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Common Council
Chambers
8640 S. Howell Ave.
PO Box 27
Oak Creek, WI 53154
(414) 768-6500

COMMON COUNCIL MEETING AGENDA

TUESDAY, SEPTEMBER 3, 2013
AT 7:00 P.M.

COUNCIL MEETINGS CAN BE SEEN LIVE ON GOVERNMENT ACCESS CHANNELS 25 AND 99

1. Call Meeting to Order / Roll Call
2. Pledge of Allegiance
3. Approval of Minutes: 8/20/2013

New Business

MAYOR & COMMON COUNCIL

4. **Ordinance:** Consider Ordinance No. 2694, amending Ordinance No. 2666, authorizing a new Deputy Treasurer position be created to replace an Account Clerk II position and that the hiring rate for this position be \$53,987, as recommended by the Personnel Committee (by Committee of the Whole).
5. **Ordinance:** Consider Ordinance No. 2695, amending Ordinance No. 2666, authorizing a new Laborer/Driver position be created in the Streets, Parks and Forestry Department and that approval for advertising to fill two (2) vacancies in the department be approved as recommended by the Personnel Committee (by Committee of the Whole).
6. **Motion:** Consider a motion to approve the 2013 Vendor Summary Report in the amount of \$1,457,574.13 (by Committee of the Whole).

POLICE

7. **Motion:** Consider a motion to approve an Inter-Municipal Agreement between the Village of Bayside and the City of Oak Creek for providing back-up Public Safety Answering Point services to each other (by Committee of the Whole).
8. **Motion:** Consider a motion to approve the proposed annual Agreement for School Resource Officer Services for the 2013-14 school year (by Committee of the Whole).

COMMUNITY DEVELOPMENT

9. **Informational:** Joint Planning Initiatives for South 27th Street.

10. **Resolution:** Consider a motion to **hold** Resolution No. 11399-090313, vacating a right-of-way for E. Forest Hill Ave. until after the required public hearing scheduled for October 15, 2013 (1st District).

ENGINEERING

11. **Resolution:** Consider Resolution No. 11396-090313, acquiring fee property (right-of-way), and temporary easements, for the S. Howell Avenue Wisconsin Department of Transportation maintenance project from Oakwood Road to Grange Avenue; and to send a payment in the amount of the Award of Damages to the affected property owners (Project No. 12025) (1st, 2nd, 3rd, 5th, & 6th Districts).
12. **Resolution:** Consider Resolution No. 11397-090313, entering into a Drainage Facility & Waterway Agreement with the Union Pacific Railroad Company for work within the railroad right-of-way for the E. Puetz Road to E. Forest Hill Avenue Drainage Improvement Project (Project No. 09024) (1st and 3rd Aldermanic Districts).

LICENSE COMMITTEE

The License Committee did not meet prior to the 9/3/13 meeting. Tentative recommendation is being made as follows.

13. **Motion:** Consider a motion to grant an Operator's license to Sarah White, 614A 15th Pl., Kenosha (Noodles & Company) (*favorable background report received*).

MISCELLANEOUS

14. **Motion:** Consider a motion to convene in to Closed Session immediately following the conclusion of the Common Council meeting pursuant to Wisconsin State Statutes Section 19.85 (1)(e) to discuss the terms of a proposed Memorandum of Understanding by and among Woodmans, Inc., One West Drexel LLC and the City of Oak Creek regarding the development of Drexel Town Square.
15. **Motion:** Consider a motion to reconvene into Open Session.
16. **Resolution:** Consider Resolution No. 11398-090313, approving the Memorandum of Understanding by and among Woodman's Inc. ("Woodman's"), One West Drexel LLC ("OWD") and the City of Oak Creek ("City") regarding the development of Drexel Town Square.

Adjournment.

Public Notice

Upon reasonable notice, a good faith effort will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aid at no cost to the individual to participate in public meetings. Due to the difficulty in finding interpreters, requests should be made as far in advance as possible preferably a minimum of 48 hours. For additional information or to request this service, contact the Oak Creek City Clerk at 768-6511, (FAX) 768-9587, (TDD) 768-6513 or by writing to the ADA Coordinator at the Health Department, City Hall, 8640 S. Howell Avenue, Oak Creek, Wisconsin 53154.

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

City of Oak Creek Common Council Report

Meeting Date: September 3, 2013

Item No.: 4

Recommendation: That the Common Council approve Ordinance 2694, an ordinance amending Ordinance 2666, authorizing a new Deputy Treasurer position be created to replace an Account Clerk II position and that the hiring rate for this position be \$53,987, as recommended by the Personnel Committee.

Background: This new Deputy Treasurer position is being recommended to replace the Account Clerk II position in the Treasurer's Department. The resignation of Jeanne Kubicek in May resulted in a vacancy in the Treasurer's Office. The pay range for the Account Clerk II position had been set by contract as \$34,998 to \$50,471 as of 2011 and has remained unchanged since then. The recommended Deputy Treasurer position (job description attached) is recommended at a range of \$53,987 to \$59,985. The beginning salary would be an increase of \$3,309 per year over the salary of the previous employee upon her resignation.

Consistent with the City's recently adopted Hiring Policy, the Personnel Committee must approve filling the position. This approval occurred at the Committee's August 26th meeting. This new position is an upgrade from the position which previously existed and is felt needed and desirable to handle the responsibilities in the Treasurer's Office. This position would also provide the redundancy and backup necessary to serve as Acting Treasurer in the absence of the City Treasurer.

Fiscal Impact: This position has been vacant for approximately three months, so there has been savings to the City in the 2013 budget of approximately \$11,600 plus benefits.

Fiscal Review by:



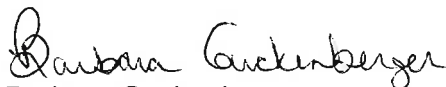
Bridget M. Souffrant
Finance Director/Comptroller

Prepared and Submitted by:



Gerald R. Peterson, ICMA-CM
City Administrator

Submitted by:



Barbara Guckenberger
City Treasurer

ORDINANCE No. 2694

BY: _____

AN ORDINANCE AMENDING ORDINANCE 2666 AND
FIXING THE SALARY RANGES, SALARY, WAGES AND
ALLOWANCES FOR NON-UNION, GENERAL, MANAGEMENT PERSONNEL AND OTHER
CITY OFFICES AND POSITIONS FOR THE YEAR 2013
ADDING A NEW DEPUTY TREASURER POSITION

The Common Council of the City of Oak Creek do hereby ordain as follows:

SECTION 1: There is herewith established the uniform rates of pay of those certain offices and positions in the civil service under the control of the Common Council of the City of Oak Creek affecting non-union, management, general, and miscellaneous personnel for the year 2013. The proper city officials are hereby authorized and directed to make the required payments to those affected employees of the City pursuant to this ordinance. The bi-weekly rate will prevail in years with more or less than 26 payrolls.

SECTION 2: The pay ranges and rates of pay of those certain offices and positions in the civil service under the control of the Common Council of the City of Oak Creek affecting management, supervisory and non-union personnel shall be as follows provided that the salary range and salaries are subject to review by the Common Council. Those affected employees pursuant to this section shall receive the fringe benefits set forth in the current Personnel Manual. These employees shall contribute fifteen percent (15%) of the cost of the premium for a single and family medical plan, respectively. Employees and their spouses who participate in a health risk assessment (HRA) program, or an annual physical exam and completion of the HRA certification, shall contribute ten percent (10%) of the premium for a single and family plan, respectively.

Civil Service Position Title	Current Salary	Starting Salary	Top Salary
Deputy Treasurer	n/a	\$53,987	\$59,985

SECTION 9: This ordinance shall take effect and be in force upon its passage and publication and shall apply as of _____, 2013, except where otherwise noted.

Introduced this ____ day of _____, 2013.

Passed and adopted this ____ day of _____, 2013.

President, Common Council

Approved this ____ day of _____, 2013.

Mayor

ATTEST:

City Clerk

VOTE: Ayes _____ Noes _____

City Of Oak Creek

Class Title: Deputy Treasurer
Department: Treasurer

Location: City Hall
Classification: Non-exempt

Summary Description

Under the supervision of the City Treasurer, will provide technical support to the department performing a variety of technical duties as follows:

Major Duties/Essential Functions

Review receipting by verifying against computer reports for accuracy. Reconcile cash drawers and prepare for deposit. Accountable for the accuracy, safety, and security of funds maintained for safekeeping.

Assumes the duties of the City Treasurer in his/her absence.

Data entry of daily receipting for tax collections and all general cash receipting.

Responsible to keep accurate record of bankruptcy notices in the city's tax system and notify City Attorney's office and collection agency as required.

Prepare and distribute monthly city investment reports.

Prepare data and maintain reporting of delinquent personal property tax. Issue delinquent notices in accordance with the city's resolution on the handling of delinquent personal property tax.

Prepare data and reporting of delinquent personal property accounts and delinquent invoices to be turned over to the City's Collection Agency.

Issue delinquent real property tax notices as directed by the Treasurer.

Prepare write-offs and to-be-published list of delinquent personal property tax.

Prepare chargebacks for delinquent personal property tax allowable by law.

Prepare corrected tax bills and chargebacks for rescinded/refunded real and personal property tax for those not required to be completed by Assessor.

Prepare omitted tax bills and chargebacks for distribution to share with other taxing jurisdictions.

Primary custodian of petty cash drawer.

Custodian of check signature stamp; maintain current signatories and notify appropriate staff and financial institutions of changes.

Compile and verify month end data; reconcile to various bank statements and to Finance Department records. Submit monthly reports to City Treasurer for approval and distribution.

Respond to telephone and counter inquiries for: property tax issues/discrepancies, other detailed questions/requests from the public.

Filing, copying/scanning, compilation, reproduction and distribution of confidential/technical items related to department; maintain documents in accordance with records retention schedules.

Evaluate work procedures, policies, organization or methods pertaining to revenue collection and internal control related to cash receipting matters; recommend resolution to City Treasurer.

Prepare employee scheduling needs for administrative services, including seasonal employees.

Process and prioritize departmental mail; forward applicable payments to Administrative Support Supervisor for receipting.

Pick up daily receipts from bank.

Prepare budget materials.

Prepare documents for all publications (news media, website, Acorn etc.).

Research of businesses and preparation of RFP/Quotes for:

- Tax Bill Mailings
- Collection Agencies
- Banking Services
- Other services as needed

Assist Treasurer with preparation of:

- Common Council Reports
- Tax roll document assembly, calculations and tax bill mailing, tax settlement allocations and disbursements.

Prepare and maintain duties for Assessment Contract; monitor progress of Assessment duties per contract and report status to City Treasurer. Verify reconciliation of year-end parcel listing.

Finalize top taxpayer list, special mailing requests and prepayment of taxes for tax bills, monthly low income loans, pet licensing etc.

Verify accuracy and finalize Manufactured Housing Unit worksheet submitted by City Assessor; prepare and distribute invoices, and assessed value and parking fee notifications to unit owners. Prepare lottery and gaming credit report for City Treasurer settlement with DOR.

Research data for: open record requests, revenue analysis and special projects.

Assist with preparation of agreements and contracts.

Compile information for surveys and reports as assigned.

Responsible for notification to other city departments of any violations of city ordinances or regulations not in the primary area of responsibility of this position.

Perform related duties as assigned.

Minor Duties/Responsibilities

Assist in gathering information for City auditors.

Maintain and inventory department office supplies and equipment.

Responsible for accurately recording timecard/sheet.

Prepare wire transfers as needed in the absence of the City Treasurer.

Attend meetings in the absence of the City Treasurer.

Supervision

Under supervision of the City Treasurer; has no supervisory responsibility; provides assistance and training to other city staff as needed.

Knowledge

Modern office methods and procedures; office equipment and filing systems; business letter and report-writing techniques; proofreading; statistical and record keeping principles and procedures.

Skill/Ability

Ability to speak and understand the English language fluently and use proper grammar, punctuation and spelling. Perform responsible secretarial and clerical work requiring independent judgment with speed and accuracy; learning, interpreting and applying organizational policies, laws, rules and regulations; word processor typing accurately at a speed

of 50 words per minute; making basic arithmetic calculations with speed and accuracy; meeting the public tactfully, and courteously answering questions in person and over the telephone; communicating with all segments of the community and government. Ability to research and obtain pertinent information through various resources. Ability to use networked personal computer equipment to process, access, retrieve, or input information using Windows, word processing and spreadsheet software or other standardized software common to the work unit or as assigned. Ability to understand and apply principles of personal computer input and output capabilities.

Education/Experience

A high school diploma or G.E.D and an associate's degree or similar course work from an accredited business school/college in bookkeeping, accounting, banking, or finance is required. Five (5) years of experience in an office setting and three (3) years of experience in government is desired. Must complete the three-year Wisconsin Municipal Treasurer's Institute within 5 years from date of hire.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is required to sit, talk and hear. The employee is required to use hands to type, finger, handle, or feel objects, tools, or controls; and reach with hands and arms. The employee must occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision and the ability to adjust focus.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The noise level in the work environment is usually quiet and would be representative of a business office.

Tools and Equipment Used

The ability to use the tools and equipment listed below is essential to perform the functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Personal computer, including spreadsheet and word processing software; network computer system; telephone; 10-key calculator; typewriter; copy machine; TDD machine, mail equipment, FAX machine, and various printers.


License/Certifications

Possession of a valid Wisconsin Motor vehicle operator's license required.

Selection Guidelines

This job is covered by a process that includes, but is not limited to the completion of a formal application, the rating and verification of education and experience, job related testing, oral interviews, and reference checks. All applicants may be required to submit to a stringent medical examination prior to appointment consistent with requirements of the position. All appointees may be fingerprinted and a record check made of local, state or federal authorities. A conviction is not an automatic bar to employment. Must be bondable.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position. The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Approval: 
Supervisor

Approval: 
City Administrator

Revision History:

- June 27, 2013
- (Acct. Clerk II) December 14, 2009
- August 24, 2002
- August 31, 1999
- September 3, 1997

City of Oak Creek Common Council Report

Meeting Date: September 3, 2013

Item No.: 5

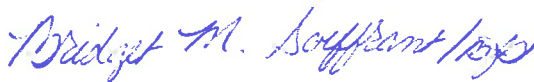
Recommendation: That the Common Council approve Ordinance 2695, an ordinance amending Ordinance 2666, authorizing a new Laborer/Driver position be created in the Streets, Parks, and Forestry Department and that approval for advertising to fill two (2) vacancies in the department be approved as recommended by the Personnel Committee.

Background: The 2009-2012 City Budgets authorized twenty five (25) full time positions for Equipment Operators (EOs) in the Streets, Parks, and Forestry Department. Effective January 1, 2013 the Council approved contracting with a private vendor for performing residential refuse collection. Previously this service had been performed using three (3) EOs. Staffing of twenty-two (22) is considered necessary to maintain existing service levels. Currently, the Streets, Parks, and Forestry Department is comprised of twenty (20) EO positions due to employee attrition.

In considering filling two (2) vacant positions in the department, the City Administrator asked the Acting Department Superintendent and the Personnel Committee to consider the creation of a Laborer/Driver position (job description attached) to allow for the potential to achieve labor cost reductions now and provide for the potential for development of skills in the operation of vehicles and equipment and for the adjustment of pay based upon performance in the job.

Fiscal Impact: Employees who vacated Equipment Operator positions were earning \$57,753 in pay annually. The Laborer/Driver position would be paid at an annual rate of \$34,998 and have the potential to reach pay of \$57,753 annually. Annual wage savings from this action would total \$45,510.

Fiscal Review by:



Bridget M. Souffrant
Finance Director/Comptroller

Prepared and Submitted by:



Gerald R. Peterson, ICMA-CM
City Administrator

ORDINANCE No. 2695

BY: _____

AN ORDINANCE AMENDING ORDINANCE 2666 AND
FIXING THE SALARY RANGES, SALARY, WAGES AND
ALLOWANCES FOR NON-UNION, GENERAL, MANAGEMENT PERSONNEL AND OTHER
CITY OFFICES AND POSITIONS FOR THE YEAR 2013
ADDING A NEW LABORER/DRIVER POSITION

The Common Council of the City of Oak Creek do hereby ordain as follows:

SECTION 1: There is herewith established the uniform rates of pay of those certain offices and positions in the civil service under the control of the Common Council of the City of Oak Creek affecting non-union, management, general, and miscellaneous personnel for the year 2013. The proper city officials are hereby authorized and directed to make the required payments to those affected employees of the City pursuant to this ordinance. The bi-weekly rate will prevail in years with more or less than 26 payrolls.

SECTION 5: GENERAL EMPLOYEES. The pay ranges and rates of pay of those positions under the control of the Common Council of the City of Oak Creek affecting general personnel shall be as follows. Those affected employees pursuant to this section shall receive the fringe benefits set forth in the current employee Personnel Manual. These employees shall contribute fifteen percent (15%) of the cost of the premium for a single and family medical plan, respectively. Employees and their spouses who participate in a health risk assessment (HRA) program, or an annual physical exam and completion of the HRA certification, shall contribute ten percent (10%) of the premium for a single and family plan, respectively.

Civil Service Position Title	Starting Salary	Top Salary
Laborer/Driver	\$34,998	\$57,753

SECTION 9: This ordinance shall take effect and be in force upon its passage and publication and shall apply as of _____, 2013, except where otherwise noted.

Introduced this ____ day of _____, 2013.

Passed and adopted this ____ day of _____, 2013.

President, Common Council

Approved this ____ day of _____, 2013.

Mayor

ATTEST:

City Clerk

VOTE: Ayes _____ Noes _____

City of Oak Creek

Position: ~~Equipment Operator~~ Laborer/Driver

FLSA Status: Non-Exempt

Department: Streets, Parks, and Forestry

Location: Street Maintenance Building

Summary Description

Under close supervision, performs work of varied difficulty, ~~including: equipment operation~~ associated with construction and maintenance of streets, sidewalks, ~~and~~ storm sewers, solid waste collection, parks, and forestry.

Major Duties/Essential Functions

Operates ~~motor vehicle~~ small equipment and hand tools associated with ~~Street~~ Department functions including such as: ~~front end loader, pavement roller, mowing tractor, tractor/back hoe, excavator, grader, sweeper, tub grinder, hot asphalt patcher,~~ various sizes of dump trucks and related vehicles and some equipment as required. Digs, excavates and performs work with hand tools as needed.

Operates trucks of various sizes and weights in the loading, hauling and unloading of various equipment, materials, and supplies. Drives and operates salt spreader and wing plows during snow and ice control operations.

Operates chain saws, brush chipper, pole saw and pruning equipment in the care and maintenance of City street trees and in the removal of brush.

Works on asphalt paving crew operating ~~paver, rollers,~~ trucks, shovels, rakes, lutes and associated equipment in the paving of asphalt streets.

Operates ~~pavement buster, back hoe, excavator,~~ dump truck, concrete saw, air tools and hand tools to excavate, repair and replace concrete pavement, sidewalks, storm sewer and catch basins throughout the City.

~~May drive and operate refuse packer and work on the collection crew in the loading of refuse, brush, building materials, appliances and other materials.~~

Works on sign crew maintaining and installing traffic signs; operates paint striper and does various associated functions in the painting and marking of City streets.

Performs routine inspection and preventive maintenance on assigned equipment and refers defects or needed repairs to supervisor; cleans equipment.

Prepares annually one (1) realistic, achievable objective which will improve the operation of the department.

Minor Duties/Responsibilities

Keeps all equipment and hand tools clean and operating smoothly, services assigned equipment with fuel and oil, conducts safety checks, adjusts mirrors and windshield wipers and lights, performs other simple mechanical repairs, greases and lubricates mechanical equipment. May assist mechanics, if trained, with vehicle/equipment repairs periodically. Notifies supervisor of any mechanical problems with assigned vehicles and equipment.

Works with other department employees to clean floor and interior of garage as needed.

~~May perform as acting supervisor on construction sites when so directed and on emergency call in; judgment and initiative are required in making decisions in accordance with established guides.~~

Establishes and maintains a positive working relationship with City management, members of the community, and other employees.

Attends training courses, meetings, conferences as directed by superior. May be required to confer with citizens on problems, concerns and accidents.

Responsible for notifying supervisor and/or department head when violations of City Codes and Ordinances are observed on the job.

Confers with supervisor on a regular basis, discussing work processes, incidents and problems.

May periodically be assigned to the operations of the carpentry shop.

Responsible for maintaining work zone safety standards in construction areas on individual crews. Will use any and all safety equipment provided while performing assigned tasks.

Transplants, trims, prunes, and removes tress; operates a variety of equipment used in tree trimming and maintenance activities; trims trees to clear right-of-way, signs or signals; prunes treetops, using saws or pruning shears; repairs damaged trees by trimming jagged stumps; removes broken or dead limbs over parkways or walkways; fells trees using chain saw.

Performs other related duties as assigned.

Supervision/Accountability

Directly accountable to the Streets, Parks and Forestry Supervisor~~Street Department Supervisor~~, indirectly accountable to the ~~Street Superintendent~~Director of Streets, Parks, and Forestry. ~~This position may act as crew leader within the department operations. In the absence of the Street Department Supervisor, this position may be assigned responsibilities for the direction of other employees on each individual crew.~~

Knowledge

Knowledge of the methods, materials, ~~equipment~~ and tools used in the repair and maintenance of streets, storm sewers, ditches, sidewalks and trees. Knowledge and understanding ~~in all types of of~~ small equipment

operation and use. ~~Understanding of refuse collection and refuse truck operation.~~ Some knowledge of gasoline and diesel engines and equipment. General understanding of City geography, including streets, storm sewers and other landmarks. Knowledge of occupational and safety hazards and precautions necessary in the work place. Basic working knowledge of water and sewer utility functions and underground utility construction.

Skill/Ability

Some experience in small ~~Skilled in all types of~~ equipment and vehicle operation. Good communication skills, both written and verbal, with an ability to create effective interpersonal relationships with co-workers and citizens. Ability to work in difficult conditions and all types of weather. Ability to work in high places and in hazardous areas with appropriate safety measures in place. Ability to follow written and oral instructions, read maps and understand basic construction and engineering drawings. Performs all duties in conformance to appropriate safety and security standards. Knowledge of snowplowing/salting operations is desirable.

Education/Experience

Any equivalent combination of education and experience that provides the required skills and abilities is qualifying. Typical qualifications would be possession of a high school diploma or G.E.D. and ~~two~~four (24) years experience in a municipal public works department or related construction experience in the position of equipment operator or laborer/driver. Experience with snowplowing/salting operations is desirable.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to use hands and fingers to feel or operate objects, tools, or controls and reach with hands and arms. The employee frequently is required to stand and talk or hear. The employee is occasionally required to walk; sit; climb or balance; stoop, kneel, crouch, or crawl; and smell. The employee must frequently lift, pull and/or move 50 pounds for extended periods. Must occasionally lift, pull and/or move 100 pounds with mechanical and/or physical assistance. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee regularly works in outside weather conditions. Work is performed mostly in field settings on construction sites or public works facilities. The employee frequently works near moving mechanical parts and is frequently exposed to wet and/or humid conditions and vibration. The employee occasionally works in high, precarious places and is occasionally exposed to fumes or airborne particles, toxic or caustic chemicals, and risk of electrical shock. The noise level in the work environment is usually loud and dirty.

Tools and Equipment Used

The ability to use the tools and equipment listed below is essential to perform the functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Motorized vehicles and equipment, including ~~back-heel~~, dump truck, pickup truck, utility truck, ~~street sweeper, street roller~~, tamper, plate compactor, saws, pumps, ~~propane-kettle~~, compressors, sanders, generators, common hand and power tools, shovels, wrenches, mobile radio and phone.

License/Certifications

Possession, proof and maintenance of a valid Wisconsin Motor vehicle operator's license. Must have (or obtain within four months of hire) a Commercial Drivers License (CDL) including B, C and D endorsements. Loss of license and/or endorsement may be cause for termination.

Special Conditions of Work

Must be able to respond to work for emergencies in all types of weather conditions at any hour of the day or night. Must be able to work unsupervised for extended periods of time. Must establish and maintain a residence within 20 miles of the City limits.

Selection Guidelines

The process for this Civil Service-covered position includes, but is not limited to, the completion of a formal application, the rating and verification of education and experience; oral interviews; a reference check; background check and a physical exam. Job related tests may be required as determined by the city. All applicants may be required to submit to stringent medical examination prior to appointment consistent with requirements of the position. All appointees may be fingerprinted and a record check made of local, state or federal authorities. A conviction is not an automatic bar to employment.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position. The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Approval: _____
Supervisor

Approval: _____
City Administrator

Revision History:
August 23, 2013
~~January 25, 2007~~
~~January 26, 2006~~
~~September 14, 1999~~
~~July 29, 1996~~
~~June 4, 1993~~
~~July 20, 1992~~

**Southeast Wisconsin Area Municipal Employer Association
Custom Survey Base Compensation Report**

Published by:

Carlson Dettmann Consulting

July 2013

CARLSON
DETTMANN
CONSULTING

Data Effective March 2013

Overview

The City of Wauwatosa, Wisconsin contracted with Carlson Dettmann Consulting to conduct a comprehensive classification and compensation study of their employees, and part of the project involved a market pay study. We conducted a base compensation among the group of 42 municipalities and counties that were part of the Milwaukee Area Municipal Employer's Association.

These organizations were contacted and asked to complete a custom wage survey, matching their jobs to 82 survey job titles and descriptions. In addition to job matching, organizations were asked to provide data on their job title, the degree to which their job matched the survey job, the current individual actual wage of all employees in the job, the typical starting rate, and the current range minimum and maximum for the job. Thirty-four of the 42 invited organizations responded to the survey within the timeframe (a total response rate of 81%). The thirty-four organizations included in this survey are as follows:

- City of Brookfield
- City of Cedarburg
- City of Cudahy
- City of Delafield
- City of Franklin
- City of Greenfield
- City of Hartford
- City of Kenosha
- City of Mequon
- City of Muskego
- City of Neenah
- City of New Berlin
- City of Oak Creek
- City of Oconomowoc
- City of Pewaukee
- City of Racine
- City of South Milwaukee
- City of Waukesha
- City of Wauwatosa
- City of West Allis
- City of West Bend
- Milwaukee County
- Ozaukee County
- Village of Brown Deer
- Village of Elm Grove
- Village of Germantown

Village of Greendale
Village of Hales Corners
Village of Menomonee Falls
Village of Pewaukee
Village of Shorewood
Village of Slinger
Village of Sussex
Waukesha County

This report details the results of all 82 survey jobs.

Thank you very much for your participation in this survey, and we hope this is helpful in your compensation decision-making efforts. Questions and comments regarding this survey should be directed to:

Brian Ronk
Compensation Consultant
Carlson Dettmann Consulting
6907 University Avenue #152
Middleton, WI 53562
brian.ronk@carlsondettmann.com
608.334.7326

Laborer

Performs work of a manual nature that does not require a high degree of manipulative skill or previous experience in order to do an effective job. Work is generally performed under the immediate direction of a supervisor. Some assigned work may be very routine and repetitive in nature and after a short period of time can be carried on without difficulty and only under general supervision. Typically does not operate a vehicle.

# of Org.	# of Emp.	Org. Wtd. Average	Emp. Average	25th Perc.	Median	Average Control Pt.	75th Perc.	Org.'s w/Range	Average Min	Average Max
7	35	\$19.95	\$19.27	\$15.00	\$20.80	*	\$24.29	3	*	*

TOTAL RESPONSES

43,264 50,523

Legal Secretary

Prepares legal papers and correspondence, such as summonses, complaints, motions and subpoenas. Must be familiar with legal terminology, procedures and documents. Assists attorneys in collecting information such as employment, medical and other records. Organizes and maintains law libraries and document and case files. Completes various forms, such as accident reports, trial and courtroom requests, and client applications. Mails, faxes or arranges for delivery of legal correspondence to clients, witnesses and court officials. Attend legal meetings, such as client interviews and hearings, and takes notes. Drafts and types routine correspondence. Schedules and makes appointments. A less responsible position than a paralegal. Generally requires some technical school training as a Legal Secretary.

# of Org.	# of Emp.	Org. Wtd. Average	Emp. Average	25th Perc.	Median	Average Control Pt.	75th Perc.	Org.'s w/Range	Average Min	Average Max
9	40	\$23.82	\$20.21	\$20.83	\$23.91	\$21.92	\$26.03	8	\$19.35	\$24.49

TOTAL RESPONSES

Equipment Operator (Entry)

This position is responsible for collection of refuse for the Sanitation Division of the Department of Public Works. This is a manual labor position responsible for roadway maintenance and collection of refuse. Work involves driving City vehicles, street repairs, snow and ice control, leaf collection, refuse collection and hauling materials to and from work sites. Work is performed under the moderate supervision of the Operations Foreman group and is subject to review to insure proper work performance. Work includes operation of an automated side loader and collection of refuse. Work is performed under moderate supervision of the Operations Foreman group and is subject to review to insure proper work performance.

# of Org.	# of Emp.	Org. Wtd. Average	Emp. Average	25th Perc.	Median	Average Control Pt.	75th Perc.	Org.'s w/Range	Average Min	Average Max
3	50	*	*	*	*	*	*	2	*	*

TOTAL RESPONSES

Equipment Operator (Top)

This position is responsible for roadway maintenance and masonry work. Work involves repairs, removal and replacement of inlets, curbs, gutters and miscellaneous concrete and asphalt formations, asphalt paving, roadway grading and shouldering, operating heavy equipment, snow and ice control and equipment maintenance. This position is responsible for all aspects of arbor culture performed within all City parks and property. Work involves planting, pruning and removing trees, stump grinding, and operating associated equipment. This position is responsible for overseeing the daily operation of the sewer cleaning crew. Work involves maintaining the City sewer system, operating all equipment related to sewer cleaning, and responding to trouble calls with the appropriate action. This position is responsible for reading and maintenance of City water meters, as well as the installation and repair of City water mains and services. Work involves locating, installing and repairing leaks in water mains and services; repairing, testing and raising hydrants and inspecting and repairing valve and curb boxes. It also involves reading, installing and testing meters, turning water on and off at selected sites, and replacing damaged meters. Work is performed under moderate supervision of the Operations Foreman group and is subject to review to insure proper work performance.

# of Org.	# of Emp.	Org. Wtd. Average	Emp. Average	25th Perc.	Median	Average Control Pt.	75th Perc.	Org.'s w/Range	Average Min	Average Max
6	39	\$24.85	\$22.76	\$23.44	\$25.50	*	\$26.04	4	*	*

TOTAL RESPONSES

53,040 54,163

Wages Effective January 1, 2011 at

2.9%

Position	Current Hourly	New Hourly	Monthly Salary	Annual Salary	Position	Current Hourly	New Hourly	Monthly Salary	Annual Salary
Planning Illustrator					Senior Engineering Technician, GIS Coordinator				
New Hire	\$19.623	\$20.192	\$3,500	\$41,999	After 18 Months	\$29.165	\$30.011	\$5,202	\$62,423
After 6 Months	\$20.541	\$21.137	\$3,664	\$43,965	After 36 Months	\$30.268	\$31.146	\$5,399	\$64,784
After 12 Months	\$21.458	\$22.080	\$3,827	\$45,926	After 48 Months	\$31.520	\$32.434	\$5,622	\$67,463
After 24 Months	\$22.377	\$23.026	\$3,991	\$47,894	Hired after 07/01/95				
After 36 Months	\$23.295	\$23.971	\$4,155	\$49,860	New Hire	\$22.894	\$23.558	\$4,083	\$49,001
After 48 Months	\$24.211	\$24.913	\$4,318	\$51,819	After 6 Months	\$23.972	\$24.667	\$4,276	\$51,307
After 60 Months	\$25.127	\$25.856	\$4,482	\$53,780	After 12 Months	\$25.049	\$25.775	\$4,468	\$53,612
After 72 Months	\$26.045	\$26.800	\$4,645	\$55,744	After 24 Months	\$26.127	\$26.885	\$4,660	\$55,921
After 96 Months	\$26.966	\$27.748	\$4,810	\$57,716	After 36 Months	\$27.204	\$27.993	\$4,852	\$58,225
					After 48 Months	\$28.285	\$29.105	\$5,045	\$60,538
					After 60 Months	\$29.363	\$30.215	\$5,237	\$62,847
					After 72 Months	\$30.441	\$31.324	\$5,429	\$65,154
					After 96 Months	\$31.520	\$32.434	\$5,622	\$67,463
Engineering Technician, GIS, CAD, Survey					Senior Engineering Technician - RLS				
New Hire	\$19.623	\$20.192	\$3,500	\$41,999	New Hire	\$25.268	\$26.001	\$4,507	\$54,082
After 6 Months	\$20.541	\$21.137	\$3,664	\$43,965	After 6 Months	\$26.450	\$27.217	\$4,718	\$56,611
After 12 Months	\$21.458	\$22.080	\$3,827	\$45,926	After 12 Months	\$27.635	\$28.436	\$4,929	\$59,147
After 24 Months	\$22.377	\$23.026	\$3,991	\$47,894	After 24 Months	\$28.818	\$29.654	\$5,140	\$61,680
After 36 Months	\$23.295	\$23.971	\$4,155	\$49,860	After 36 Months	\$30.000	\$30.870	\$5,351	\$64,210
After 48 Months	\$24.211	\$24.913	\$4,318	\$51,819	After 48 Months	\$31.182	\$32.086	\$5,562	\$66,739
After 60 Months	\$25.127	\$25.856	\$4,482	\$53,780	After 60 Months	\$32.362	\$33.300	\$5,772	\$69,264
After 72 Months	\$26.045	\$26.800	\$4,645	\$55,744	After 72 Months	\$33.546	\$34.519	\$5,983	\$71,800
After 96 Months	\$26.966	\$27.748	\$4,810	\$57,716	After 96 Months	\$34.728	\$35.735	\$6,194	\$74,329
Engineering Technician, Senior Draftsman					Civil Engineer				
New Hire	\$19.623	\$20.192	\$3,500	\$41,999	New Hire	\$25.346	\$26.081	\$4,521	\$54,248
After 6 Months	\$20.541	\$21.137	\$3,664	\$43,965	After 6 Months	\$26.635	\$27.407	\$4,751	\$57,007
After 12 Months	\$21.458	\$22.080	\$3,827	\$45,926	After 12 Months	\$27.921	\$28.731	\$4,980	\$59,760
After 24 Months	\$22.377	\$23.026	\$3,991	\$47,894	After 24 Months	\$29.206	\$30.053	\$5,209	\$62,510
After 36 Months	\$23.295	\$23.971	\$4,155	\$49,860	After 36 Months	\$30.493	\$31.377	\$5,439	\$65,264
After 48 Months	\$24.211	\$24.913	\$4,318	\$51,819	After 48 Months	\$31.781	\$32.703	\$5,669	\$68,022
After 60 Months	\$25.127	\$25.856	\$4,482	\$53,780	After 60 Months	\$33.069	\$34.028	\$5,898	\$70,778
After 72 Months	\$26.045	\$26.800	\$4,645	\$55,744	After 72 Months	\$34.356	\$35.352	\$6,128	\$73,532
After 96 Months	\$26.966	\$27.748	\$4,810	\$57,716	After 96 Months	\$35.643	\$36.677	\$6,357	\$76,288
After 108 Months	\$28.001	\$28.813	\$4,994	\$59,931					
Equipment Operator, Park Maintenance Technician					Mechanic II				
New Hire	\$16.352	\$16.826	\$2,917	\$34,998	New Hire	\$19.623	\$20.192	\$3,500	\$41,999
After 6 Months	\$17.681	\$18.194	\$3,154	\$37,844	After 6 Months	\$20.758	\$21.360	\$3,702	\$44,429
After 12 Months	\$19.012	\$19.563	\$3,391	\$40,691	After 12 Months	\$21.893	\$22.528	\$3,905	\$46,858
After 24 Months	\$20.340	\$20.930	\$3,628	\$43,534	After 24 Months	\$23.028	\$23.696	\$4,107	\$49,288
After 36 Months	\$21.667	\$22.295	\$3,864	\$46,374	After 36 Months	\$24.162	\$24.863	\$4,310	\$51,715
After 48 Months	\$22.998	\$23.665	\$4,102	\$49,223	After 48 Months	\$25.296	\$26.030	\$4,512	\$54,142
After 60 Months	\$24.326	\$25.031	\$4,339	\$52,064	After 60 Months	\$26.433	\$27.200	\$4,715	\$56,576
After 72 Months	\$25.655	\$26.399	\$4,576	\$54,910	After 72 Months	\$27.566	\$28.365	\$4,917	\$58,999
After 96 Months	\$26.983	\$27.766	\$4,813	\$57,753	After 96 Months	\$28.700	\$29.532	\$5,119	\$61,427
Mechanic I					Chief Mechanic				
New Hire	\$19.216	\$19.773	\$3,427	\$41,128	New Hire	\$21.258	\$21.874	\$3,791	\$45,498
After 6 Months	\$20.162	\$20.747	\$3,596	\$43,154	After 6 Months	\$22.375	\$23.024	\$3,991	\$47,890
After 12 Months	\$21.108	\$21.720	\$3,765	\$45,178	After 12 Months	\$23.489	\$24.170	\$4,189	\$50,274
After 24 Months	\$22.057	\$22.697	\$3,934	\$47,210	After 24 Months	\$24.606	\$25.320	\$4,389	\$52,666
After 36 Months	\$23.002	\$23.669	\$4,103	\$49,232	After 36 Months	\$25.725	\$26.471	\$4,588	\$55,060
After 48 Months	\$23.949	\$24.644	\$4,272	\$51,260	After 48 Months	\$26.838	\$27.616	\$4,787	\$57,441
After 60 Months	\$24.896	\$25.618	\$4,440	\$53,285	After 60 Months	\$27.956	\$28.767	\$4,986	\$59,835
After 72 Months	\$25.842	\$26.591	\$4,609	\$55,309	After 72 Months	\$29.073	\$29.916	\$5,185	\$62,225
After 96 Months	\$26.789	\$27.566	\$4,778	\$57,337	After 96 Months	\$30.187	\$31.062	\$5,384	\$64,609

City of Oak Creek Common Council Report

Meeting Date: September 3, 2013

Item No.: 6

Recommendation: That the Common Council approve payment of the obligations as listed on the August 28, 2013 Vendor Summary Report.

Background: Of note are the following payments:

1. \$73,766.73 to Advanced Disposal-Muskego-C6 (pg #1) for recycling and landfill charges.
2. \$23,607.11 to Bray Associates Architects Inc. (pg #3) for fire station architectural services.
3. \$7,609.82 to DLT Solutions, Inc. (pgs #5) for Autocad support.
4. \$7,678.00 to Engineered Security Solutions (pg #5) for security cameras and installation.
5. \$6,529.43 to Environ (pg #5) for Lakeview consulting services.
6. \$4,921.30 to Faulks Bros Construction, Inc. (pg #5) for ball diamond infield mix.
7. \$4,905.85 to First Choice Tree Care, Inc. (pg #6) for EAB trunk injections.
8. \$14,239.35 to Harris (pg #7) for annual software licensing fees.
9. \$10,000.00 to Richard W Krebs Jr. (pg #8) for settlement agreement.
10. \$9,692.09 to National Insurance Company (pgs #10-11) for disability insurance.
11. \$188,390.25 to One West Drexel (pg #11) for Drexel grant money received.
12. \$873,067.94 to Payne & Dolan Inc. (pg #12) for West Puetz Road and various street asphaltting contract payments.
13. \$4,629.50 to R. A. Smith National (pg #15) for Weatherly Drive roadway design.
14. \$55,811.84 to SmithgroupJJR (pg #15) for Oak Creek bluff grant work.
15. \$10,105.00 to TBJ Consulting LLC (pg #16) for three servers with web filters and firewalls.
16. \$55,149.28 to WE Energies (pgs #17-18) for street lighting and gas/electric utilities.
17. \$26,247.81 to World Fuel Services, Inc. (pg #19) for fuel inventory.

Fiscal Impact: Total claims paid of \$1,457,574.13

Prepared by/Fiscal Review by:

Respectfully submitted,



Bridget M. Souffrant
Finance Director/Comptroller

Gerald R. Peterson,
City Administrator

City of Oak Creek Common Council Report

Meeting Date: September 3, 2013

Item No.: 7

Recommendation: That the Common Council approve an Inter-municipal Agreement between the Village of Bayside and the City of Oak Creek for providing back-up Public Safety Answering Point services to each other.

Background: Oak Creek was approached by the Village of Bayside to act as a back-up Public Safety Answering Point (PSAP) in the event the Bayside Communication Center (BCC) becomes inoperable due to equipment malfunction, loss of power, or acts of God. Attached is an Agreement for Oak Creek and Bayside to provide reciprocal back-up dispatch services if and when the need might arise. Each community absorbs its own costs and is committed to support needed dispatch communication services in the event their facility is not functional.

Fiscal Impact: This agreement provides a very cost effective way to provide redundant back-up dispatch services between the communities.

Fiscal Review by:



Bridget M. Souffrant
Finance Director/Comptroller

Prepared and Submitted by:

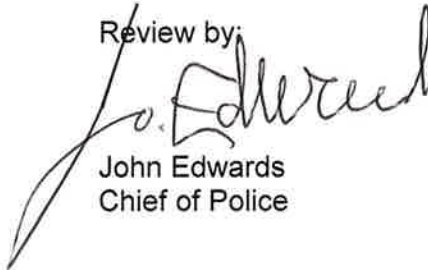
Gerald R. Peterson, ICMA-CM
City Administrator

Review by:



Caesar Geiger
Information Technology Manager

Review by:



John Edwards
Chief of Police

INTER-MUNICIPAL AGREEMENT
BETWEEN THE VILLAGE OF BAYSIDE WISCONSIN AND
THE CITY OF OAK CREEK WISCONSIN
REGARDING PUBLIC SAFETY ANSWERING POINT BACK-UP

WHEREAS, the Village of Bayside (The "Village") operates a Public Safety Answering Point ("PSAP") referred to as Bayside Communications Center ("BACC") in and for emergency services for the Village of Bayside and several other municipal police and fire services.

WHEREAS, the City of Oak Creek ("City") operates a Public Safety Answering Point ("PSAP") in and for emergency service for the City of Oak Creek and,

WHEREAS, the municipalities served believe that the operation of their facility is necessary to provide for the safety, security and well-being of its respective citizens, and

WHEREAS, from time to time, there may be equipment malfunctions, loss of power, or acts of God at one of the PSAPs which may require said operation to rely on the other for back-up service, and

THEREFORE, in consideration of the mutual promises made herein, the Village and City agree as follows:

1. The Village agrees to act as the back-up PSAP and dispatch center for the City.
2. The City agrees to act as the back-up PSAP and dispatch center for the Village.
3. The terms of this Agreement shall commence on May 1, 2013, or upon the date that this Agreement is executed by the parties, whichever is later, and shall terminate upon written notice by either party, provided said notice is delivered a minimum of ninety (90) days prior to the requested termination.
4. Each party shall indemnify, save and hold harmless the other party, its officers, employees, agents and representatives from any liability (including statutory liability and liability under worker's compensation or other occupational disease law), claim, action, loss, cost, damage, injury (including death), or expense, including attorney's fees, due to the negligence or other fault of its officers, employees, agents and representatives, arising out of or resulting from the implementation of this Agreement by the respective parties. The parties shall give to each other prompt and reasonable notice of any such claims or actions, and the other party shall have the right to investigate, compromise, and defend the same.

5. The Village shall not be covered under the City's worker's compensation, nor shall the City be covered under the Village's worker's compensation. All responsibilities to pay wages, provide employee benefits, including worker's compensation, and other similar employer responsibilities shall remain with the respective parties for their own employees.
6. Notices required or deemed advisable under this Agreement shall be made in writing and delivered personally or by registered or certified mail upon the Village at:

Village Manager
Village of Bayside
9075 N. Regent Road
Bayside, WI 53217-1800

And upon Oak Creek to:

City Administrator
City of Oak Creek
8640 S. Howell Avenue
P.O. Box 27
Oak Creek, WI 53154

7. Nothing in this agreement shall be construed so as to give either the Village or City, its employees or agents, any relationship to each other, other than as independent contractors. The Village shall be entitled to none of the rights, benefits, salaries, wages, or fringe benefits to which employees of City are eligible and vice versa.
8. The parties agree that there shall be no assignment or transfer of this Agreement, nor any interest, rights or responsibilities herein contained, except as agreed to in writing.
9. No waiver of any breaches of this Agreement shall be held to be a waiver of any other or any subsequent breaches. All remedies afforded in this Agreement shall be considered cumulative and in addition to any other remedies provided by law.
10. There shall be no modifications to this Agreement, except as agreed upon in writing, signed by both parties.
11. The entire agreement of the parties is contained herein, and this Agreement supersedes all previous agreements, whether written or oral, and all negotiations, as well as any previous agreements presently in effect between the Village and City relating to the subject matter.

12. This agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.

13. In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties.

Both parties having read and understood the entirety of this Agreement affix their duly authorized signatures:

VILLAGE OF BAYSIDE

CITY OF OAK CREEK

PRINTED NAME/TITLE

PRINTED NAME/TITLE

DATE

DATE

City of Oak Creek Common Council Report

Meeting Date: September 3, 2013

Item No.: 8

Recommendation: That the Common Council approve the proposed annual Agreement for School Resource Officer Services for the 2013-2014 school year.

Background: The City of Oak Creek and the Oak Creek/Franklin School District have had an Agreement for School Resource Officer Services in place since the program was instituted in 1999. The initial Agreement was a three-year contract with all subsequent renewal Agreements reviewed and signed annually. The Agreement provides for two police officers to serve as School Resource Officers at the Oak Creek High School and Oak Creek East and West Middle Schools with all costs for wages and benefits split equally between the City of Oak Creek and the Oak Creek/Franklin School District. In addition the Agreement defines the administrative issues associated with the program.

The language of the Agreement is the same as previous years and has been previously reviewed and approved by the City Attorney. In addition, the Oak Creek/Franklin Joint School District has already agreed to and signed the renewal Agreement for the 2013-2014 school year.

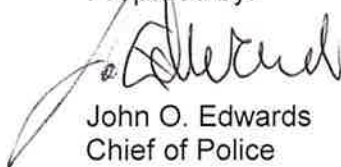
Fiscal Impact: The Oak Creek/Franklin School District will pay the City of Oak Creek a total of \$121,723 for their share of the costs of the program. The City of Oak Creek's portion of the costs, which also totals \$121,723, will be covered by funds allocated in the Police Department's 2013 and 2014 Full-Time Salaries budget account.

Respectfully Submitted,



Gerald Peterson, ICMA-CM
City Administrator

Prepared by:



John O. Edwards
Chief of Police

Fiscal Review by:



Bridget M. Souffrant
Finance Director/Comptroller

AGREEMENT FOR SCHOOL RESOURCE OFFICER SERVICES

THIS AGREEMENT, made and entered into this 3RD day of SEPTEMBER, 2013, by and between the **OAK CREEK/FRANKLIN JOINT SCHOOL DISTRICT**, hereinafter referred to as the "School District", and the **CITY OF OAK CREEK**, hereinafter referred to as the "City";

WHEREAS, the City shall provide to the School District for the 2013-2014, school year, two (2) police officers to serve as School Resource Officers at the Oak Creek High School and Oak Creek East and West Middle Schools, and

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1. The City shall provide School Resource Officer services for a one-year period beginning June 1st, 2013 through May 31st, 2014 to include the 2013-2014 regular school year.

2. The School Resource Officers will be indirectly supervised by the principals of their respective schools. Conflicts that may arise will be mediated by the Director of Pupil Services on issues regarding school policy/procedure. The School Resource Officers will report directly to the 1st Shift Lieutenant of Operations as per the Oak Creek Police Department Organizational Chart.

3. The Police Department does reserve the right to re-deploy the School Resource Officers' services in other capacities in the event of emergency situations or in the event that, for whatever reason, the Police Department is understaffed in other bureaus. In those cases, the School District shall not be charged, under the provisions of this Agreement, for wages and benefits.

4. The School Resource Officers remain as employees of the City of Oak Creek and, therefore, the City is responsible for any and all Workers' Compensation benefits/claims and shall be the responsible party in the event of any negligence or malfeasance by the police officers. The Officers will continue to be subject to the Oak Creek Police Department Rules and Regulations and the Oak Creek Professional Policemen's Collective Bargaining Labor Agreement. The Officers will also be subject to any rules and regulations of the School District. In the case of any conflicting language between the parties' rules and regulations, the rules and regulations of the Police Department and the Collective Bargaining Labor Agreement shall supercede.

5. The School District shall pay to the City the sum of \$121,723 which is one-half of the wages and fringe benefits of the two SRO officers. Said payments shall be due and payable on or before December 15, 2013, and May 31, 2014. The first payment—due December 15, 2013, for the period of June 1, 2013, through December 31, 2013—will be in the amount of \$70,658. The second payment—due May 31, 2014, for the period of January 1, 2014, through May 31, 2014—will be in the amount of \$51,065 The City will issue an invoice to the School District for said payments.

6. The City agrees to pay for all other costs that may be associated with the Collective Bargaining Labor Agreement between the City of Oak Creek and the Oak Creek Professional Policemen’s Association.

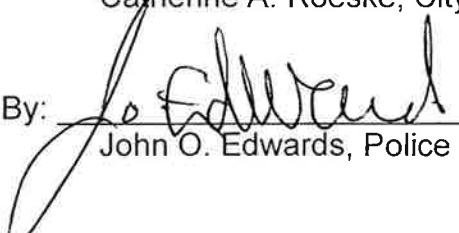
7. This Agreement will terminate on May 31, 2014, with the express understanding that it will be reviewed and renewed on an annual basis.

Dated at Oak Creek, Wisconsin, this 3RD day of SEPTEMBER, 2013.

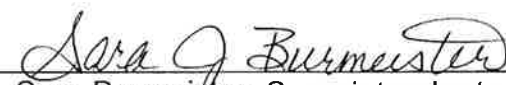
CITY OF OAK CREEK

By: _____
Stephen Scaffidi, Mayor

By: _____
Catherine A. Roeske, City Clerk

By:  _____
John O. Edwards, Police Chief

OAK CREEK/FRANKLIN JOINT SCHOOL DISTRICT

By:  _____
Sara Burmeister, Superintendent of Schools

By:  _____
Frank Carini, School Board President

City of Oak Creek Common Council Report

Meeting Date: September 3, 2013

Item No.: 9

Background: As early as 2004 the City has been working with the City of Franklin on joint planning initiatives for South 27th Street. To date this has included development of an area plan as well as streetscape plans for the corridor, which is expected to undergo reconstruction (at least the portion north of Drexel Avenue) in 2015.

Both cities have invested considerable time and resources into the planning of this corridor. Part of that effort included an unsuccessful attempt to brand the corridor. Even though the branding issue has yet to be resolved, the communities kept moving forward on the design of streetscaping improvements for the corridor in anticipation of the 2015 reconstruction date.

As part of the implementation of the streetscape plan there will be additional maintenance responsibilities required of the two municipalities. One method that has been discussed to address those additional ongoing maintenance needs is the formation of a business improvement district, or BID to maintain the streetscape features, as well as market the corridor.

Wisconsin Act 184, signed into law in 1984, gives Wisconsin municipalities (i.e., cities, villages and towns) the power to establish one or more Business Improvement Districts within their community and an assessment methodology that allows business properties within that geographic area to contribute to programs aimed at promotion, management, maintenance and development of that district. BID assessments are restricted to commercial and industrial properties subject to real estate tax. Tax-exempt properties (i.e., religious, public utility, or government properties) or those used exclusively as residences cannot be included in the assessment district.¹

Several property owners along the corridor have been exploring the formation of a joint BID for 27th Street, which would include property owners from both communities. They have been working with the management team for the Historic 41 BID, which is a joint effort of Milwaukee Business Improvement District 43 and Greenfield Business Improvement Districts 1 & 2. Historic 41 has offered their assistance in creating and managing business improvement districts within both communities. While there is not a specific proposal at this time, the intent would be to have the BID boards from Oak Creek and Franklin become members of the joint BID that encompasses the entire 27th Street corridor north to Oklahoma Avenue.

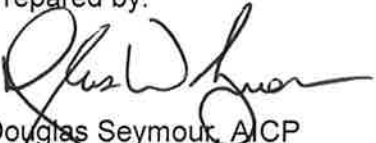
This evening's presentation by Julio Maldonado, Executive Director of the Historic 41 BID will offer insights regarding the BID formation process. Information will also be provided on the business plan for the Historic 41 BID. A similar presentation is being made to the City of Franklin's Common Council.

¹ *Business Improvement Districts – University of Wisconsin Extension Local Government Center, <http://lgc.uwex.edu/about.html>*

There remain many questions to be answered, including whether the Historic 41 brand is appropriate for the 27th Street corridor in Oak Creek and Franklin, and whether the goals and objectives of both organizations are compatible. Likewise, there would be operational issues that would need to be addressed, including how the new BIDs would be incorporated into the operating plan and structure of the existing joint district.

Fiscal Impact: This is a presentation item only.

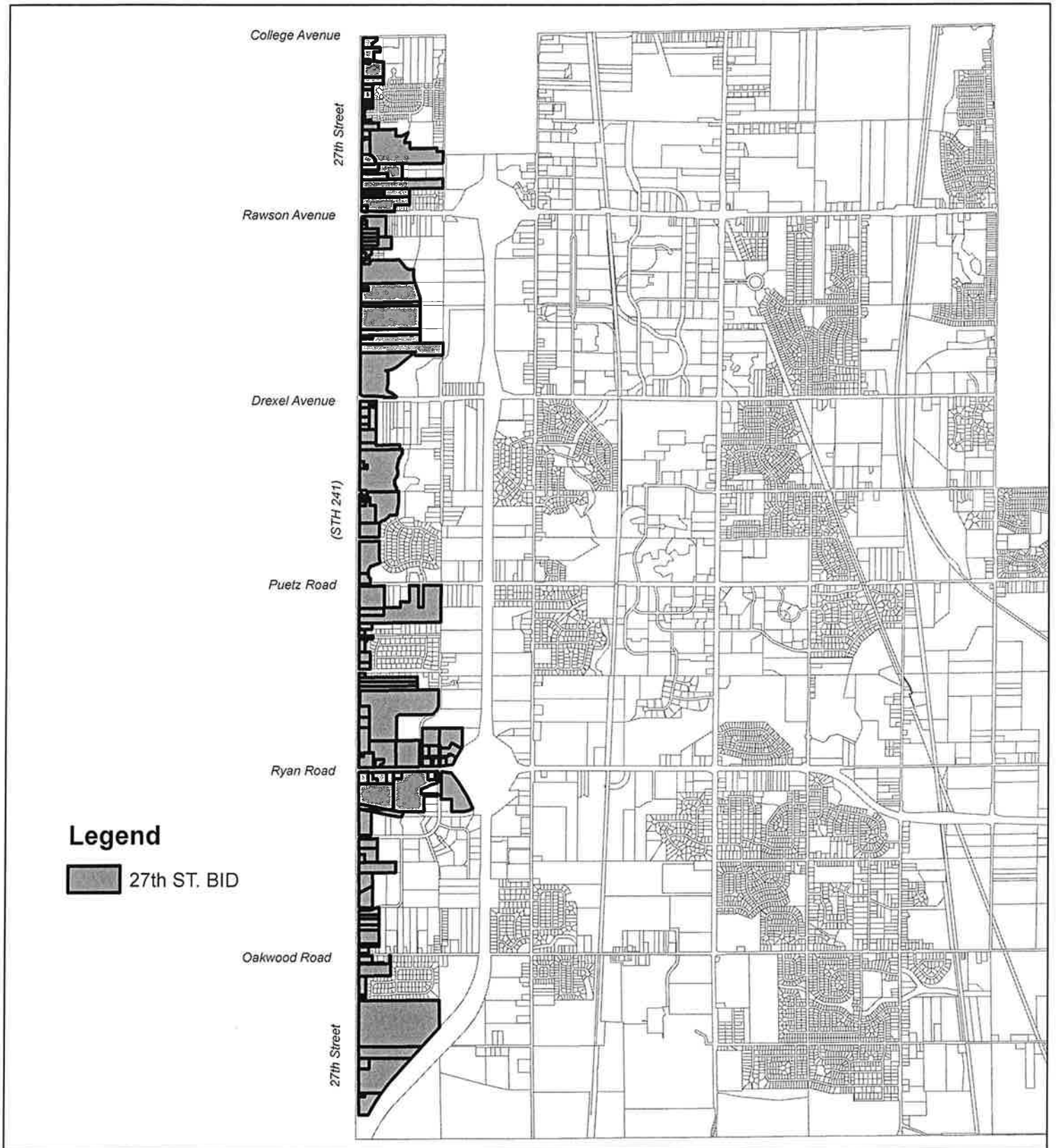
Prepared by:


Douglas Seymour, AICP
Community Development Director

Respectfully submitted by:


Gerald R. Peterson, ICMA-CM
City Administrator Reviewed by:

Exhibit
Proposed Boundaries
of 27th Street BID



BUSINESS IMPROVEMENT DISTRICT NO. 43

**South 27th Street
Business Improvement District**

2013 PROPOSED OPERATING PLAN

September 20, 2012

I. INTRODUCTION

A. Background

In 1984, the Wisconsin legislature created S. 66.1109 of the Statutes (see Appendix A) enabling cities to establish Business Improvement Districts (BIDs). The purpose of the law is "to allow businesses within those districts to develop, to manage and promote the districts and to establish an assessment method to fund these activities." (1983 Wisconsin Act 184, Section 1, legislative declaration.)

The City of Milwaukee has received a petition from property owners which requests creation of a Business Improvement District for the purpose of revitalizing and improving the South 27th Street corridor on Milwaukee's south side (see Appendix B). The BID law requires that every district have an annual Operating Plan. This document is the initial Operating Plan for the proposed South 27th Street Business Improvement District. The BID proponents prepared this Plan with technical assistance from the City of Milwaukee Department of City Development.

B. Physical Setting

The area is roughly bounded by:
The properties at S. 27th Street and Oklahoma intersection on the north and extends south to the Milwaukee/Greenfield border. The district also encompasses properties on Kinnickinnic River Parkway.

II. DISTRICT BOUNDARIES

Boundaries of the proposed district are shown on the map in Appendix C of this plan. A listing of the properties included in the district is provided in Appendix D.

III. PROPOSED OPERATING PLAN

A. Plan Objectives

The objective of the South 27th Street Business Improvement District is to: enhance the economic viability of local businesses, enhance property values, maximize business facilities (conventions, dining, and entertainment), promote the friendliness and quality of services, enhance the community image through safety and beautification and overall develop area growth.

B. Proposed Activities - Year Three

Principle activities to be engaged in by the district during its 2nd year of operation will include:

- a. Enhance the area's image through beautification - maintenance and related activities
- b. Establish safety and security programs through contacted security services
- c. Market the district
- d. Develop marketing and promotional programs to promote the dining, entertainment, shopping, healthcare and hospitality opportunities in the district via independent and cooperative programming with VISIT Milwaukee and other entities.

A unique feature will be that Greenfield is also undertaking the formation of a business improvement district and will have similar initiatives and goals. Further, it is fact that the three business improvement districts (Milwaukee 43, Greenfield 1 & 2 jointly contract with a 501-c-3 entity to manage both districts as one).

C. Proposed Expenditures - Approximately \$121,083 in 2013, this is Milwaukee's portion of the joint budget.

Proposed Budget

Category/Item	Milwaukee
Design and Maintenance	
Management, maintenance and extensive boulevard enhancement (i.e.trees, perennials, etc.) Maintenance equipment, initial start up supplies	\$ 33,903
Marketing and Promotion	
General development and implementation of a brand and marketing activities for the district. Web site development & hosting.	33,903
Administration/management	
Part-time Management: Business Recruitment/retention, oversight, member communication, administrative support, etc., office, annual audit, office space/rental, web site, insurance, memberships, office supplies, grant program, misc. etc.	53,277
Total	\$ 121,083
Reserve	20,400
Business Development/Retail Retention/Recruitment/[from reserves]	24,000
Assessments	\$ 121,083
Interest/Dividends(5% interest/variable)	

D. Financing Method

It is proposed to raise \$121,083 through BID assessments in Milwaukee (see Appendix D). Other miscellaneous income will be from interest and dividends. Sponsorships revenue may be anticipated for special programs and marketing efforts. The BID Board shall have the authority and responsibility to prioritize expenditures and to revise the budget as necessary to match the funds actually available.

E. Organization of BID Board

Upon creation of the BID, the Mayor will appoint members to the district board ("board"). The board's primary responsibility will be implementation of this Operating Plan. This will require the board to negotiate with providers of services and materials to carry out the Plan; to enter into various contracts; to monitor development activity; to periodically revise the Operating Plan; to ensure district compliance with the provisions of applicable statutes and regulations; and to make reimbursements for any overpayments of BID assessments.

State law requires that the board be composed of at least five members and that a majority of the board members be owners or occupants of property within the district.

It is fact that the two communities will provide board members in relative proportion to the "association" that will be created and contracted with to run the two business improvement districts.

It is recommended that the BID board be structured and operate as follows:

1. Board Size from Milwaukee - Minimum of Five
2. Composition - At least 60% shall be owners or occupants of property within the district. Any non-owner or non-occupant appointed to the board shall be a resident of the City of Milwaukee. The board shall elect its Chairperson from among its members.
3. Term - Appointments to the board shall be for a period of three years except that initially two members shall be appointed for a period of three years, two members shall be appointed for a period of two years, and one member shall be appointed for a period of one year.
4. Compensation - None

5. Meetings - All meetings of the board shall be governed by the Wisconsin Open Meetings Law and held periodically.

6. Record Keeping - Files and records of the board's affairs shall be kept pursuant to public record requirements.

7. Staffing - The board may employ staff and/or contract for staffing services pursuant to this Plan and subsequent modifications thereof.

8. Meetings - The board shall meet regularly, at least twice each year. The board shall adopt rules of order ("by laws") to govern the conduct of its meetings.

F. Relationship to the 27th Street Business Association

The BID shall be a separate entity from the any association or organization, notwithstanding the fact that members, officers and directors of each may be shared. The association shall remain a private organization, not subject to the open meeting law, and not subject to the public record law except for its records generated in connection with the BID board. The association has contracted with the BID to provide services to the BID, in accordance with this Plan.

IV. METHOD OF ASSESMENT

A. Assessment Rate and Method

The principle behind the assessment methodology is that each property should contribute to the BID in proportion to the benefit derived from the BID. After consideration of other assessment methods, it was determined that assessed value of a property was the characteristic most directly related to the potential benefit provided by the BID. Therefore, a fixed assessment on the assessed value of the property was selected as the basic assessment methodology for this BID.

The assessment method will be on the current year general property assessment that is established by the City of Milwaukee. The rate will be approximately \$1 per \$1000 of assessed value. \$500 minimum with a maximum of \$1,500 per property.

However, maintaining an equitable relationship between the BID assessment and the expected benefits requires an adjustment to the basic assessment method. To prevent the disproportional assessment of a small number of high value properties, a maximum assessment of \$1,500 per parcel will be applied.

As of January 1, 2011, the property in the proposed district had a total assessed value of over \$179,639,100. This plan proposed to assess the property in the district at a rate of \$1 per \$1,000.00 of assessed value, subject to the maximum assessment, for the purposes of the BID.

Appendix D shows the projected BID assessment for each property included in the district.

B. Excluded and Exempt Property

The BID law requires explicit consideration of certain classes of property. In compliance with the law the following statements are provided.

1. State Statute 66.1109(1)(f)lm: The district will contain property used exclusively for manufacturing purposes, as well as properties used in part for manufacturing. These properties will be assessed according to the method set forth in this plan because it is assumed that they will benefit from development in the district.
2. State Statute 66.1109(5)(a): Property known to be used exclusively for residential purposes will not be assessed; such properties will be identified as BID Exempt Properties in Appendix D, as revised each year.
3. In accordance with the interpretation of the City Attorney regarding State Statute 66.1109(1)(b), property exempt from general real estate taxes has been excluded from the district. Privately owned tax exempt property adjoining the district and which is expected to benefit from district activities may be asked to make a financial contribution to the district on a voluntary basis.

V. RELATIONSHIP TO MILWAUKEE COMPREHENSIVE PLAN AND ORDERLY DEVELOPMENT OF THE CITY

A. City Plans

In February 1978, the Common Council of the City of Milwaukee adopted a Preservation Policy as the policy basis for its Comprehensive Plan and as a guide for its planning, programming and budgeting decisions. The Common Council reaffirmed and expanded the Preservation Policy in Resolution File Number 881978, adopted January 24, 1989.

The Preservation Policy emphasizes maintaining Milwaukee's present housing, jobs, neighborhoods, services, and tax base rather than passively accepting loss of jobs and population, or emphasizing massive new development. In its January 1989 reaffirmation of the policy, the Common Council gave new emphasis to forging new public and private partnerships as a means to accomplish preservation.

The district is a means of formalizing and funding the public-private partnership between the City and property owners in the 27th Street Business Improvement District business area and for furthering preservation and redevelopment in this portion of the City of Milwaukee. Therefore, it is fully consistent with the City's Comprehensive Plan and Preservation Policy.

B. City Role in District Operation

The City of Milwaukee has committed to helping private property owners in the district promote its development. To this end, the City expected to play a significant role in the creation of the Business Improvement district and in the implementation of the Operating Plan. In particular, the City will:

1. Provide technical assistance to the proponents of the district through adoption of the Plan, and provide assistance as appropriate thereafter.
2. Monitor and, when appropriate, apply for outside funds that could be used in support of the district.
3. Collect assessments, maintain in a segregated account, and disburse the monies of the district on a timely basis.
4. Receive annual audits as required per sec. 66.1109 (3) (c) of the BID law.
5. Provide the board, through the Tax Commissioner's Office on or before June 30th of each Plan year, with the official City records and the assessed value of each tax key number with the district, as of January 1st of each Plan year, for purposes of calculating the BID assessments.
6. Encourage the State of Wisconsin, Milwaukee County and other units of government to support the activities of the district.

A. Public Review Process

The Wisconsin Business Improvement district law establishes a specific process for reviewing and approving proposed districts. Pursuant to the statutory requirements, the following process will be followed:

1. The Milwaukee City Plan Commission will review the proposed district boundaries and proposed Operating Plan and will then set a date for a formal public hearing.
2. The City Plan Commission will send, by certified mail, a public hearing notice and a copy of the proposed Operating Plan to all owners of real property within the proposed district. In addition a Class 2 notice of the public hearing will be published in a local newspaper of general circulation.
3. The City Plan Commission will hold a public hearing, will approve or disapprove the Plan, and will report its action to the Common Council.
4. The Economic Development Committee of the Common Council will review the proposed BID Plan at a public meeting and will make a recommendation to the full Common Council.
5. The Common Council will act on the proposed BID Plan.
6. If adopted by the Common Council, the proposed BID Plan is sent to the Mayor for his approval.
7. If approved by the Mayor, the BID is created and the Mayor will appoint members to the district board established to implement the Plan.

B. Petition against Creation of the BID

The City may not create the Business Improvement district if, within 30 days of the City Plan Commission's hearing, a petition is filed with the City containing signatures of:

Owners of property to be assessed under the proposed initial Operating Plan having a valuation equal to more than 40% of the valuation of all property to be assessed under the proposed initial Operating Plan, using the method of valuation specified in the proposed initial Operating Plan; or

Owners of property to be assessed under the proposed initial Operating Plan having an assessed valuation equal to more than 40% of the assessed valuation of all property to be assessed under the proposed Operating Plan.

VII. FUTURE YEAR OPERATING PLANS

A. Phased Development

It is anticipated that the BID will continue to revise and develop the Operating Plan annually, in response to changing development needs and opportunities in the district, in accordance with the purposes and objectives defined in this initial Operating Plan.

Section 66.1109 (3) (a) of the BID law requires the board and the City to annually review and make changes as appropriate in the Operating Plan. Therefore, while this document outlines in general terms the complete development program, it focuses upon Year One activities, and information on specific assessed values, budget amounts and assessment amounts are based on Year One conditions. Greater detail about subsequent year's activities will be provided in the required annual Plan updates, and approval by the Common Council of such Plan updates shall be conclusive evidence of compliance with this Plan and the BID law.

In later years, the BID Operating Plan will continue to apply the assessment formula, as adjusted, to raise funds to meet the next annual budget. However, the method of assessing shall not be materially altered, except with the consent of the City of Milwaukee.

B. Amendment, Severability and Expansion

This BID has been created under authority of Section 66.1109 of the Statutes of the State of Wisconsin. Should any court find any portion of this Statute invalid or unconstitutional its decision will not invalidate or terminate the BID and this BID Plan shall be amended to conform to the law without need of reestablishment.

Should the legislature amend the Statute to narrow or broaden the process of a BID so as to exclude or include as assessable properties a certain class or classes of properties, then this BID Plan may be amended by the Common Council of the City of Milwaukee as and when it conducts its annual Operating Plan approval and without necessity to undertake any other act. This is specifically authorized under Section 66.1109(3)(b).

APPENDICES

- A. STATUTE
- B. PETITION
- C. PROPOSED DISTRICT BOUNDARIES
- D. YEAR ONE PROJECTED ASSESSMENTS
- E. CITY ATTORNEY'S OPINION

Exhibit A

WEST'S WISCONSIN STATUTES ANNOTATED
MUNICIPALITIES
SUBCHAPTER XI. DEVELOPMENT

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Current through 2003 Act 28, published 6/2/03

66.1109. Business improvement districts

(1) In this section:

(a) "Board" means a business improvement district board appointed under sub. (3)(a).

(b) "Business improvement district" means an area within a municipality consisting of contiguous parcels and may include railroad rights-of-way, rivers, or highways continuously bounded by the parcels on at least one side, and shall include parcels that are contiguous to the district but that were not included in the original or amended boundaries of the district because the parcels were tax-exempt when the boundaries were determined and such parcels became taxable after the original or amended boundaries of the district were determined.

(c) "Chief executive officer" means a mayor, city manager, village president or town chairperson.

(d) "Local legislative body" means a common council, village board of trustees or town board of supervisors.

(e) "Municipality" means a city, village or town.

(f) "Operating plan" means a plan adopted or amended under this section for the development, redevelopment, maintenance, operation and promotion of a business improvement district, including all of the following:

1. The special assessment method applicable to the business improvement district.

1m. Whether real property used exclusively for manufacturing purposes will be specially assessed.

2. The kind, number and location of all proposed expenditures within the business improvement district.

3. A description of the methods of financing all estimated expenditures and the time when related costs will be incurred.

4. A description of how the creation of the business improvement district promotes the orderly development of the municipality, including its relationship to any municipal master plan.

5. A legal opinion that subs. 1 to 4 have been complied with.

(g) "Planning commission" means a plan commission under s. 62.23, or if none a board of public land commissioners, or if none a planning committee of the local legislative body.

(2) A municipality may create a business improvement district and adopt its operating plan if all of the following are met:

(a) An owner of real property used for commercial purposes and located in the proposed business improvement district designated under par. (b) has petitioned the municipality for creation of a business improvement district.

(b) The planning commission has designated a proposed business improvement district and adopted its proposed initial operating plan.

(c) At least 30 days before creation of the business improvement district and adoption of its initial operating plan by the municipality, the planning commission has held a public hearing on its proposed business improvement district and initial operating plan. Notice of the hearing shall be published as a class 2 notice under ch. 985. Before publication, a copy of the notice together with a copy of the proposed initial operating plan and a copy of a detail map showing the boundaries of the proposed business improvement district shall be sent by certified mail to all owners of real property within the proposed business improvement district. The notice shall state the boundaries of the proposed business improvement district and shall indicate that copies of the proposed initial operating plan are available from the planning commission on request.

(d) Within 30 days after the hearing under par. (c), the owners of property to be assessed under the proposed initial operating plan having a valuation equal to more than 40% of the valuation of all property to be assessed under the proposed initial operating plan, using the method of valuation specified in the proposed initial operating plan, or the owners of property to be assessed under the proposed initial operating plan having an assessed valuation equal to more than 40% of the assessed valuation of all property to be assessed under the proposed initial operating plan, have not filed a petition with the planning commission protesting the proposed business improvement district or its proposed initial operating plan.

(e) The local legislative body has voted to adopt the proposed initial operating plan for the municipality.

(3)(a) The chief executive officer shall appoint members to a business improvement district board to implement the operating plan. Board members shall be confirmed by the local legislative body and shall serve staggered terms designated by the local legislative body. The board shall have at least 5 members. A majority of board members shall own or occupy real property in the business improvement district.

(b) The board shall annually consider and may make changes to the operating plan, which may include termination of the plan, for its business improvement district. The board shall then submit the operating plan to the local legislative body for its approval. If the local legislative body disapproves the operating plan, the board shall consider and may make changes to the operating plan and may continue to resubmit the operating plan until local legislative body approval is obtained. Any change to the special assessment method applicable to the business improvement district shall be approved by the local legislative body.

(c) The board shall prepare and make available to the public annual reports describing the current status of the business improvement district, including expenditures and revenues. The report shall include an independent certified audit of the implementation of the operating plan obtained by the municipality. The municipality shall obtain an additional independent certified audit upon termination of the business improvement district.

(d) Either the board or the municipality, as specified in the operating plan as adopted, or amended and approved under this section, has all powers necessary or convenient to implement the operating plan, including the power to contract.

(4) All special assessments received from a business improvement district and all other appropriations by the municipality or other moneys received for the benefit of the business improvement district shall be placed in a segregated account in the municipal treasury. No disbursements from the account may be made except to reimburse the municipality for appropriations other than special assessments, to pay the costs of audits required under sub. (3)(c) or on order of the board for the purpose of implementing the operating plan. On termination of the business improvement district by the municipality, all moneys collected by special assessment remaining in the account shall be disbursed to the owners of specially assessed property

in the business improvement district, in the same proportion as the last collected special assessment.

(4m) A municipality shall terminate a business improvement district if the owners of property assessed under the operating plan having a valuation equal to more than 50% of the valuation of all property assessed under the operating plan, using the method of valuation specified in the operating plan, or the owners of property assessed under the operating plan having an assessed valuation equal to more than 50% of the assessed valuation of all property assessed under the operating plan, file a petition with the planning commission requesting termination of the business improvement district, subject to all of the following conditions:

(a) A petition may not be filed under this subsection earlier than one year after the date the municipality first adopts the operating plan for the business improvement district.

(b) On and after the date a petition is filed under this subsection, neither the board nor the municipality may enter into any new obligations by contract or otherwise to implement the operating plan until the expiration of 30 days after the date of hearing under par. (c) and unless the business improvement district is not terminated under par. (e).

(c) Within 30 days after the filing of a petition under this subsection, the planning commission shall hold a public hearing on the proposed termination. Notice of the hearing shall be published as a class 2 notice under ch. 985. Before publication, a copy of the notice together with a copy of the operating plan and a copy of a detail map showing the boundaries of the business improvement district shall be sent by certified mail to all owners of real property within the business improvement district. The notice shall state the boundaries of the business improvement district and shall indicate that copies of the operating plan are available from the planning commission on request.

(d) Within 30 days after the date of hearing under par. (c), every owner of property assessed under the operating plan may send written notice to the planning commission indicating, if the owner signed a petition under this subsection, that the owner retracts the owner's request to terminate the business improvement district, or, if the owner did not sign the petition, that the owner requests termination of the business improvement district.

(e) If after the expiration of 30 days after the date of hearing under par. (c), by petition under this subsection or subsequent notification under par. (d), and after subtracting any retractions under par. (d), the owners of property assessed under the operating plan having a valuation equal to more than 50% of the valuation of all property assessed under the operating plan, using the method of valuation specified in the operating plan, or the owners of property assessed under the operating plan having an assessed valuation equal to more than 50% of the assessed valuation of all property assessed under the operating plan, have requested the termination of the business improvement district, the municipality shall terminate the business improvement district on the date that the obligation with the latest completion date entered into to implement the operating plan expires.

(5)(a) Real property used exclusively for residential purposes and real property that is exempted from general property taxes under s. 70. 11 may not be specially assessed for purposes of this section.

(b) A municipality may terminate a business improvement district at any time.

(c) This section does not limit the power of a municipality under other law to regulate the use of or specially assess real property.

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Source:

2001 Act 85, § 1, 2, eff. May 3, 2002.

2001 Act 85 amended subsecs. (1)(b) and (5)(a).

1999 Act 150 renumbered § 66.608 as this section, and as renumbered, amended subsec.(3)(d).

City of Oak Creek Common Council Report

Meeting Date: September 3, 2011

Item No.: 10

Recommendation: That the Council adopt Resolution No. 11399-090313 vacating a portion of the E. Forest Hill Avenue right-of-way.

Background: A request has been made by the owner of 324 E. Forest Hill Avenue to vacate a portion of the right-of-way along the southern property boundary. The area to be vacated is 10 feet in width and between 335.65 feet and 335.69 feet in length, for a total of 3,356 square feet.

This request is related to certified survey maps for this property, property located at 400 E. Lily Drive, and the preliminary plat for the Oakfield Village Addition #2. All told, the CSMs and subdivision will create 11 new building lots. Adding the aforementioned square footage to the lot at 324 E. Forest Hill Avenue allows the Applicant to create conforming building lots and creates a straight right-of-way consistent with adjacent parcels to the west.

No adverse impacts to the current and future maintenance of the right-of-way are anticipated with this vacation, and the City Engineering Department has expressed no objections.

The Plan Commission has reviewed this request and recommends its approval.

This resolution is only being introduced this evening. The public hearing will be held on October 15, 2013. The Council may act on the resolution at that time.

Fiscal Impact: This vacation will return the right of way to private ownership, allowing the creation of new residential building lots. Residential development of the lots will generate \$3,996/home in impact fees. Data has suggested that single-family homes constructed on the newly created parcels would need to have an assessed value in excess of \$249,577 (each) in order to generate revenues equal to costs.

Prepared by:


Doug Seymour, AICP
Director of Community Development

Respectfully Submitted,

Gerald Peterson, ICMA-CM
City Administrator

Fiscal Review by:

Bridget M. Souffrant
Finance Director/Comptroller

RESOLUTION NO. 11399-090313

RESOLUTION VACATING AND DISCONTINUING A PART OF A
PUBLIC STREET IN THE CITY OF OAK CREEK
(324 E. Forest Hill Avenue in the SE ¼ of Section 23-5-22)
(1st Aldermanic District)

WHEREAS the public interest requires that a part of a public street in the City of Oak Creek, Milwaukee County, Wisconsin, be discontinued and vacated, the legal description of the street being:

That part of the Southwest Quarter (SW ¼) of the Northwest Quarter (NW ¼) of Section 16, Town 5 North, Range 22 East in the City of Oak Creek, Milwaukee County, Wisconsin, being more particularly described as follows:

Commencing at the southwest corner of said Northwest Quarter (NW ¼); thence North 89°18'49" East along the south line said Northwest Quarter (NW ¼) 982.00 feet to the west line projected of Parcel 2 of Certified Survey Map No. 560; thence North 00°34'02" East along said projection 40.01 feet to the place of beginning of the lands hereinafter to be described; thence continuing North 00°34'02" East 10.00 feet to the north right-of-way line of East Forest Hill Avenue; thence North 89°18'49" East along the said north right-of-way line 335.69 feet to the southeast corner of said Parcel 2; thence South 00°47'07" West along the east line of said Parcel 2 projected 10.00 feet; thence South 89°18'49" West 335.65 feet to the place of beginning.

provided that pursuant to Section 66.1005 Wis. Stats. such vacation shall not terminate the easements acquired and the rights of the public in any of the underground structures, improvements or services as enumerated or otherwise existing in said public way and in said description of lands hereinbefore described, but such easements and rights and all rights of entrance, maintenance, construction and repair with reference thereto shall continue as if such public way had not been vacated.

and,

WHEREAS it appears that this resolution was introduced before the Common Council of the City of Oak Creek pursuant to Wis. Stats. Sec. 66.1003(4)(a) on September 3, 2013 and a Notice of Public Hearing was published in the Oak Creek NOW, the official City newspaper on September 12, 2013, September 19, 2013 and September 26, 2013, that a copy of said Notice was duly served on the following property owners in accordance with Wisconsin State Statutes:

OWNER	PROPERTY ADDRESS
Mark D. and Linda A. Beaumont	300 E. Forest Hill Ave., Oak Creek, WI 53154
David Semrad and Linda L. Holler	324 E. Forest Hill Ave., Oak Creek, WI 53154 (Mailing address: 8170 S. 13 th St., Oak Creek, WI 53154)
Midwest Real Estate Development Co., Inc.	324 E. Forest Hill Ave., Oak Creek, WI 53154 (Mailing address: 2990 Universal St., Ste. C, Oshkosh, WI 53904)
Darlene F. Kollatz	400 E. Forest Hill Ave., Oak Creek, WI 53154

and it further appears that no sufficient written objection to said discontinuance and vacation was filed with the City Clerk; and it appears that a public hearing was held before the Common Council of the City of Oak Creek on the 15th day of October, 2013, at 7:00 p.m.; and

WHEREAS, A Notice of Pendency of Application to Vacate in the above matter was recorded with the Register of Deeds for Milwaukee County, Wisconsin on the 3rd day of September, 2013 and a report was received by the Plan Commission, all as required by law, and

NOW THEREFORE, in accordance with the authority vested in the Common Council by Section 66.1003(4)(a) of the Wisconsin Statutes,

BE IT RESOLVED by the Common Council of the City of Oak Creek that the following public street legally described as:

That part of the Southwest Quarter (SW ¼) of the Northwest Quarter (NW ¼) of Section 16, Town 5 North, Range 22 East in the City of Oak Creek, Milwaukee County, Wisconsin, being more particularly described as follows:

Commencing at the southwest corner of said Northwest Quarter (NW ¼); thence North 89°18'49" East along the south line said Northwest Quarter (NW ¼) 982.00 feet to the west line projected of Parcel 2 of Certified Survey Map No. 560; thence North 00°34'02" East along said projection 40.01 feet to the place of beginning of the lands hereinafter to be described; thence continuing North 00°34'02" East 10.00 feet to the north right-of-way line of East Forest Hill Avenue; thence North 89°18'49" East along the said north right-of-way line 335.69 feet to the southeast corner of said Parcel 2; thence South 00°47'07" West along the east line of said Parcel 2 projected 10.00 feet; thence South 89°18'49" West 335.65 feet to the place of beginning.

provided that pursuant to Section 66.1005 Wis. Stats. such vacation shall not terminate the easements acquired and the rights of the public in any of the underground structures, improvements or services as enumerated or otherwise existing in said public way and in said description of lands hereinbefore described, but such easements and rights and all rights of entrance, maintenance, construction and repair with reference thereto shall continue as if such public way had not been vacated.

be and the same are hereby discontinued and vacated.

Introduced at a regular meeting of the Common Council of the City of Oak Creek held the 3rd day of September, 2013.

Passed and adopted this ____ day of _____, 2013.

President, Common Council

Approved this ____ day of _____, 2013.

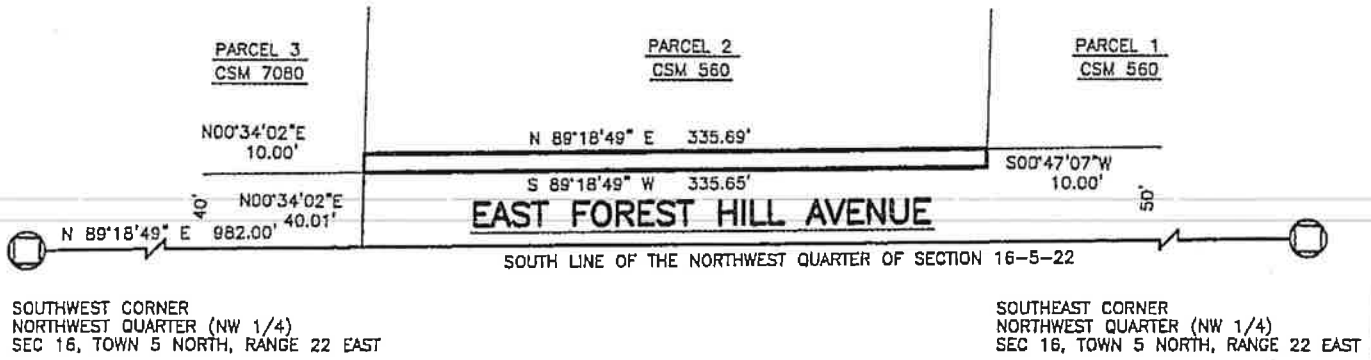
ATTEST:

Mayor

City Clerk

VOTE: Ayes ____ Noes ____

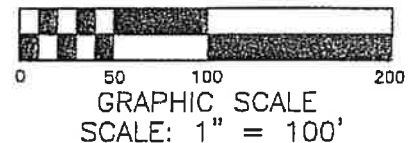
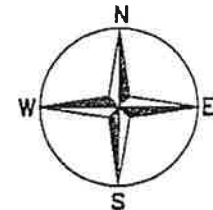
**EXHIBIT A
EAST FOREST HILL STREET
RIGHT-OF-WAY VACATION**



SURVEYOR'S DESCRIPTION:

That part of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) of Section 16, Town 5 North, Range 22 East in the City of Oak Creek, Milwaukee County, Wisconsin, being more particularly described as follows:
Commencing at the southwest corner of said Northwest Quarter (NW 1/4); thence North 89°18'49" East along the south line of said Northwest Quarter (NW 1/4) 982.00 feet to the west line projected of Parcel 2 of Certified Survey Map No. 560; thence North 00°34'02" East along said projection 40.01 feet to the place of beginning of the lands hereinafter to be described: thence continuing North 00°34'02" East 10.00 feet to the north right-of-way line of East Forest Hill Avenue; thence North 89°18'49" East along the said north right-of-way line 335.69 feet to the southeast corner of said Parcel 2; thence South 00°47'07" West along the east line of said Parcel 2 projected 10.00 feet; thence South 89°18'49" West 335.65 feet to the place of beginning.

Containing 3,356 square feet or 0.0770 Acres of land.



Calvin K. Klimeck
KALVIN K. KLIMECK – Wis Reg. No. S-2209
Dated this 9th day of July, 2013

OWNER: MIDWEST DEVELOPMENT CORP. 2990 Universal St, Suite C Oshkosh, WI 53904 (920)426-2001
This instrument prepared by KALVIN K. KLIMECK, P.E.; R.L.S., of PIONEER ENGINEERING AND SURVEYING, L.L.C.
3902 C.T.H. "B", Johnson Creek, Wisconsin, 53038 phone no. (414) 651-0490 e-mail: kalpioneereng@tds.net

City of Oak Creek Common Council Report

Meeting Date: September 3, 2013

Item No.: 11

Recommendation: That the Common Council adopts Resolution No. 11396-090313, acquiring fee property (right-of-way), and temporary easements, for the S. Howell Avenue Wisconsin Department of Transportation maintenance project from Oakwood Road to Grange Avenue; and, to send a payment in the amount of the Award of Damages to the affected property owners (Project No. 12025) (1st, 2nd, 3rd, 5th, & 6th Aldermanic Districts).

Background: The acquisition (approved with Resolution No. 11298-110712) of real estate and easements is necessary for construction of sidewalks along the Howell Avenue corridor. The required acquisition has been determined to be agreeable by the affected property owners. The City has hired MSA Professional Services to handle all of the real estate acquisitions for the project. The City must acquire TLE and PLE on 63 parcels. The Council approved payment for 58 parcels previously. The acquisitions acquired at this time are listed below.

Owner	Property Address	Tax Key Number	Parcel No.	Acquisition Type	Amount
Burger	9844 S. Glenmoor Court	906-0057	31	TLE	\$200

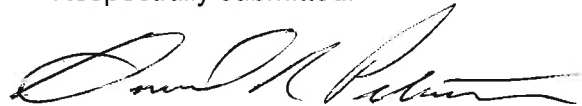
Fiscal Impact: The total cost of this action is \$200, and is to be paid from CIP funds reserved in Project No. 12025.

Prepared by:



Brian L. Johnston, P.E.
Development Engineer

Respectfully submitted:



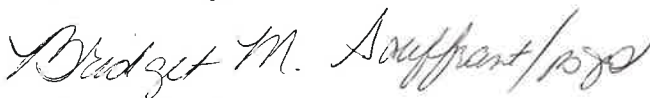
Gerald R. Peterson, ICMA-CM
City Administrator

Approved by:



Michael C. Simmons, P.E.
City Engineer

Fiscal review by:



Bridget M. Souffrant
Finance Director

RESOLUTION NO. 11396-090313

BY: _____

RESOLUTION ACCEPTING FEE PROPERTY, AND TEMPORARY EASEMENTS FOR THE HOWELL AVENUE RECONSTRUCTION PROJECT

(PROJECT NO. 12025)

(1st, 2nd, 3rd, 5th & 6th ALDERMANIC DISTRICTS)

WHEREAS, the City of Oak Creek decided that public necessity demands the construction of sidewalk with the Wisconsin Department of Transportation maintenance project (2060-15-71); and

WHEREAS, the acquisition of fee simple title, and temporary easements were approved with Resolution No. 11298-110712, and

WHEREAS, the plat and relocation order for this project, with State I.D. 2060-15-21, have been approved and filed with the County Clerk for Milwaukee County, and

WHEREAS, the property owners listed below have agreed to land acquisition and grant easements to the City,

Owner	Property Address	Tax Key Number	Parcel No.	Acquisition Type	Amount
Burger	9844 S. Glenmoor Court	906-0057	31	TLE	\$200

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Oak Creek that the attached land acquisition and easements be approved and the same is hereby accepted; and

BE IT FURTHER RESOLVED, the Finance Director is hereby authorized and directed to prepare a check(s) in the amount(s) and to the owner(s) shown above for a closing to be scheduled and upon closing MSA is hereby authorized and directed to record the same in the Office of the Register of Deeds in and for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Oak Creek held this 3rd day of September, 2013.

Passed and adopted this 3rd day of September, 2013.

President, Common Council

Approved this 3rd day of September, 2013.

Mayor

ATTEST:

City Clerk

VOTE: Ayes _____ Noes _____

City of Oak Creek Common Council Report

Meeting Date September 3, 2013

Item No.: 12

Recommendation: That the Common Council adopts Resolution No. 11397-090313, a resolution to enter into a Drainage Facility & Waterway Agreement with the Union Pacific Railroad Company for work within the railroad right-of-way for the E. Puetz Road to E. Forest Hill Avenue Drainage Improvement Project (Project No. 09024) (1st and 3rd Aldermanic Districts).

Background: The E. Puetz Road to E. Forest Hill Avenue drainage improvement project requires work to be completed within the Union Pacific Railroad Company right-of-way. Union Pacific is requiring the City to enter into the attached Drainage Facility & Waterway Agreement as one of the last steps in the permitting process. The drainage project is currently being advertised with the bid opening scheduled for September 13, 2013.

Fiscal Impact: Union Pacific requires a \$1,000 fee for the execution of this agreement, which will be funded through Project No. 09024.

Prepared by:



Philip J. Beiermeister, P.E.
Environmental Design Engineer

Respectfully submitted:



Gerald R. Peterson, ICMA-CM
City Administrator

Approved by:



Michael C. Simmons, P.E.
City Engineer

Fiscal review by:



Bridget M. Souffrant
Finance Director/Comptroller

RESOLUTION NO. 11397-090313

BY: _____

**RESOLUTION TO ENTER INTO A DRAINAGE FACILITY & WATERWAY AGREEMENT WITH
THE UNION PACIFIC RAILROAD COMPANY FOR THE E. PUETZ ROAD TO E. FOREST HILL
AVENUE DRAINAGE IMPROVEMENT PROJECT**

(PROJECT NO. 09024)

(UNION PACIFIC FOLDER NO. 2683-03)

(1ST AND 3RD ALDERMANIC DISTRICT)

WHEREAS, the E. Puetz Road to E. Forest Hill Avenue Drainage Improvement project requires work to be conducted within the Union Pacific Railroad Company right-of-way, and,

WHEREAS, the Union Pacific Railroad Company requires that the City enter into a Drainage Facility & Waterway Agreement, and,

WHEREAS, the required Drainage Facility & Waterway Agreement has been prepared and presented to the Common Council,

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Oak Creek that the attached Drainage Facility & Waterway Agreement is approved and executed by the City.

Introduced at a regular meeting of the Common Council of the City of Oak Creek held this 3rd day of September, 2013.

Passed and adopted this 3rd day of September, 2013.

President, Common Council

Approved this 3rd day of September, 2013.

Mayor

ATTEST:

City Clerk

VOTE: AYES _____ NOES _____

**DRAINAGE FACILITY & WATERWAY
AGREEMENT**

Mile Post: 73.4 to 74.1, Milwaukee Subdivision
Location: Oak Creek, Milwaukee County, Wisconsin

THIS AGREEMENT ("Agreement") is made and entered into as of July 22, 2013, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **CITY OF OAK CREEK, WISCONSIN**, a Wisconsin municipal corporation to be addressed at 8640 South Howell Avenue, Oak Creek, Wisconsin 53154 ("Licensee").

RECITALS:

In order to improve drainage conditions the Licensee desires to construct a longitudinal drainage facility in the vicinity of Licensor's right of way between Mile Posts 73.4 and 74.1 on the Milwaukee Subdivision, located at or near Oak Creek, Milwaukee County, Wisconsin (hereinafter the "Premises").

The drainage facilities to be constructed by the Licensee, at Licensee's expense, on the Premises are hereinafter collectively referred to as the "Drainage Facility". The Drainage Facility and Premises are shown on the print dated January 05, 2013, marked Exhibit "A", hereto attached.

The Railroad is agreeable to the Licensee constructing, maintaining and using the Drainage Facility upon the terms and conditions set forth herein.

AGREEMENT:

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and use the Drainage Facility.

Article 2. CONSTRUCTION WORK TO BE PERFORMED BY LICENSEE.

The Licensee, at its sole expense, shall construct the Drainage Facility and perform the work described in the Recitals above and/or described in Exhibit "A".

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, hereto attached.

Article 4. DEFERRED CONSTRUCTION.

The Licensor and Licensee acknowledge that conditions inherent in the Drainage Facility may cause the complete stabilization of Licensor's trackage supported by new cuts or fills to be deferred beyond the construction period, and that Licensor's operation over the roadbed during the seasoning period will impose extraordinary maintenance costs in the event of caving, sliding, slipping, sinking or settling, including damage to rip-rapping or protective work in connection therewith, as well as settlement and consolidation of tracks and ballast, until the seasoning period is complete. Therefore, the Licensee will pay to the Licensor, as a part of the consideration for this Agreement, all that part of the cost and expense of extraordinary maintenance (hereinafter referred to as "Deferred Construction") associated with the Drainage Facility which can be attributed to failure of subgrade, settlement, and consolidation of subballast, or roadbed, or any combination thereof, which are incurred during the period commencing immediately following completion of the work on the Drainage Facility by the Licensee or its contractor and ending five years thereafter. The Deferred Construction costs aforesaid shall include reimbursement of the extra cost, in excess of normal maintenance costs, of maintaining embankments and that portion of said tracks above subgrade in accordance with acceptable maintenance standards, and will include cost of maintaining proper alignment, proper surface and use of ballast and other necessary materials.

Article 5. ADMINISTRATIVE HANDLING CHARGE.

Upon execution and delivery of this Agreement, the Licensee shall pay to the Licensor an Administrative Handling Charge of **One Thousand DOLLARS (\$1,000.00)** for clerical, administrative and handling expense in connection with processing this Agreement.

Article 6. TERM; TERMINATION.

A. This Agreement shall take effect as of the date first herein written and, unless sooner terminated as set forth in Paragraphs (B) and (C) below, shall continue in full force and effect for so long as the Premises and Drainage Facility shall be used by the Licensee for the purposes set forth herein; provided, however, that if the Licensee shall abandon the use of the Drainage Facility and Premises, or any part thereof, for such purposes, this Agreement and the rights and privileges granted to Licensee herein as to the portion(s) so abandoned shall cease and terminate at the time such portions of the Drainage Facility and Premises are abandoned.

B. If the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith and immediately terminate this Agreement by written notice to Licensee.

C. This Agreement may be terminated by either party, with or without cause, upon six (6) months written notice to the other party. In the event of such notice of termination, the parties shall arrange for either the Drainage Facility to be removed, filled in and graded to accommodate the surrounding grade surface, or to encase the Drainage Facility to the standards and satisfaction of the Licensor.

D. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Article 7. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Drainage Facility or Premises (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Railroad's Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's Premises without first executing the Contractor's Right of Entry Agreement.

Article 8. INSURANCE.

A. The Licensee, at its expense, shall obtain the insurance described in Exhibit C, hereto attached. The Licensee will also provide to the Licensor a Certificate of Insurance issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

Union Pacific Railroad Company is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the Drainage Facility located on Railroad's right of way between Mile Posts 73.4 on the Milwaukee Subdivision, located at or near Oak Creek, Milwaukee County, Wisconsin.

B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit C shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Licensor.

C. All insurance correspondence shall be directed to:

Folder No.: 2683-03
Assistant Manager-Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street STOP 1690
Omaha, Nebraska 68179-1690

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
ASST. MANAGER CONTRACTS

CITY OF OAK CREEK, WISCONSIN

By: _____
Title: _____

EXHIBIT B

TO DRAINAGE FACILITY & WATERWAY AGREEMENT

TERMS AND CONDITIONS

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment. It shall be Licensee's sole obligation to obtain such additional permission, license and grants necessary on account of any such existing rights.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

a) The Licensee shall submit the design of the Drainage Facility to the Licensor for Licensor's prior approval. All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Drainage Facility shall be done to the satisfaction of the Licensor and in substantial conformance to the specifications, notes and cross sections shown on Exhibit A.

b) The Licensee, at its sole expense, shall operate, maintain and use the Drainage Facility in a good and safe condition and shall keep the Drainage Facility free and clear of debris, sediment or obstructive matter which may or could interfere with or impede the proper functioning of the Drainage Facility.

c) The Licensee shall not cross any trackage of Licensor with any vehicles except at existing, open public crossings. The Drainage Facility shall be installed by an approved method of construction, or if by the jacking and boring method, during jacking operations, the Licensee agrees to fill voids created between the embankment and pipe by pressure grouting. The Licensee shall provide adequate barrier protection around the entire excavation area.

d) During the performance of excavating, constructing and maintaining the Drainage Facility, or any part thereof, the Licensee shall not excavate near the toe of the track embankment of the trackbed and will protect the trackbed in the design, construction and maintenance of the Drainage Facility. In the event of any settlement of the Licensor's embankment caused by excavation of the Drainage Facility, the Licensee, at its sole expense, shall restore Licensor's embankment to its proper grade and dimensions.

e) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Drainage Facility where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Services of the Licensor and then the work shall be done to the satisfaction of the Vice President-Engineering Services or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Drainage Facility, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefor, all expense incurred by the Licensor in connection therewith, which expense shall include all assignable costs.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Drainage Facility. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Drainage Facility, including any and all expense which may be incurred by the Licensor in connection therewith for inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF DRAINAGE FACILITY.

a) The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce or encase the Drainage Facility, or move all or any portion of the Drainage Facility to such new location, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

b) All the terms, conditions and stipulations herein expressed with reference to the Drainage Facility on property of the Licensor in the location hereinbefore described shall, so far as the Drainage Facility remains on the property, apply to the Drainage Facility as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

The Drainage Facility and all parts thereof within and outside of the limits of the property of the Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

a) Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and will commence no work on the right of way until all such protection or relocation has been accomplished.

b) In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Licensor's property, and (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property. Licensee shall not have or seek recourse against Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Licensor's property or a customer or user of services of the fiber optic cable on Licensor's property.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Drainage Facility, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee.

The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Drainage Facility, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Drainage Facility or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensor authorizes the Licensee to take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Drainage Facility, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

a) As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and (b) damage to or loss or destruction of property whatsoever (including Licensee's property and adjacent property and crops, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

b) To the extent it may lawfully do so, the Licensee agrees to assume the risk of loss or damage to the Drainage Facility and to indemnify and hold harmless the Licensor from any Loss which is due to or arises from (i) the installation, construction, maintenance, repair,

reconstruction, removal, use or existence of the Drainage Facility and appurtenances thereto, or any part thereof, including any break in the Drainage Facility wall or structure or any leakage, flow of water or flooding from the Drainage Facility, or (ii) Licensee's failure to comply with or perform any of the terms and conditions set forth in this Agreement, except to the extent that the Loss is caused by the sole and direct negligence of the Licensor; provided, however, that the foregoing indemnification provisions shall not apply to any claims, damages, costs and expenses that have been fully compensated for through the insurance required of Licensee in Exhibit C, or required of Licensee's contractor under the separate Contractor's Right of Entry Agreement.

c) Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings, resulting from any employee's suit against either party pursuant to any such Act(s), be relied upon or used by either party in any attempt to assert common law liability against the other.

Section 11. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 12. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 13. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 12 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

EXHIBIT C

Union Pacific Railroad Insurance Requirements

Licensee shall, at its sole cost and expense, (except for Railroad Protective Liability Insurance required in Paragraph D), procure and maintain in effect during the term of this Agreement the following insurance coverage. Licensee shall procure and maintain, or cause to be procured and maintained by its contractor, at its sole cost and expense, Railroad Protective Liability Insurance coverage described in Paragraph D during any period of construction, maintenance, repair or reconstruction work.

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee's and/or Licensee's contractor's statutory liability under the workers' compensation laws of the state where the Utility/Facility is located.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee, and/or Licensee's contractor, is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. Railroad Protective Liability insurance. Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensor as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Licensor before the work may be commenced and until the original policy is forwarded to Licensor.

E. Umbrella or Excess insurance. If Licensee, and/or Licensee's contractor, utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Licensor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Licensor's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

I. Prior to commencing any work, Licensee, and/or Licensee's contractor, shall furnish Licensor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

J. All insurance policies must be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state in which the Utility is located.

K. The fact that insurance is obtained by Licensee, and/or Licensee's contractor, or by Licensor on behalf of Licensee, and/or Licensee's contractor, will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor from Licensee or any third party will not be limited by the amount of the required insurance coverage.