenues would cover any budget increases.

BOPW is only recommending this to property owners along S. North Cape because of the jurisdictional transfer issue and Milwaukee County constructing the ditches. It should be noted that enclosing ditches are not required. Property owners may employ a private contractor to perform work in their roadside ditches or leave them as is.

DPW will coordinate schedule with property owners, if any, as time allows considering all other projects.

**OPTIONS**

- A. Concur with BOPW and authorize DPW to perform ditch enclosure work on S. North Cape Road. Or
- B. Refer back to Staff with further direction.

**FISCAL NOTE**

Property owners will be charged pass-through costs for materials and labor as determined by Engineering and Department of Public Works Staff and indicated in the attached Determination Table. If everyone were to participate, the budget would need to be increased by approximately \$125,000. As explained, there would be offsetting revenues to cover these expenditures.

**COUNCIL ACTION REQUESTED**

(OPTION A) Motion to authorize DPW to enclose ditches for various properties along S. North Cape Road.

ENG-GM

<b>APPROVAL</b>	<b>REQUEST FOR BOARD OF PUBLIC WORKS ACTION</b>	<b>MTG DATE</b> 10/11/2016
Reports & Recommendations	<b>SPECIAL PERMISSION FOR S NORTH CAPE DITCH ENCLOSURES</b>	<b>ITEM NO.</b>

### **BACKGROUND**

Recently, Milwaukee County transferred S. North Cape Road to the City. Staff has received numerous complaints and concerns regarding the ditches along the project. This item will attempt to facilitate property owners making improvements to their satisfaction.

### **ANALYSIS**

When questioned, Staff reminds property owners that the County proposed a road cross section with sidewalks that enclosed the ditches with a curb and gutter storm sewer system. That option was rejected and the resulting project that was constructed with roadside open ditches. Staff worked with the County engineering and construction administration staff to shallow up the ditch as much as possible, but admittedly many of the ditches are difficult to maintain by property owners.

Staff has discussed with several property owners the procedure for enclosing a ditch. This process starts with a request to the City. Staff then presents this request to the Board of Public Works for consideration. If permission is granted, the property owner then finds a contractor to install an approved pipe with some design guidance from Staff.

To address the question "is there anything that the City can do to help us", Staff is proposing that the Board of Public Works grant Staff the ability to bypass the Board of Public Works Meeting if certain conditions are met:

1. The ditch is steeper than 3:1 on road side or 4:1 on house side. AND
2. The ditch measures at least 3.0 feet below the edge of pavement at all locations along the desired section to be enclosed. AND
3. Property request to Staff be made and improvements constructed in a limited timeframe - say 9 months

There is other assistance that the City could propose, but it is felt that any assistance with purchase or installation of materials may set a precedent for other locations in the City.

### **OPTIONS**

For Discussion.

### **FISCAL NOTE**

No impact to City budget.

### **RECOMMENDATION**

Grant permission. City Engineer will send a letter to all property owners along S. North Cape with this option for their consideration.

Dear property owner,

The Board of Public Works has determined that property owners along S. North Cape Road should be given special consideration regarding the enclosure of ditches after the County's reconstruction project. Special considerations will allow the work to be done without going through the normal request procedures before the Board and also allow you the option of having the Department of Public Works perform the work for nominal fees to cover labor and materials. To qualify, you must make a request to the Franklin Engineering Department prior to August 31, 2017.

To be eligible, the following conditions must be met:

1. The ditch is steeper than 4 horizontal : 1 vertical. AND
2. The ditch measures at least 30 inches below the edge of pavement at any location along the desired section to be enclosed. AND
3. A pipe of appropriate size to carry the required drainage can be installed with adequate cover.

If you would like to participate in this special offer, the Franklin Engineering department can help determine if your ditch meets the eligibility requirements outlined above. Please call me at 414-425-7510 if you would like to discuss.

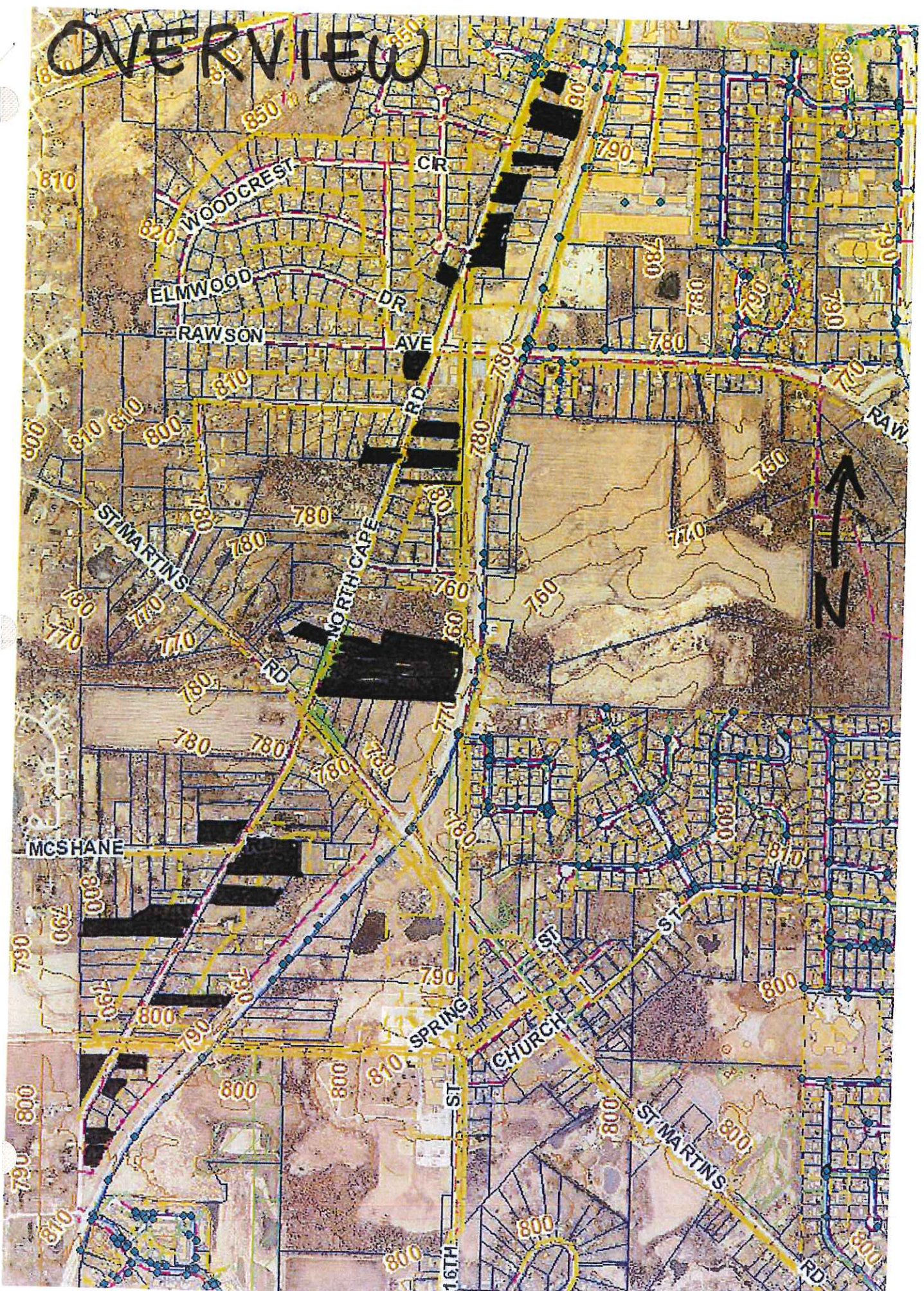
Thank you.

Sara Arnold, P.E.  
Project Engineer

Copy: Mayor Steve Olson  
Alderwoman Susanne Mayer



# OVERVIEW





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INFORMATION	INFORMATION FOR BOARD OF PUBLIC WORKS	MTG. DATE 09/11/2018
Reports & Recommendations	<b>UPDATE ON S. NORTH CAPE RD. DITCH ENCLOSURE REQUESTS</b>	ITEM NO.

### **BACKGROUND**

At the October 11, 2016, meeting of the Board of Public Works the City Engineer was granted permission to send a letter to all property owners along the construction area of S. North Cape Rd. Staff had received numerous complaints and concerns about the roadside open ditches that were designed and constructed by the County prior to the road's transferal from the County to the City. The City Engineer is attempting to facilitate property owners making improvements to their satisfaction. The Request for Board of Public Works Action and a sample of the letter that was sent to all owners are attached.

### **UPDATE**

The deadline to make a request for survey was August 31, 2017. The Engineering Department received 34 calls from property owners who received the letter. Twenty-five property owners requested a survey of their ditches. Several of those who asked for a survey said they do not think they will be enclosing their ditches but since the survey was to be done at no cost they wanted their property included. The rest of the owners either rejected the offer or never called back after initial phone communication. The attached Overview identifies the properties that asked for surveys.

The attached Determination Table shows all properties that requested surveys and whether or not they qualify for ditch enclosure by the Department of Public Works, along with the cost for that work. The table identifies "Ditch 1," Ditch 2," and "Ditch 3." The table works from north to south along S. North Cape Rd. and the Ditches also go from north to south along each property. That means Ditch 1 is between the northern property limits south to the driveway culvert and Ditch 2 is from the driveway culvert south to the southern property limits (the two properties with two drives have a third ditch, in which case Ditch 2 is between the two and Ditch 3 is the southern ditch). Almost all ditches surveyed qualify for enclosure by DPW staff.

Due to the different lengths and depths of the ditches the ditch enclosure costs vary greatly, from \$518.00 to \$13,878.30 for individual ditches and from \$2,034.50 to \$22,293.30 for each parcel. These costs do not include the permit or construction fees for connection of sump pumps or roof drains, which some property owners may desire when enclosing the ditch. Properties that qualify for enclosure also have the option of hiring a qualified private contractor to enclose the ditch using the City's design and specifications.

All but two qualifying ditches can be enclosed without cooperation from neighboring parcels:

- Ditch 1 at 7018 S. North Cape Rd. (Breidigan), can only be enclosed if the property owner to their north (7010 S. North Cape Rd.) encloses Ditch 2. While the owner of

Ditch 2 at 7010 S. North Cape Rd. can be enclosed without participation from 7018, the final cost for 7010 cannot be determined until 7018 decides whether or not to participate.

- The property owner at 7455 S. North Cape Rd. (Jankowski) will need to pay for regrading of the roadside ditch in front of the property to their north (7421 S. North Cape Rd.) in order to enclose Ditch 1 on their property.

In all but one case where there are multiple ditches that qualify to be enclosed the property owner has the option of enclosing only one ditch. The property at 7744 S. North Cape Rd. (Perry) requires the downstream ditch, Ditch 2, to be enclosed in order for the upstream ditch, Ditch 1, to be enclosed. Note that Ditch 2 can be enclosed regardless of Ditch 1.

Both 7941 S. North Cape Rd. (Peterson) and 7946 S. North Cape Rd. (Porter) will require reinforced concrete pipe, which costs significantly more than metal. However, to be consistent the City is offering to charge the price for metal.

Five of the roadside ditches can be enclosed for only a portion of the total length.

Due to construction work by the Muskego-Norway School District at the southern limits of South North Cape in 2017 and 2018, data collection and design had to be postponed. During that construction several roadside ditches were enclosed by the District, including two properties that had requested surveys (8008 and 8020 S. North Cape Rd.). Therefore, this project no longer applies to them.


The letters will be sent tomorrow (September 12) with a deadline to request enclosure by DPW staff of December 31, 2018. The final construction schedule will depend on the requests, but will begin in 2019.

S. NORTH CAPE ROAD DITCH ENCLOSURE DETERMINATION TABLE

Address	Property Owner	Ditch 1			Ditch 2			Ditch 3		
		DPW Eligible	Private Eligible	DPW Cost	DPW Eligible	Private Eligible	DPW Cost	DPW Eligible	Private Eligible	DPW Cost
1 6770 S. North Cape Rd.	Tice	Yes	Yes	\$ 2,620.60	No	No	N/A			
2 6800 S. North Cape Rd.	Keller	Yes	Yes	\$ 1,707.00	Yes	Yes	\$ 1,763.00			
3 6874 S. North Cape Rd.	Nuoffer	Yes	Yes	\$ 1,910.55	Yes	Yes	\$ 2,275.10			
4 6930 S. North Cape Rd.	Mudek	No	No	N/A	Yes	Yes	\$ 6,377.00			
5 6956 S. North Cape Rd.	Esche	Yes	Yes	\$ 1,028.25	Yes (Partial)	Yes (Partial)	\$ 1,702.25	No	No	N/A
6 7010 S. North Cape Rd.	Groves	No	No	N/A	Yes	Yes	Dependent			
7 7018 S. North Cape Rd.	Breidigan	Conditional	Conditional	\$ 962.00	Yes	Yes	\$ 2,005.70			
8 7029 S. North Cape Rd.	Wages	Yes	Yes	\$ 3,690.00	Yes	Yes	\$ 2,536.50			
9 11641 W. Rawson Ave.	Strand	Yes	Yes	\$ 4,215.45	Yes (Partial)	Yes (Partial)	\$ 8,631.50			
10 7176 S. North Cape	Metcalf	Yes	Yes	\$ 2,871.60	Yes	Yes	\$ 1,517.90			
11 7217 S. North Cape Rd.	McNamara	Yes	Yes	\$ 2,765.50	Yes	Yes	\$ 587.25			
12 7220 S. North Cape Rd.	Bandur	Yes	Yes	\$ 3,449.25	Yes	Yes	\$ 1,730.50			
13 7380 S. North Cape Rd.	Franklin School	Yes	Yes	\$ 13,725.00						
14 7455 S. North Cape Rd.	Jankowski	Conditional	Conditional	\$ 3,429.50	Enclosed during original construction					
15 7661 S. North Cape Rd.	Clark	Yes (Partial)	Yes (Partial)	\$ 3,567.50	Yes (Partial)	Yes (Partial)	\$ 1,666.00			
16 7700 S. North Cape Rd.	Sharrow	Enclosed during original construction	Enclosed during original construction		Yes (Partial)	Yes (Partial)	\$ 3,231.00			
17 7744 S. North Cape Rd.	Perry	Conditional	Conditional	\$ 3,103.50	Yes	Yes	\$ 3,884.00			
18 7751 S. North Cape Rd.	Pfister	Enclosed during original construction	Enclosed during original construction		Yes	Yes	\$ 2,461.10	Yes	Yes	\$ 518.00
19 7771 S. North Cape Rd.	Skeen	Yes	Yes	\$ 2,034.50	Enclosed during original construction					
20 7850 S. North Cape Rd.	Larson	Yes	Yes	\$ 3,204.00	No	No	N/A			
21 7922 S. North Cape Rd.	Perez and Lebeau	No	No	N/A	Yes	Yes	\$ 2,737.00			
22 7941 S. North Cape Rd.	Peterson	Yes	Yes	\$ 13,878.30	Yes	Yes	\$ 8,475.00			
23 7946 S. North Cape Rd.	Porter	Yes	Yes	\$ 4,522.30	Enclosed during original construction					
24 8008 S. North Cape Rd.	Wenzel		The ditches in front of this property were enclosed during the Muskego-Norway School construction project.							
25 8020 S. North Cape Rd.	Ols		The ditches in front of this property were enclosed during the Muskego-Norway School construction project.							

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<b>APPROVAL</b> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>10/2/2018</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Selection of a Design Concept and Architect for the City Hall Remodeling Project</b>	<b>ITEM NUMBER</b>  <i>G.11.</i>

(This item was tabled from the September 18, 2018 Common Council Meeting to the October 2, 2018 Common Council Meeting. **To avoid costs of reprinting, please bring along the design concepts that were included in your last Council packet for this item.**)

The Common Council previously authorized contracts with two architectural firms to develop concepts for a remodeling of the front façade of City Hall. Quorum Architects and Continuum Architects + Planners, S.C. were selected. Each was to provide two concepts within the estimated available budget range of \$650,000 to \$700,000 and one concept between \$1,000,000 and \$1,100,000. The Director of Administration (author of this Council Action Sheet) included Scott Satula (Building Inspector), Steve Ketterhagen (First Assistant Building Inspector), Ted Juerisson (Assistant Building Inspector), and Bob Tesch (Facilities Manager) in the review of alternatives and in preliminary meetings with the architects. Steve and Ted are both licensed architects and brought an added level of expertise to the review.

Like evaluating a piece of art, this project is highly subjective. As such both architects were offered 10 to 12 minutes to present on their concepts (not including time spent answering questions from the Common Council). This will ensure that staff's preferences unintentionally misrepresent any particular concept design. Additionally, I will be providing two recommendations. The first is a recommendation within the current expected budget. I will also provide a recommendation relative to the higher, enhanced-budget alternatives. The following points are intended to provide some context for your overall review and consideration.

- Please recall the project just addresses the front (Loomis Road) side of the building, except for the brown-board cladding that encircles the entire top third of the building. Landscaping on the Loomis Road side of parking lot was also not part of the project.
- The concepts by Continuum are slightly more developed than those by Quorum. As such, Continuum's example has more pictures, detail, and perspectives. That, however, is largely a function of the fact that Continuum quoted \$12,000 to prepare concepts and Quorum quoted \$8,800. As such, with a third more resources available to them, I would expect more from Continuum's presentation package (which they did). In the end, however, I recommend and encourage the Aldermen to overlook the distinction on the format of the concept and simply focus on the overall concept itself.
- It is fair to note that Continuum adhered most closely to the contractual terms, such as deadline. I want to give them that acknowledgement. Quorum, for example, requested an extension because they felt their concepts were not quite sufficient. The one work-day extension (which gave them the weekend) did not set back my timeline, so it was allowed (in part because they were provided fewer resources). Our prior experience with Quorum was very positive, (they were involved in the ADA project at the Historical Buildings) so I am not concerned. If, however, they are selected, this point would likely be emphasized in the final design contract. The bottom line is that I believed it was important enough and appropriate to point this fact out, but not enough to affect the concept review or impact the decision.
- Once an architect and general concept is selected, a full design and documents contract would be returned to the Common Council. That process will allow for much greater development of the concept. For example, pieces from one element could be brought in to enhance the concept or added lighting features could be incorporated. Things like colors, final sizes of design elements (such as added windows), and specific placement of the flag pole would be addressed. Lots of meat needs to be put on the concept's bones, and that will be done during the next phase.
- Concepts Overall: I noticed an interesting distinction in the overall direction taken by the architects. Continuum viewed the City Hall's main entrance and the Building Inspection entrance as bookends to their concepts and developed both entrances and the space in between with one thought in mind. In doing so they spread the impact – and funding – out across the entire space. Quorum focused their design – and funding – on City Hall's main entrance which provided for a much grander impact in the middle and less impact across the entire facade of the building. As will be seen from the recommendations below, both strategies had their merits.

- Quorum did one thing that slightly confuses the matter, but in the end is definitely to our benefit. Their second alternative (Design Option B) estimates out at about \$910,000. The image shows and references two "alternate options" for new windows in the exterior wall of the Common Council chambers and sunshades and canopies over the new and existing windows. Backing these options out, the cost is expected to come within the scope of the budget. Therefore, when looking at this alternative please ignore those features, since the absence of those features is what allows it to fulfill the requirement for two in-budget options. At the same time, the option presentation provides us with an example of what a concept between our two target budgets could look like.
- Following were the factors I considered in reviewing the design concepts: the overall impression, how the main entrance was addressed, a covered area for people to stand under, the style of cladding (method replacing the brown boards), how existing windows were treated, signage, impact on the exterior Common Council wall, impact on the interior lobby, exterior height, how the Building Inspection door was addressed, an alternative Community Room access, how the exterior grounds or "community space" was created or treated, impacts on the parking lot, and consideration for a drop box for payments or a message board.

**IN-BUDGET RECOMMENDATION: Continuum's Option 2, which they refer to as the "Superframe," was unanimously preferred.** Their strategy of using the entrances as bookends paid off. Expanding the front entrance along the exterior wall of the Council Chambers gives a larger visual impact. The smaller but complimentary design around the Building Inspection entrance stretches the overall impact of the project. The contrasting color pops but also makes sense given the prominent use of limestone-white on the façade of the Library across the street.

If this overall concept is pursued, staff would want to address some of the following details:

- Enhanced wall and window area lighting, particularly in the new public space to the north of the main entrance,
- installing a small curb around all materials at ground level to protect the materials during winter maintenance, etc.,
- Fewer, but bigger, windows added to the exterior Council Chamber wall,
- Consideration of the canopy depth and beveling of soffits and side walls, and
- Appropriate signage and naming at the Building Inspection entrance.

Despite wanting to further investigate some of the details of the design, staff did unanimously recommend Continuum's Option 2 as the best concept within the approved budget.

**CONSIDERATION OF ADDITIONAL FUNDING: Staff also unanimously supported pursuing the more dramatic potential offered by the larger, (+) million dollar project.** The bottom line was that only one of the four in-budget designs was substantial enough to warrant spending \$650,000. There was a minority opinion that none of the in-budget projects made a substantial difference worth the money. The impact of the one in-budget concept that was recommended, however, was dramatically overshadowed by the potential impact of the recommended enhanced-budgeted project. In addition to the staff's opinion, two factors convinced me to recommend that the Common Council should seriously consider expanding the scope and budget of the project.

- ❖ First, the City is causing dozens of millions of dollars to be spent to enhance development along the Loomis Road corridor. Franklin is a high-end community, and the City Hall should reflect that. The larger budget project will provide that pop that is underwhelming at the in-budget project concept. Similarly, the in-budget projects do not stand up to the scope and attractiveness of the City Hall projects of a number of our neighbors. It's not a contest, but they are, arguably, a bench mark. The City Hall of Franklin would remain lacking in character even after the \$650,000 is invested if the budget remains as is.
- ❖ Second, the City is investing substantially in the roof and HVAC system of City Hall, so we will be in the building for an extended period. Similarly, if the façade is remodeled now, it is unlikely to be remodeled again in the next 20 years. Recognizing that fact, if the alternatives were to construct the in-budget alternative now or wait seven years and construct the larger, more impressive project, staff unanimously recommends waiting for the larger project.

In summary, the in-budget recommendation referenced above is nice and is the best that can be done for the budget. It is not the best that can be done for Franklin. Staff recommends consideration of a larger budget and pursuing a design concept with more pop and zing.

**ENHANCED-BUDGET PROJECT – Staff unanimously recommends Quorum's "Design Option C – Scheme 1".** The exterior view simply stands out from all of the alternatives. The new oversized foyer makes a statement and will grab one's focus. Just as Continuum's strategy worked well for the in-budget project scope, Quorum's worked well for the enhanced-budget project



scope. Note that only portions of the glass wall that is currently the exterior of the Common Council Chambers is see-through glass. The rest is spandrel glass that is not see-through. The raised interior lobby was also a selling point to enhance the overall project. Although the reference to clerestory lights (lights above eye level at the top of a raised interior ceiling) probably overreaches the budget and alternative means of bringing in natural lighting should be expected.

Although the favorite alternative, staff would want to ensure there is a four to eight inch curb between the ground and the wall elements to ensure they last longer and limit damage from routine snow removal. Staff would want to move the sign location. Additionally, the design for the Building Inspection door probably deserves to be slightly enhanced given the grandeur of the main entrance. Lastly, some further consideration should at least be given to how existing windows are treated.

It is worth noting that in general Staff did appreciate Continuum's enhanced-budget concept referred to as "the Funnel." The large canopy element definitely stands out and changes the character of the building. Staff, however, was most impressed with their concept of adding an entrance off the main entrance public space into the Community Room. That change really altered the functionality and vision of the space. If this alternative is pursued, staff would want to address the scope of the Building Inspection entrance as it may be oversized in comparison to the main entrance modification.

#### **MOVING FORWARD:**

- A concept should be selected, and the Director of Administration should work with the architect selected to prepare a contract for concept development and design services. The concept development would be an iterative process that gets into the details of the concept and more fully investigates costs.
- Staff recommends Quorum and their "Design Option C" concept be selected. The actual construction budget would not need to occur until following design. Any increase over the current budgeted amount would then need to be approved out of the 2019 Restricted Contingency, for two reasons. First, that would ensure the final design and price merit approval because use of the restricted contingency requires four votes. Second, restricted contingency is appropriate because that is fund balance and funding for construction and remodeling of a city hall cannot use borrowed funds without voter approval. The City, however, has a sufficient General Fund fund balance for such considerations.
- If the motion is approved and unless otherwise directed, the Director of Administration will use existing Department of Administration contractual services appropriations to get the design work started on a time and materials basis for an amount under the level of authority that can be authorized by the Mayor from existing appropriations (\$5,000). The purpose is so that concept development can begin instead of waiting two weeks for a full professional services contract at the next Common Council meeting. The goal would be to try to speed the project along so that it can be bid out before the end of winter and a contract issued as early in the new construction year as possible. That is a very aggressive timetable, so every couple of weeks could help.

I would like to thank Scott Satula, Steve Ketterhagen, Ted Juerisson, and Bob Tesch for their time, help, and thoughtful consideration on this project. Their expertise was very beneficial in ensuring that the concepts were fully vetted.

## **COUNCIL ACTION REQUESTED**

**RECOMMENDED:** Motion to direct the Director of Administration to prepare a professional services agreement with Quorum Architects for concept development and design services for Design Option C.

#### **ALTERNATIVES:**

- (a) Motion to direct the Director of Administration to prepare a professional services agreement with Continuum for concept development and design services for Option #2.
- (b) Motion as otherwise determined by the Common Council.

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