

Intergovernmental Cooperation Agreement
Fiber Optic Cable Location and Use

This intergovernmental cooperation agreement, referred to as the Agreement, is entered into by and between the City of Franklin, a Wisconsin municipal corporation, 9229 West Loomis Road, Franklin, Wisconsin 53132, referred to as Franklin; and the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to as Waukesha. Together, Franklin and Waukesha are referred to as the Parties.

Recitals

Franklin and Waukesha each have fiber-optic cable installation projects underway, which share a concurrent path over a portion of their routes.

To avoid the duplication of materials, effort and cost, Waukesha is willing to allow Franklin to install its fiber-optic cables in Waukesha's conduit in the concurrent path, in exchange for Franklin allowing Waukesha to install cables in a portion of Franklin's conduit outside of the concurrent path.

Therefore, in consideration of the mutual promises herein, the Parties agree and contract as follows:

1. **Waukesha Conduit Installation.** Waukesha shall install a 2-inch underground conduit suitable for use with fiber-optic communications cables, within the right-of-way of Ryan Road from the intersection of Ryan Road and Loomis Road east to the intersection of Ryan Road and South 60th Street, then south within the right-of-way of South 60th Street to the intersection of South 60th Street and Oakwood Road. This conduit is referred to herein as the Waukesha Conduit. The Parties acknowledge that this conduit is part of a larger fiber-optic installation project by Waukesha, and the conduit will extend beyond these points. The installation of the Waukesha Conduit shall be done using new materials of first quality, in a workmanlike manner, and in accordance with accepted and customary practices in the fiber-optic digital communications industry. Waukesha shall ensure that the installation is done according to all applicable statutes, ordinances, codes and regulations, and Waukesha shall be responsible at its sole cost for obtaining all necessary materials, labor, permits, permissions, rights-of-way, and easements.
2. **Franklin Conduit Installation.** Franklin shall install a 2-inch underground conduit suitable for use with fiber-optic communications cables, from the Franklin Public School District building at 8255 Forest Hill Avenue within the rights-of-way of Forest Hill Avenue and South 76th Street to the intersection of South 76th Street and Ryan Road, where it will terminate in a handhole to be installed by Waukesha as part of the Waukesha Conduit. This conduit is referred to herein as the Franklin Conduit. The installation of the Franklin Conduit shall be done using new materials of first quality, in a workmanlike manner, and in accordance with accepted and customary practices in the fiber-optic digital communications industry. Franklin shall ensure that the installation is done according to all applicable statutes, ordinances, codes and regulations, and Franklin shall be responsible at its sole cost for obtaining all necessary materials, labor, permits, permissions, rights-of-way, and easements.
3. **Franklin Cable Installation.** Franklin may install, operate, maintain, repair, and replace fiber-optic digital communications cable in the Waukesha Conduit between the intersection of Ryan Road and South 76th Street and the Franklin Fire Department Station 2 at 9911 South 60th Street. Franklin may occupy no more than 50% of the cross-sectional area of the Waukesha Conduit.
4. **Waukesha Cable Installation.** Waukesha may install, operate, maintain, repair, and replace fiber-optic digital communications cable in the Franklin Conduit between the intersection of Ryan Road and South 76th Street and the Franklin School District office building at 8255 Forest Hill Avenue. Waukesha may occupy no more than 50% of the cross-sectional area of the Franklin Conduit.

5. **Responsibility for Installation and Maintenance.** Each Party shall be responsible at their sole expense for the acquisition, installation, operation, maintenance, repair, and replacement of, their respective conduits and cables. Each Party shall maintain its respective conduit in good working order, and shall respond promptly to notice from the other Party that a conduit is in need of repair. Each Party shall give the other at least 15 days' notice of planned maintenance, repair, or replacement work that might result in service interruption.
6. **Handhole Access.** To the greatest extent possible, the Parties shall install and use common handholes, and shall give the other Party access to handholes as reasonably required for installation, operation, maintenance, repair, and replacement of cables and associated fixtures and equipment.
7. **No Requirement for Substitute Facilities.** The rights granted by this Agreement are specific to the cable and conduits in the locations contemplated by this Agreement. If either party loses its right to maintain cable or conduit in the locations contemplated by this Agreement due to third-party action, court order, or some other circumstance not of their own undertaking, the Parties are not required to provide substitute or replacement cable or conduit.
8. **Ownership.** The Parties shall retain title to their respective conduits and cables and all associated fixtures and facilities. If either Party decides to cease its use of their respective cables or conduits and to abandon them, then title to the abandoned portions of the cables or conduits shall pass to the other Party, without further consideration, and the Party's responsibilities with respect to the abandoned portion shall cease.
9. **Term.** The term of this Agreement commences as of the date of its execution and shall expire on the date 50 years from then, unless (i) terminated earlier by the mutual agreement of the Parties, or (ii) the Parties lose their respective right to maintain cable or conduits in the locations called for by this Agreement as a result of third-party action or court order.
10. **Completion Date.** Waukesha and Franklin shall complete all work required by this Agreement with an estimated completion date of July 1, 2023, subject to good-faith delays caused by circumstances beyond the Parties' control.
11. **Warranty Disclaimers, Waivers of Claims.**
 - a. The Parties represent that the cables and conduit will be installed substantially in compliance with this Agreement, and that they will enforce all manufacturer and installer warranties with respect to the materials and workmanship of the installation of the cables and conduit.
 - b. The Parties expressly disclaim all warranties, expressed or implied, regarding the suitability and fitness for intended purposes of the conduit access provided herein, or the quality, availability or reliability of data transmission through cables installed in the conduits.
12. **Insurance.** Each Party shall maintain casualty loss insurance coverage for its fiber-optic facilities, including the conduit and cables, at their own sole expense, with limits sufficient to cover all reasonably-anticipated losses to the facilities. The Parties shall provide proof of coverage to the other upon request.
13. **Parties Are Independent Contractors.** Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
14. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

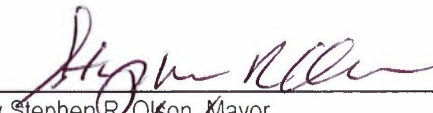
15. **Force Majeure.** Regardless of any other term or provision herein, neither Party shall be in default of this Agreement if the failure to perform timely was the result of an unforeseen circumstance reasonably beyond the Party's control, provided performance resumes or takes place as soon as reasonably possible after circumstances return to normal, in good faith. All time periods and deadlines stated herein shall be extended by a period reasonably necessary to accommodate such delays.
16. **Amendments.** No amendments, additions, or changes of any kind to this Agreement will be valid unless in writing and signed by all of the Parties to this Agreement.
17. **Governing Law and Jurisdiction.** This Agreement will be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Agreement, it will be filed in the state Circuit Court for Milwaukee County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

City of Waukesha

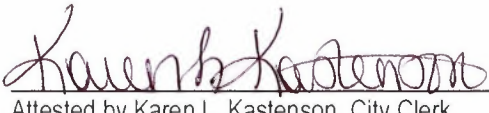
By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

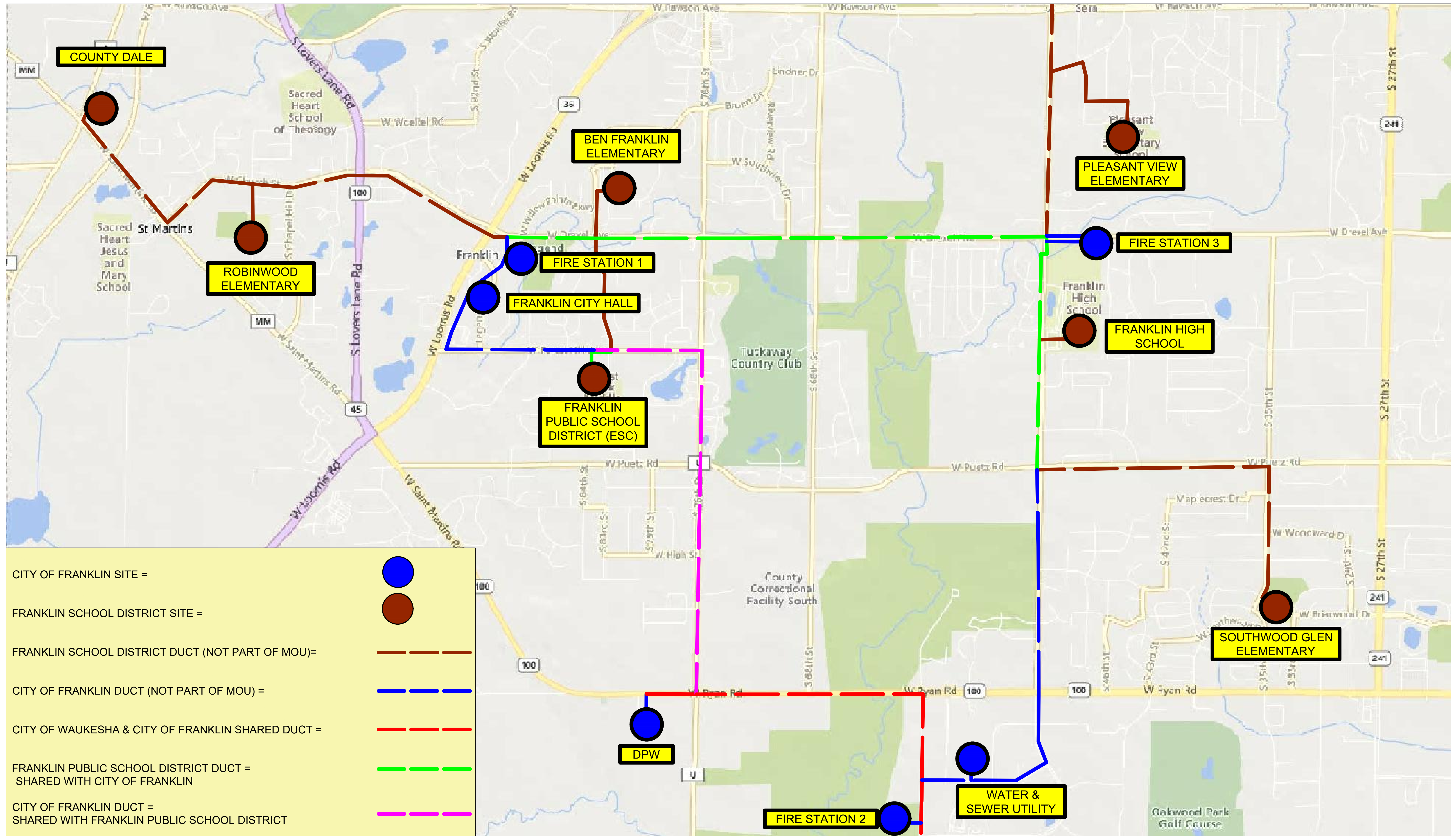
City of Franklin



By Stephen R. Olson, Mayor
Date: 2/9/23



Attested by Karen L. Kastenson, City Clerk
Date: 2-8-23



CITY OF FRANKLIN SITE =	
FRANKLIN SCHOOL DISTRICT SITE =	
FRANKLIN SCHOOL DISTRICT DUCT (NOT PART OF MOU)=	
CITY OF FRANKLIN DUCT (NOT PART OF MOU) =	
CITY OF WAUKESHA & CITY OF FRANKLIN SHARED DUCT =	
FRANKLIN PUBLIC SCHOOL DISTRICT DUCT = SHARED WITH CITY OF FRANKLIN	
CITY OF FRANKLIN DUCT = SHARED WITH FRANKLIN PUBLIC SCHOOL DISTRICT	