



*County of Milwaukee*  
**Office of the Sheriff**

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David A. Clarke, Jr.  
*Sheriff*

**DATE:** January 12, 2011

**TO:** Supervisor Michael Mayo, Sr., Acting Chairman, County Board of Supervisors

**FROM:** Richard Schmidt, Inspector, Milwaukee County Office of the Sheriff

**SUBJECT:** Request to grant an amendment to existing easement with the City of Franklin dated February 26, 2001.

**REQUEST**

The Sheriff of Milwaukee County requests the authority to grant an amendment to an existing easement with the City of Franklin as it relates to the area surrounding the City of Franklin Water Tower, which is located on land owned by the Milwaukee County Correctional Facility South.

**BACKGROUND**

In September of 2000, County Board File No. 00-407 was approved which granted the City of Franklin an easement for land to site two water towers on land owned by Milwaukee County's Correctional Facility South. In 2010, the City of Franklin contacted staff at the CCFS to request to add a booster station to the allowed improvements clause contained in the present agreement and to slightly reconfigure the easement area. The addition of the booster station will increase the reliability of the utility's water system. The easement retains the same size of 1.99 acres but the shape is slightly changed to accommodate the construction of the booster station.

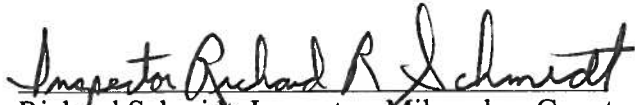
The City of Franklin submitted the easement documents to Milwaukee County's Office of Corporation Counsel for its review. Attached to this report is a copy of the easement agreement and maps showing the location of the water tower.

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821 West State Street • Milwaukee, Wisconsin 53233-1488  
 414-278-4766 • <http://www.mksheriff.org>

**FISCAL NOTE**

There is no fiscal effect to the change in the easement as requested by the City of Franklin.



Richard Schmidt, Inspector, Milwaukee County Office of the Sheriff

cc: Willie Johnson, Jr., Chairman, Judiciary, Safety and General Services Committee  
Theodore Lipscomb, Vice Chair, Economic and Community Development Committee  
Jon Priebe, Public Safety Fiscal Administrator

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## MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** 1/12/11

Original Fiscal Note

Substitute Fiscal Note

**SUBJECT:** The Sheriff of Milwaukee County requests the authority to grant an amendment to an existing easement with the City of Franklin as it relates to the area surrounding the City of Franklin Water Tower, which is located on land owned by the Milwaukee County Correctional Facility South.

**FISCAL EFFECT:**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact<br><input checked="" type="checkbox"/> Existing Staff Time Required<br><input type="checkbox"/> Increase Operating Expenditures<br>(If checked, check one of two boxes below)<br><input type="checkbox"/> Absorbed Within Agency's Budget<br><input type="checkbox"/> Not Absorbed Within Agency's Budget<br><input type="checkbox"/> Decrease Operating Expenditures<br><input type="checkbox"/> Increase Operating Revenues<br><input type="checkbox"/> Decrease Operating Revenues | <input type="checkbox"/> Increase Capital Expenditures<br><input type="checkbox"/> Decrease Capital Expenditures<br><input type="checkbox"/> Increase Capital Revenues<br><input type="checkbox"/> Decrease Capital Revenues<br><input type="checkbox"/> Use of contingent funds |
|--|--|

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

	Expenditure or Revenue Category	Current Year	Subsequent Year
<b>Operating Budget</b>	Expenditure	0	
	Revenue	0	
	Net Cost	0	
<b>Capital Improvement Budget</b>	Expenditure		
	Revenue		
	Net Cost		

## DESCRIPTION OF FISCAL EFFECT

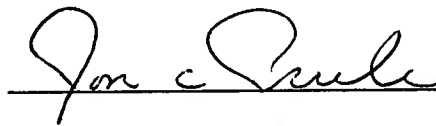
In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.<sup>1</sup> If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

The Sheriff of Milwaukee County is requesting the authority to grant an amendment to an existing easement with the City of Franklin as it relates to the area surrounding the City of Franklin Water Tower, which is located on land owned by the Milwaukee County Correctional Facility South. There is no fiscal effect from entering into this amendment.

Department/Prepared By Molly Pahl, Fiscal Operations Manager

Authorized Signature



Did DAS-Fiscal Staff Review?  Yes  No

<sup>1</sup> If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

(ITEM ) From the Sheriff requesting to grant an amendment to existing easement with the City of Franklin dated February 26, 2001:

A RESOLUTION

WHEREAS, the Sheriff of Milwaukee County requests to grant an amendment to an existing easement with the City of Franklin as it relates to the area surrounding the City of Franklin Water Tower, which is located on land owned by the Milwaukee County Correctional Facility South; and

WHEREAS, in September of 2000, County Board File No. 00-407 was approved which granted the City of Franklin an easement for land to site two water towers on land owned by Milwaukee County's Correctional Facility South(CCFS); and

WHEREAS, in 2010, the City of Franklin contacted staff at the CCFS to request to add a booster station to the allowed improvements clause contained in the present agreement and to slightly reconfigure the easement area; and

WHEREAS, the addition of the booster station will increase the reliability of the utility's water system and the easement retains the same size of 1.99 acres but the shape is slightly changed to accommodate the construction of the booster station; and

WHEREAS, the City of Franklin submitted the easement documents to Milwaukee County's Office of Corporation Counsel for its review; now, therefore,

BE IT RESOLVED, that the Office of the Sheriff is hereby authorized to enter into an amendment of its easement agreement with the City of Franklin over land located at the CCFS.

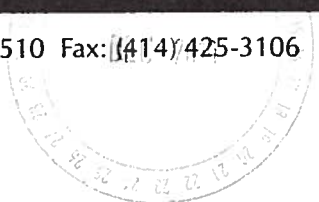
FISCAL NOTE

There is no fiscal effect to the change in the easement as requested by the City of Franklin.

*Approved as to Form  
Robert Z. Anders 1-13-11  
Corporation Counsel*



9229 West Loomis Road, Franklin, Wisconsin 53132-9728 (414) 425-7510 Fax: (414) 425-3106



December 3, 2010

Chairman Lee Holloway  
Milwaukee County Board of Supervisors  
Courthouse Room 201  
901 N. 9<sup>th</sup> Street  
Milwaukee, WI 53233

FILE NO. 10-470

SUBJECT: Franklin Water Utility Easement on House of Correction Land  
At W. Puetz Road and S. 76<sup>th</sup> Street

Dear Chairman Holloway:

The City of Franklin Water Utility has found it necessary to construct a water booster (pump station) near the elevated water tower located on Milwaukee County House of Correction lands and herewith requests an amendment to the easement with Milwaukee County dated February 26, 2001 (copy enclosed).

The amendment to the easement would add the booster station to the allowed improvements contained in the present agreement and slightly reconfigure the easement area. Please note that the easement remains the same size, 1.99 acres, but the shape is slightly changed to accommodate the construction of the booster station.

The proposed revision to the agreement will allow the Franklin Water Utility to construct a second booster station which will increase the reliability of the Utility's water system. As per the existing easement agreement, Milwaukee County has the right to review and approve the building that would house the booster station.

I have worked with Shawn Sullivan of the House of Correction staff and he has recommended that prior to submitting the amendment to you, Milwaukee County Corporation Counsel would review the easement document. Attorney John Schapekahn with the Corporation Counsel has reviewed the easement and indicated it was in a form that could be submitted to the County Board.

It is my understanding that the amendment to the easement must clear the Committee on Judiciary, Safety and General Services prior to being presented to the County Board.

Would you please take the necessary action to route our request through the recommending committee to the County Board.

Should you have any questions, please feel free to contact me.

Yours Very Truly,  
  
John M. Bennett, P.E.  
City Engineer

JMB: pw/db

- C: Board of Water Commissioners
- Shawn Sullivan, House of Corrections
- John Schapekahn, Corporation Counsel
- Paul Cesarz, 9<sup>th</sup> District Supervisor

**WATER TOWER EASEMENT AMENDMENT NO. 1**

**THIS WATER TOWER EASEMENT AMENDMENT NO. 1 is made by and between the City of Franklin, a municipal corporation of the State of Wisconsin, and Milwaukee County, a municipal corporation of the State of Wisconsin, as owner, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2010.**

**WITNESSETH**

WHEREAS, the City of Franklin was granted a WATER TOWER EASEMENT, recorded in the Office of the Register of Deeds for Milwaukee County on March 8, 2001, as Document No. 8033249, for the purpose of the installation of facilities to serve the City of Franklin municipal water system; and

WHEREAS, the City of Franklin municipal water system has experienced the need for the installation of a water booster station proximate to the water tower on and approximate to the existing property subject to the WATER TOWER EASEMENT, and as such, the City of Franklin and Milwaukee County have agreed to amend the WATER TOWER EASEMENT to specify the installation of this additional "Facilities" and to amend the "Easement Area" of property subject to the easement to allow for its installation and operation.

NOW, THEREFORE, in the public interest and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, subject to the terms and conditions set forth below:

1. The Facilities shall include a water booster station.
2. The Easement Area subject to the WATER TOWER EASEMENT is hereby amended to be that area described upon Exhibit A annexed hereto and incorporated herein.
3. All of the other terms and conditions of the WATER TOWER EASEMENT shall remain in full force and effect and shall apply to the water booster station and expanded Easement Area provided for by this WATER TOWER EASEMENT AMENDMENT NO. 1.

IN WITNESS WHEREOF, this WATER TOWER EASEMENT AMENDMENT NO. 1 has been executed as set forth below and effective as of the date first written above.

IN WITNESS WHEREOF, Milwaukee County has caused these presents to be signed by \_\_\_\_\_, County Executive, at Milwaukee, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2011

By: \_\_\_\_\_, County Executive

STATE OF WISCONSIN  
SS  
MILWAUKEE COUNTY

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, \_\_\_\_\_, County Executive of the above named municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be the County Executive of said municipal corporation and acknowledge the same.

\_\_\_\_\_  
Notary Public  
State of Wisconsin  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, Milwaukee County has caused these presents to be signed by Joseph J. Czarnecki, County Clerk, at Milwaukee, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Joseph J. Czarnecki, County Clerk

STATE OF WISCONSIN  
SS  
MILWAUKEE COUNTY

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, Joseph J. Czarnecki, County Clerk of the above named municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be the County Clerk of said municipal corporation and acknowledge the same.

\_\_\_\_\_  
Notary Public  
State of Wisconsin  
My Commission Expires: \_\_\_\_\_



CITY OF FRANKLIN

By: \_\_\_\_\_  
Thomas M. Taylor, Mayor

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

STATE OF WISCONSIN  
SS  
COUNTY OF MILWAUKEE

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2011, before me personally appeared Thomas M. Taylor and Sandra L. Wesolowski who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority, and pursuant to resolution file No. \_\_\_\_\_ adopted by its Common Council on \_\_\_\_\_, 2011.

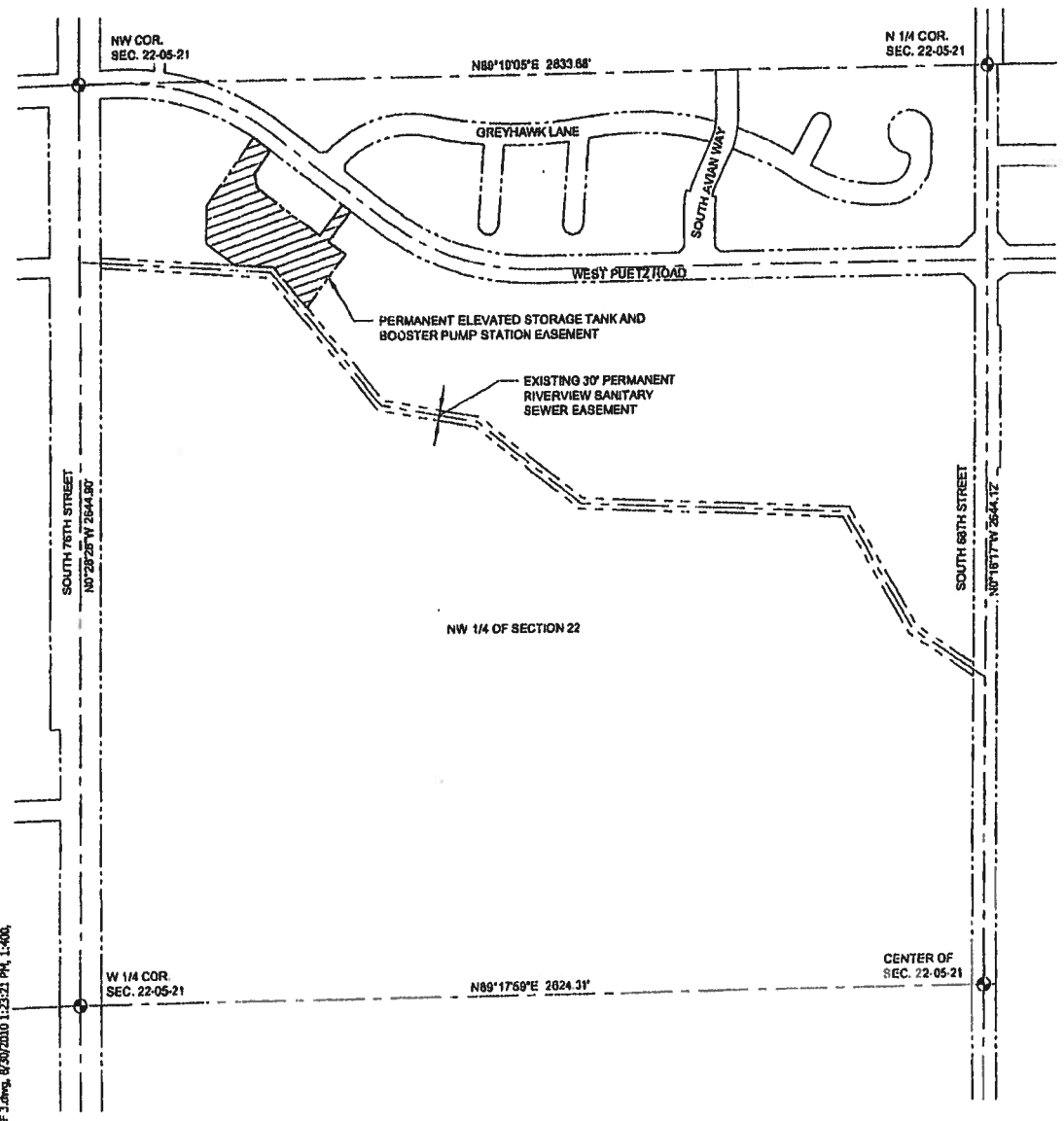
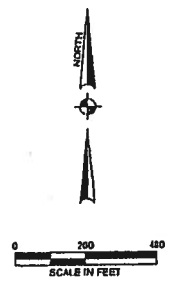
\_\_\_\_\_  
Notary Public, Milwaukee County, Wisconsin

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

### Description of Easement Area

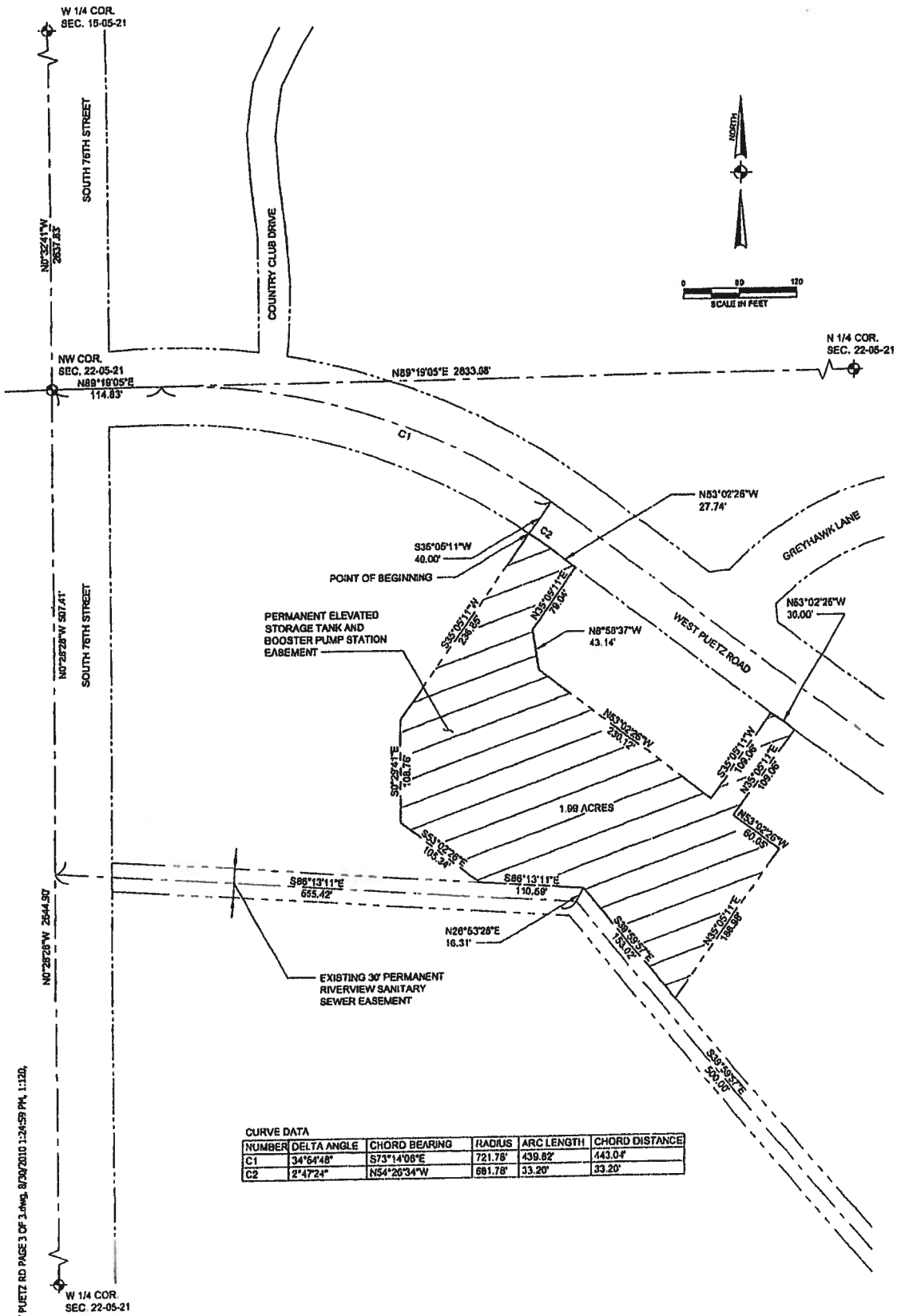
Being a part of the Northwest 1/4 of Section 22, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

Commencing at the Northwest corner of Section 22: thence N89°19'05"E, along the centerline of West Puetz Road, 114.83 feet; thence southeasterly along the said centerline, 439.82 feet, along the arc of a curve whose center lies to the south, whose radius is 721.78 feet, whose chord bears S73°14'06"E, 443.04 feet to a point; thence S35°05'11"W, 40.00 feet to a point on the southerly right-of-way line of West Puetz Road and the **POINT OF BEGINNING** of the lands to be described; thence continuing S35°05'11"W, 236.85 feet to a point; thence S0°29'41"E, 108.76 feet to a point; thence S53°02'26"E, 105.34 feet to a point on the existing northerly easement line of the Riverview Sanitary Sewer Easement; thence S86°13'11"E, 110.59 feet along said northerly easement line to a point; thence S39°59'57"E, 153.02 feet along said northerly easement line to a point; thence N35°05'11"E, 188.98 feet to a point; thence N53°02'26"W, 60.05 feet to a point; thence N35°05'11"E, 109.06 feet to a point on the southerly right-of-way line of West Puetz Road; thence N53°02'26"W, 30.00 feet along the said southerly right-of-way line to a point; thence S35°05'11"W, 109.06 feet to a point; thence N53°02'26"W, 230.12 feet to a point; thence N8°58'37"W, 43.14 feet to a point; thence N35°05'11"E, 79.04 feet to a point on the southerly right-of-way line of West Puetz Road; thence N53°02'26"W, 27.74 feet along the said southerly right-of-way line to a point; thence northwesterly along the said southerly right-of-way line 33.20 feet along the arc of a curve whose center lies to the southwest, whose radius is 681.78 feet, whose chord bears N54°26'34"W, 33.20 feet to the **POINT OF BEGINNING**. Containing 86,693.65 square feet, 1.99 acres.



J:\Franklin\EA2-09-02\Design\WORKING\WEST PUETZ RD PAGE 2 OF 3.dwg, 8/30/2010 1:23:21 PM, 1:400, WB

NW1/4, SECTION 22, T5N, R21E  
CITY OF FRANKLIN  
MILWAUKEE COUNTY, WISCONSIN  
  
EXHIBIT A  
PAGE 2 OF 3



CURVE DATA

NUMBER	DELTA ANGLE	CHORD BEARING	RADIUS	ARC LENGTH	CHORD DISTANCE
C1	34°54'48"	S73°14'06"E	721.78'	439.82'	443.04'
C2	2°47'24"	N54°20'34"W	881.78'	33.20'	33.20'

J:\Franklin\1542-09.dwg (Design)\WORKING\WEST PUETZ RD PAGE 3 OF 3.dwg, 8/30/2010 1:24:59 PM, 1:32, WB

NW1/4, SECTION 22, T6N, R21E  
 CITY OF FRANKLIN  
 MILWAUKEE COUNTY, WISCONSIN

EXHIBIT A  
 PAGE 3 OF 3

Water Tower Casement

8033249

Document Number

Document Title

REGISTER'S OFFICE | SS  
Milwaukee County, WI

RECORDED AT 1:46 PM

03-08-2001

WALTER R. BARCZAK  
REGISTER OF DEEDS

AMOUNT 36.00

Recording Area

Name and Return Address

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

Parcel Identification Number (PIN)

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

1500

WATER TOWER EASEMENT

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

WITNESSETH

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

- d) County Indemnification of City. County shall agree to indemnify, defend and hold City and its officers, partners, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims) or loss including attorney's fees, consultants fees and expert fees which arise during or after the term of this Easement from or in connection with the presence in the soil, groundwater or soil vapor on or under the Property of Hazardous materials, unless the Hazardous Materials are present as a result of the negligence or willful misconduct of City, its officers, employees or agents. Without limiting the generality of the foregoing, the indemnification provided by this paragraph (c) shall specifically cover costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any federal, state or local government agency or political subdivision because of the presence of Hazardous Material in the soil, groundwater or soil vapor on or under the Property, unless the Hazardous Materials are present solely as a result of the negligence or willful misconduct of City, its officers, employees or agents. Without limiting the generality of any of the foregoing the indemnification provided by paragraph (c) shall also specifically cover costs incurred in connection with

1. Hazardous Materials present in the soil, groundwater or soil vapor on or under the Property before the term of this Easement commenced;
  2. Hazardous Materials that migrate, flow, percolate, diffuse or in any way move onto or under the Property after the commencement of this easement, except to the extent caused by City; or
  3. Hazardous Materials present on or under the Property as a result of any discharge, dumping, or spilling, (accidental or otherwise) on to the Property, prior to or during the easement by any persons, corporation, partnership or entity other than City.
19. All of the terms and conditions of this Water Tower Easement shall be binding upon the City and County and their respective successors and assigns.

19. All of the terms and conditions of this Water Tower Easement shall be binding upon the City and County and their respective successors and assigns.
20. If City does not substantially commence construction of a water tower and associated appurtenances, access improvements and water main improvements by January 31, 2002, or complete construction by January 31, 2004, this easement will terminate and City will, at

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

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

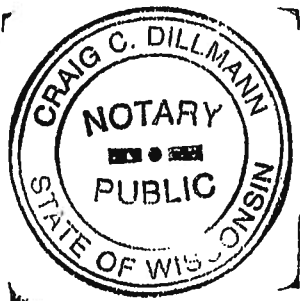
BY: F. Thomas Ament  
F. Thomas Ament, County Executive

STATE OF WISCONSIN)  
MILWAUKEE COUNTY) SS

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

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

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



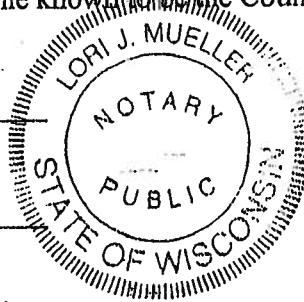
IN WITNESS WHEREOF, Milwaukee County has caused these presents to be signed by Mark Ryan, County Clerk, at Milwaukee, Wisconsin, this 26<sup>th</sup> day of February, 2000.

BY: *Mark Ryan*  
Mark Ryan, County Clerk

STATE OF WISCONSIN)  
MILWAUKEE COUNTY) SS

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

*Lori J. Mueller*  
Notary Public  
State of Wisconsin  
My Commission Expires: 10-19-03



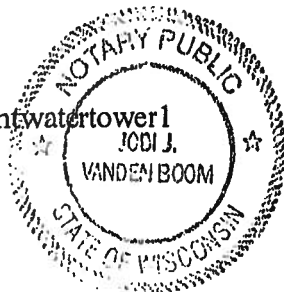
CITY OF FRANKLIN

By: *Frederick F. Klimetz*  
Frederick F. Klimetz  
By: *Sandra L. Claus*  
Sandra L. Claus, City Clerk

STATE OF WISCONSIN)  
COUNTY OF MILWAUKEE) SS

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

forms/easement/watertower1



*Jodi J. Vanderboom*  
NOTARY PUBLIC, Milwaukee County, Wisconsin  
My commission expires 9-19-04

EXHIBIT A  
DESCRIPTION OF THE PROPERTY  
(TAX KEY NO. 650-0000-001)

All of the NW 1/4 of Section 22, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin. Excepting the South 198.00 feet of North 1205.00 feet of East 220.00 feet of said quarter section and excepting West 60.00 feet for street right of way. Containing 153.791 acres.

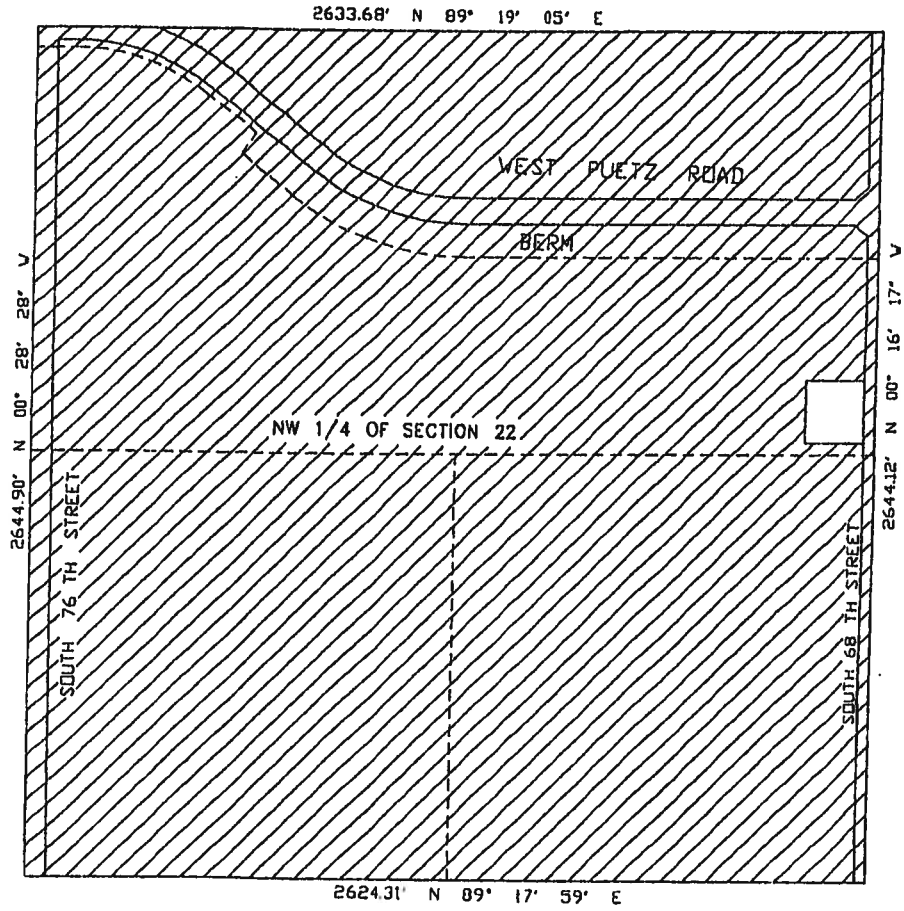
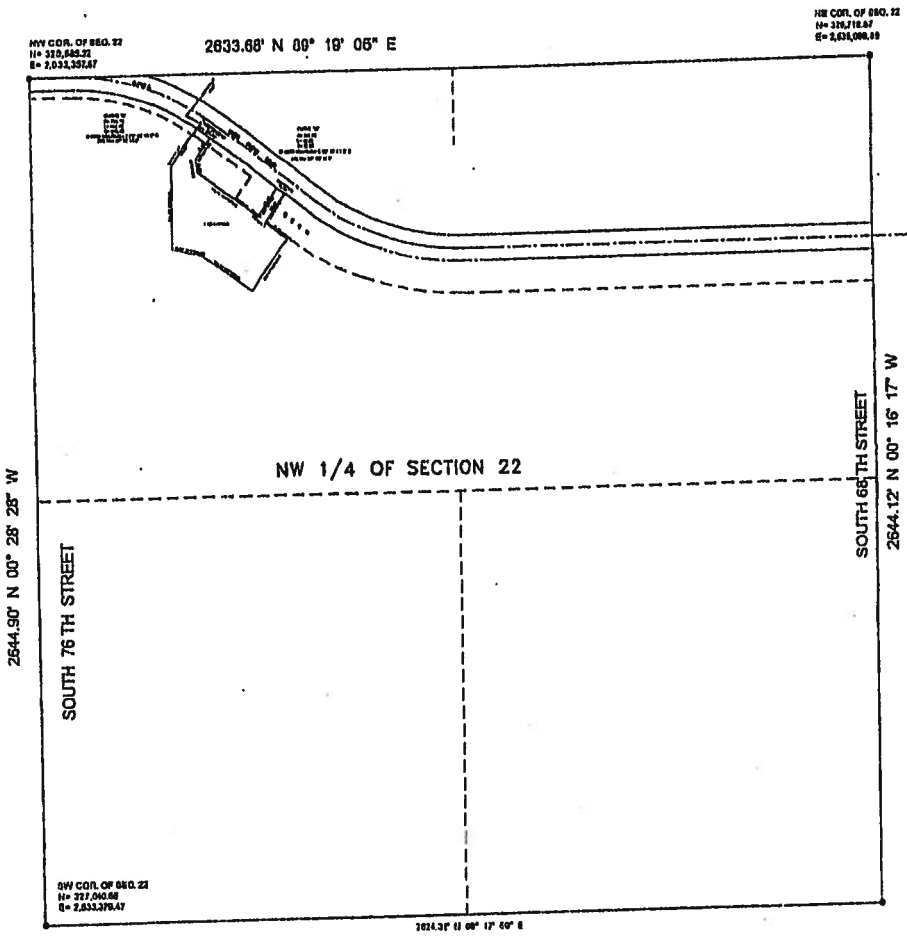


EXHIBIT B  
DEPECTION OF THE FACILITIES

- 1 - of 2



SCALE: 1" = 480'





# EXHIBIT B DEPECTION OF THE FACILITIES

2 of 2



SCALE: 1" = 150'

NW COR. OF SEC. 22  
N= 329,885.22  
E= 2,533,367.57

2644.90' N 00° 28' 28" W

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

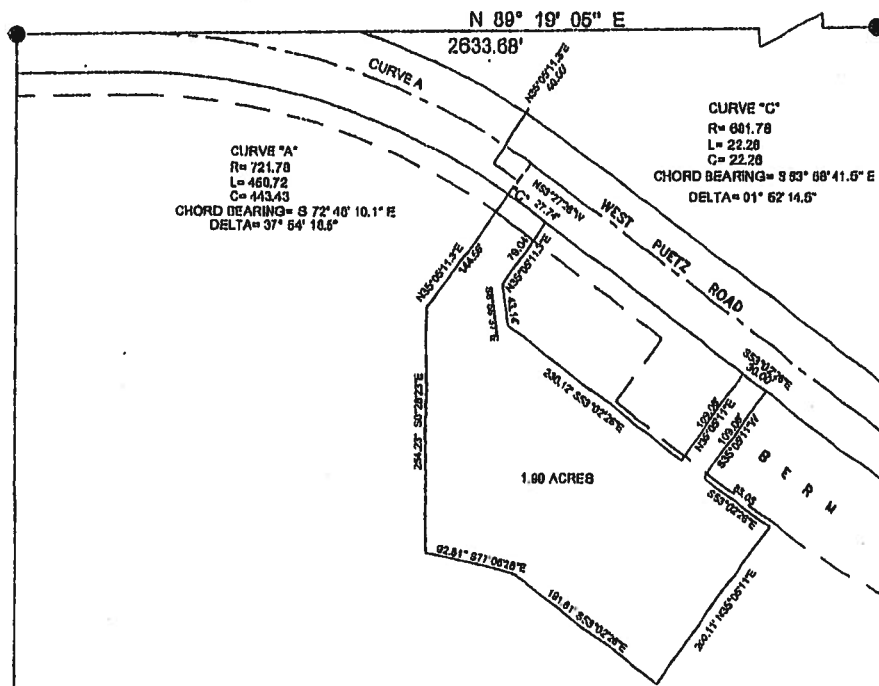


EXHIBIT C

(Description of Easement Area)

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

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

APPROVED  
FOR  
DESCRIPTION  
KDS 2/21/01  
COUNTY D. P. W.

COUNTY BOARD  
CHAIRMAN

2010 DEC -9 PM 3:29

RECEIVED