

ENROLLED ORDINANCE 170-78

APPROVE EASEMENT TO CITY OF BROOKFIELD TO CONSTRUCT, OPERATE  
AND MAINTAIN UNDERGROUND SANITARY SEWER FACILITIES

WHEREAS, Waukesha County owns property that was formerly the Soo Line Railway, located in the City of Brookfield in Section 17, Township 7 North, Range 20 East, which was purchased from the State of Wisconsin, Department of Transportation in 2000, and

WHEREAS, it is deemed desirable to allow the City of Brookfield to construct, operate, and maintain underground sanitary sewer facilities on Waukesha County's land for the purpose of upgrading sanitary sewer service to area properties in the City of Brookfield, and

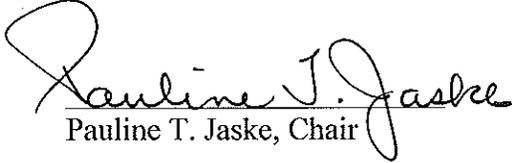
WHEREAS, it is necessary to provide an easement from Waukesha County to the City of Brookfield for the purpose of constructing, operating and maintaining the sewer facilities on County-owned land.

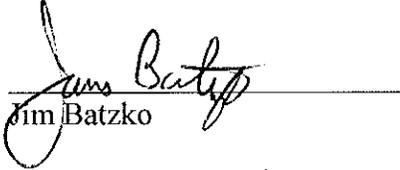
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Sanitary Sewer Easement Agreement between the City of Brookfield and Waukesha County, which is on file in the Office of the County Clerk, is hereby approved.

BE IT FURTHER ORDAINED that the Director of the Department of Parks and Land Use may execute said Agreement on behalf of Waukesha County.

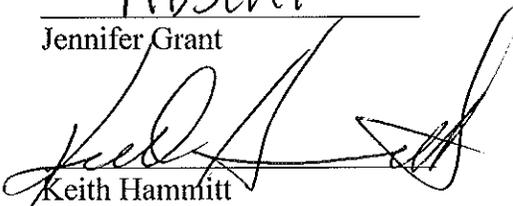
APPROVE EASEMENT TO CITY OF BROOKFIELD TO CONSTRUCT, OPERATE  
AND MAINTAIN UNDERGROUND SANITARY SEWER FACILITIES

Presented by:  
Land Use, Parks, and Environment Committee

  
Pauline T. Jaske, Chair

  
Jim Batzko

Absent  
Jennifer Grant

  
Keith Hammitt

  
Eric Highum

  
William Mitchell

  
Thomas J. Schellinger

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 1/26/16,   
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X  
Vetoed: \_\_\_\_\_  
Date: 1/27/16,   
Paul Farrow, County Executive

Document No.

**SANITARY SEWER EASEMENT  
AGREEMENT**

Return to:

Duane Grimm  
Waukesha County Parks & Land Use  
515 W. Moreland Blvd., Room AC-230  
Waukesha, WI 53188

BRC 1073975001

Parcel Number

THIS SANITARY SEWER EASEMENT AGREEMENT (*Agreement*) is granted by Waukesha County (the *Owner*) to the City of Brookfield (the *Utility*).

**RECITALS:**

A. The Owner is the fee holder of certain real property in the City of Brookfield, Waukesha County, State of Wisconsin, as more particularly described on the attached and incorporated Exhibit A (the *Property*).

B. The Utility has requested that the Owner grant a thirty (30) foot wide easement (the *Sewer Easement*) and temporary construction easement (the *Temporary Construction Easement*) over certain portions of the Property the centerline of which is depicted on the attached and incorporated Exhibit B (the *Sewer Easement Area*) for the purpose of installing and maintaining an underground sanitary sewer.

**AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Grant of Easement.** The Owner grants to the Utility, and its licensees, a perpetual thirty (30) foot wide easement and right-of-way to construct, reconstruct, maintain, operate, supplement, and/or remove 1,277 linear feet of underground sanitary sewer, and other related fixtures, equipment, and appurtenances that

may from time to time be required, with the right of ingress and egress for the purpose of this grant, over the Sewer Easement Area and (for the purpose of access only) that portion of the Property laying between the Sewer Easement Area and the abutting Riverview Drive. All improvements shall be located below grade. The Utility agrees to construct all such improvements no later than May 31, 2016 (the *Final Completion Date*) at its sole cost and expense.

**2. Temporary Construction Easement.** During the period of construction or installation of improvements within the Property, the Utility shall have a Temporary Construction Easement over those portions of the Property located within twenty (20) feet of the Utility Easement Area for the purpose of transporting equipment and materials in connection with the construction or installation of improvements within the Property. The Temporary Construction Easement shall expire on the earlier to occur of (a) completion of installation as contemplated in Section 1, above, or (b) the Final Completion Date as specified in Section 1, above.

**3. Indemnification.** The Utility, its successors and assigns shall defend, indemnify and hold harmless the Owner and all of its departments, agencies, boards, officers, employees and agents from and against all liability, suits, actions, claims, costs, damages, and expenses of every kind, including court costs and legal fees, for claims of any character, including liability and expenses in connection with the loss of life, personal injury, or damage to property, brought because of any injuries or damages received or sustained by any person, persons, or property on account of or arising out of any act or omission, negligent or otherwise, of the Utility, its agents, contractors, subcontractors, invitees or employees in connection with this Agreement, any and all work of any type performed or that which should have been performed upon the lands subject to this Agreement, and their use of the Property covered by this Agreement, except to the extent that any of the same arise due to the gross negligence or intentional misconduct of the Owner or its departments, agencies, boards, officers, employees or agents.

**4. Consistent Uses Allowed.** The Owner reserves the right to use the Sewer Easement Area and the Temporary Construction Easement for purposes that will not interfere with the Utility's full enjoyment of the Easement rights granted in this Agreement. The parties acknowledge that it is the Owner's intent to ultimately construct and maintain a bicycle and pedestrian trail upon the Property for public use. For the avoidance of doubt, under no circumstances shall the public's use or the Owner's construction, maintenance or replacement of said trail be considered an interference with the Utility's rights under this Agreement.

**5. Tree Removal/Restoration of Surface.** The Utility shall not trim, cut down or remove trees or brush within the Sewer Easement Area or upon the Property without prior written approval of the Owner through the Waukesha County Department of Parks and Land Use. The Utility shall promptly restore the surface disturbed by any construction or maintenance of any equipment located within the Sewer Easement or the Temporary Construction Easement to its condition before the disturbance and in accordance with Waukesha County Department of Parks and Land Use Specifications. If any damage is caused to the trail on the property, the trail shall be restored by the Utility in accordance with the Owner's then current trail specifications. If repairs or maintenance to the sanitary sewer or restoration activities necessitate the closure of the trail on the Property, the Utility shall notify the Owner not less than 48 hours prior to the closure. Any closure of the trail must have a detour route approved by the Owner established prior to closing. The detoured trail must be properly marked to clearly identify the detour route for trail users.

**6. Covenants Run with Land.** All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Owner and the Utility and their respective successors and assigns. The party named as Owner in this Agreement and any successor or assign to the Owner as fee simple owner of the Property shall

cease to have any liability under this Agreement with respect to facts or circumstances arising after the party has transferred its fee simple interest in the Property.

7. **Non-Use.** Non-use or limited use of the Sewer Easement or Temporary Construction Easement rights granted in this Agreement shall not prevent the benefiting party from later use of the Sewer Easement or Temporary Construction Easement rights to the fullest extent authorized in this Agreement.

8. **Insurance.** The Utility and its successors and assigns shall, at all times during the term of this Agreement, keep in force and effect insurance policies as outlined below, issued by a company or companies authorized to do business in the state of Wisconsin and satisfactory to the Owner. Such insurance shall be primary. Upon execution of this Agreement, the Utility shall furnish the Owner with a Certificate of insurance which references this Agreement. The Owner shall be given thirty (30) days advance notice of cancellation, nonrenewal, or material reduction of coverages, scope or limits during the term of this Agreement. The Utility shall maintain commercial general liability insurance covering liability for the Utility's liabilities associated with this Agreement and automobile liability insurance covering Utility's automobiles utilized in connection with this Agreement. Utility shall require the following insurance from any contractors it retains to construct or maintain the sanitary sewer associated with this Agreement: 1) Commercial General Liability Insurance-Policy shall be written to provide coverage for, but not limited to, the following: premises operations, personal injury, blanket contractual coverage, independent contractors coverage. Waukesha County, its boards, commission, agencies, officers, employees and representatives shall be named as additional insured and so stated on the Certificate of Insurance. Limits of liability not less than \$1,000,000 each occurrence and aggregate. 2) Automobile Liability Insurance - Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limit of liability not less than \$500,000 combined single limit.

9. **Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

10. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds of Waukesha County, Wisconsin.

11. **Termination.** This Agreement may not be terminated or revoked by the Owner except for cause upon written notice by Owner. "Cause" hereunder shall mean any unauthorized interference by the Utility or its agents, contractors, subcontractors, employees or invitees with the public's free use of the recreational trail upon the Property which continues for a period of 24 hours after written notice of the interference to the Utility from the Owner. Notwithstanding Section 10 above, such continued unauthorized interference shall authorize the unilateral termination of this Agreement by the Owner through the recording with the Waukesha County Register of Deeds of a written termination of easement document that need only be executed by Owner that shall reference termination pursuant to this Section 11 and attach a copy of the written notice required hereby.

12. **Notices.** All notices to the Owner shall be sent by certified U.S. Mail, Return Receipt Requested, addressed to the Park System Manager, Waukesha County Department of Parks and Land Use, Park System Division, 515 W. Moreland Blvd, Room AC230, Waukesha, Wisconsin 53188. All notices to Utility shall be sent by certified U.S. Mail, Return Receipt Requested, addressed to City of Brookfield, Attention: John Carlson, P.E., Project Manager, 2000 North Calhoun Road, Brookfield, WI 53005. Either party may change its address for notice by providing written notice to the other party.

13. **Invalidity.** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

14. **Waiver.** No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

15. **Enforcement.** Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief.

16. **No Public Dedication.** Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the easements granted under this Agreement to the general public or for any public purpose whatsoever.

Dated: \_\_\_\_\_

WAUKESHA COUNTY \_\_\_\_\_ (Owner)

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

Name: Dale R. Shaver

Title: Director, Parks & Land Use

Dated: \_\_\_\_\_

CITY OF BROOKFIELD \_\_\_\_\_ (Utility)

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

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

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

**ACKNOWLEDGMENT**

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

This instrument was acknowledged before me on \_\_\_\_\_, 2016 by Dale R. Shaver,  
Director of the Waukesha County Department of Parks and Land Use on behalf of Waukesha County.

\_\_\_\_\_  
Name:  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

This instrument was acknowledged before me on \_\_\_\_\_, 2016 by \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ on behalf of the City of Brookfield.

\_\_\_\_\_  
Name:  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

This document was drafted by:  
Erik G. Weidig, Wis. Bar No. 1038021  
Principal Assistant Corporation Counsel  
Waukesha County Corporation Counsel  
515 W. Moreland Blvd., Room AC-330  
Waukesha, WI 53188

**EXHIBIT A**

(Legal description of Property)

IN TOWNSHIP 7 NORTH, RANGE 20 EAST OF THE EXTENDED FOURTH PRINCIPAL MEDIAN,  
TOWN (NOW CITY) OF BROOKFIELD, WAUKESHA COUNTY, STATE OF WISCONSIN

A strip of land 66 feet in width, being equidistant from the centerline of the former Soo Line Railroad Company's main track, commencing at railroad milepost 13.31, said point being approximately 1100 feet west and 1600 feet south of the northeast corner of Section 17, said town and range, thence continuing southwesterly along said centerline across the S  $\frac{1}{2}$  NE  $\frac{1}{4}$ , SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , W  $\frac{1}{2}$  SW  $\frac{1}{4}$ , Section 17; SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , Section 18; NE  $\frac{1}{4}$ , S  $\frac{1}{2}$  NW  $\frac{1}{4}$ , Section 19 to the west line of said Town (now City) of Brookfield.

**EXHIBIT B**

(Legal description of Utility Easement Area)

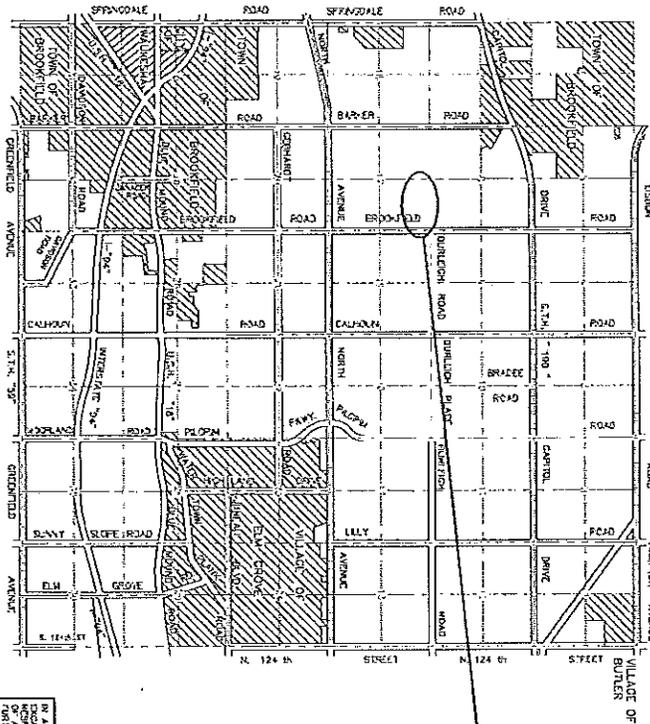
See Attached

Project: 170-081 San. Sewer. Relay. Design: SA-15-03 RIVERVIEW SANITARY RELAY.dwg Sheet: 1 of 4 November 6, 2015

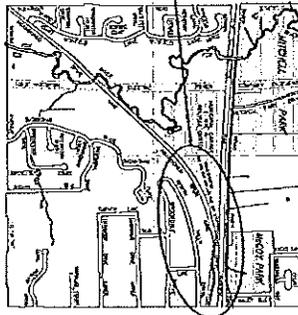
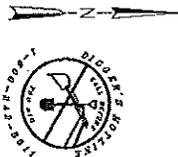
WATER & SEWER BOARD	
CHRISTOPHER BLACKBURN	CHAIRMAN
BILL CARNELL	ALDERMAN
SCOTT BEGG	ALDERMAN
JEFF MCARDHY	ALDERMAN
JERRY MELLONE	ALDERMAN

Sheet Number	Sheet Title
1	TITLE SHEET
2	GENERAL NOTES
3	CONSTRUCTION DETAILS
4	RIVERVIEW DRIVE - STA. 40+00 TO 51+00
5	RIVERVIEW DRIVE - STA. 51+00 TO 61+00
6	RIVERVIEW DRIVE - STA. 61+00 TO 65+41
7	8-INCH COLD STORAGE SANITARY SEWER DRAIN
8	SEWER ABANDONMENT

CITY OF BROOKFIELD  
RIVERVIEW SANITARY SEWER RELAY  
PROJECT No. SA-15-03



CITY OF BROOKFIELD  
GENERAL LOCATION MAP  
MAP NO. 1-36 OF 07-20  
SECS 1-36 OF 07-20



IN ACCORDANCE WITH WISCONSIN STATUTE REGARDING DAMAGE TO TRANSMISSION FACILITIES, THE USER OF THIS DRAWING AGREES TO ADVANCE NOTICE TO THE DISSEMINATED USER TO COMPLETION OF ANY EXCAVATION REQUIRED TO PERFORM WORK CONFORMING TO THESE DRAWINGS, AND TO PROVIDE ADEQUATE PROTECTION FOR ALL UTILITIES AND STRUCTURES EXISTING AND TO BE CONSTRUCTED RELATIVE TO CONVALESCENT WORK.

THE UNDERGROUND UTILITY INFORMATION AS SHOWN HEREON IS BASED ON PLANS, OPEN INFORMATION FURNISHED BY THE DUTY COMPANY, AND LOCAL KNOWLEDGE. WHILE THE ENGINEER HAS MADE A VISUAL SURVEY OF THE PROJECT, HIS RESPONSIBILITY AND GUARANTEE ARE LIMITED TO THE INFORMATION PROVIDED TO HIM AND OTHER INSTRUMENTS OF HIS SERVICE.

**CITY OF BROOKFIELD**

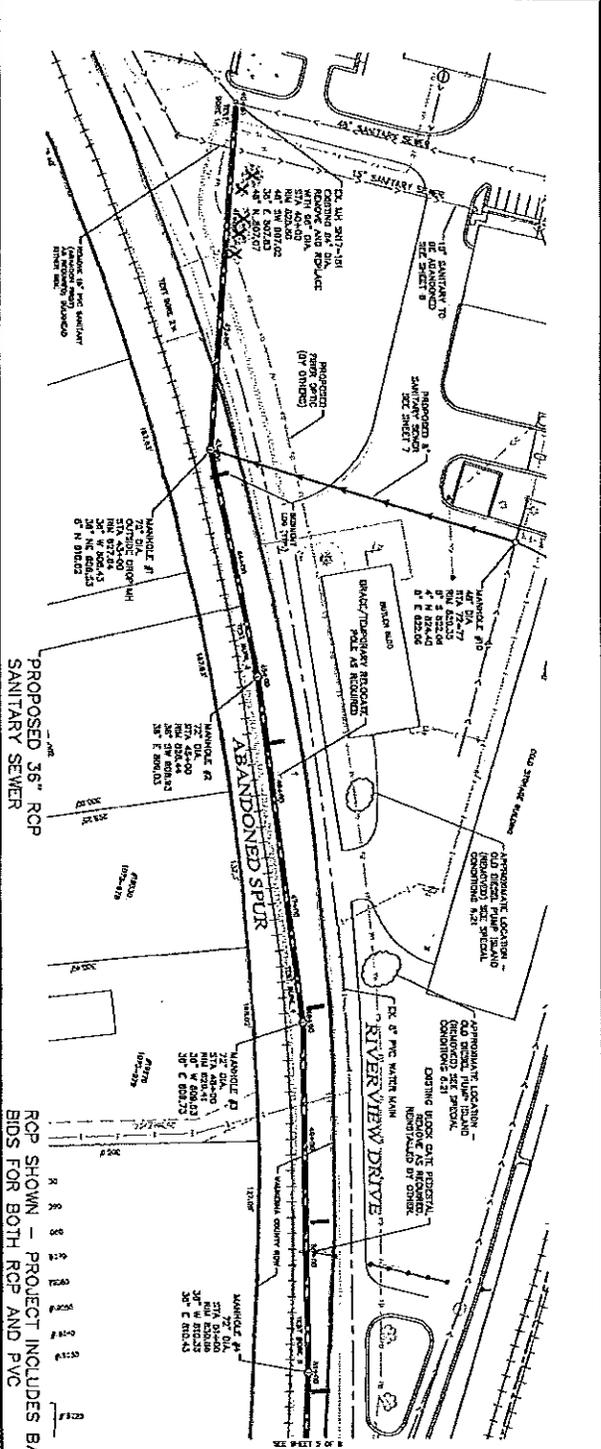
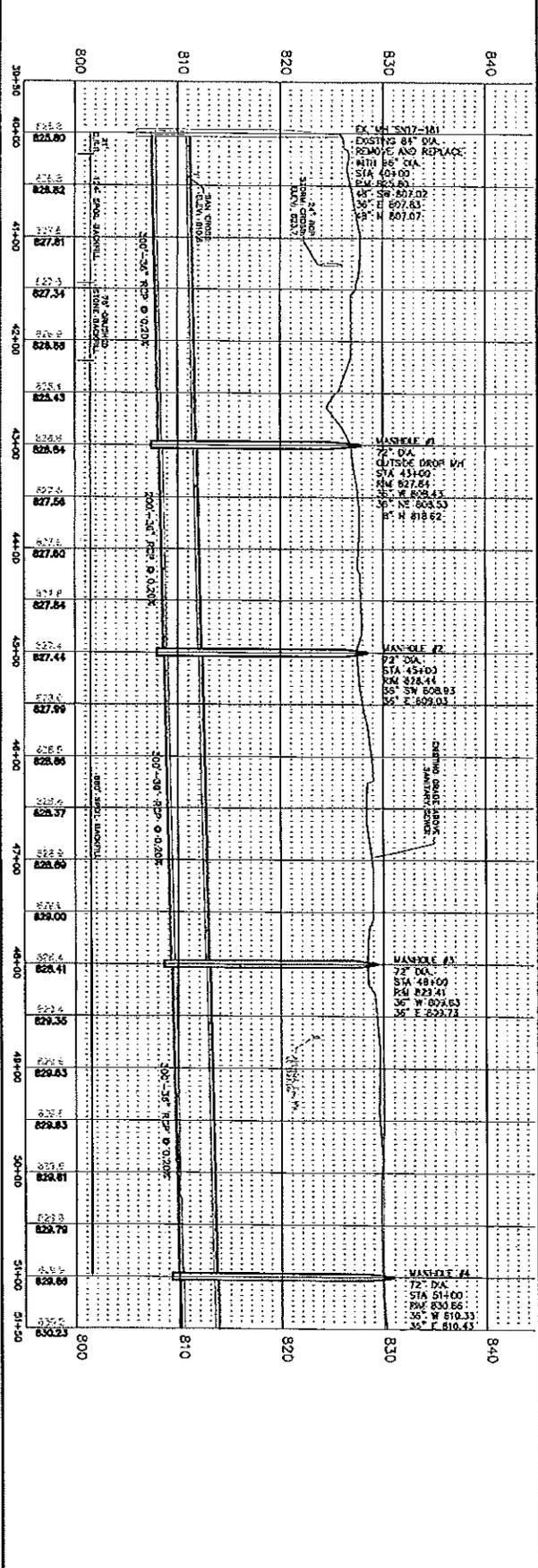
**ENGINEERING**

**DIVISION**

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_ CITY ENGINEER

<p><b>ENGINEERING DIVISION</b></p>	<p>SA-15-03 RIVERVIEW SANITARY SEWER RELAY TITLE SHEET</p>	<p>REVISION</p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	DESCRIPTION				<table border="1"> <tr> <td>DESIGNED BY</td> <td>DATE CHECKED</td> </tr> <tr> <td>DRAWN BY</td> <td>DATE</td> </tr> <tr> <td>INCHES</td> <td> </td> </tr> <tr> <td>PROJECT NO.</td> <td> </td> </tr> <tr> <td>CONTRACTOR</td> <td> </td> </tr> </table>	DESIGNED BY	DATE CHECKED	DRAWN BY	DATE	INCHES		PROJECT NO.		CONTRACTOR	
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YEAR INSTALLED																			
INSPECTOR																			
CONTRACTOR																			





**ESTIMATE OF QUANTITIES**

NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
1	CONCRETE				
2	STEEL				
3	PIPE				
4	MANHOLES				
5	LABOR				
6	EQUIPMENT				
7	PERMITS				
8	INSURANCE				
9	PROFIT				
10	TOTAL				

**NOTES:**  
 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY SPECIFICATIONS AND THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS, LATEST EDITION.  
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND LICENSES.  
 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES.  
 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING STRUCTURES.  
 5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING LANDSCAPE.  
 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING TREES.  
 7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING CURBS AND SIDEWALKS.  
 8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING DRIVEWAYS.  
 9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING FENCES.  
 10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING SIGNAGE.  
 11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES.  
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 17. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING FENCES.  
 18. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING SIGNAGE.

<p><b>ENGINEERING DIVISION</b></p>	<p><b>SA-15-03</b>  <b>RIVERVIEW SANITARY SEWER RELAY</b>  <b>RIVERVIEW DRIVE - STA. 40+00 TO 51+00</b></p>	<p>FROM: STA. 40+00</p>	<p>TO: STA. 51+00</p>
		<p>REVISIONS</p>	<p>PROJECT NO. SA-15-03</p>
<p>DESIGNED BY: [Name]</p>	<p>CHECKED BY: [Name]</p>	<p>DATE: [Date]</p>	<p>CONTRACTOR: [Name]</p>

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-01/26/16

(ORD) NUMBER-1700081

- |                          |                          |
|--------------------------|--------------------------|
| 1 R. KOLB.....AYE        | 2 D. Zimmermann.....AYE  |
| 3 R. MORRIS.....AYE      | 4 J. BATZKO.....AYE      |
| 5 J. BRANDTJEN.....AYE   | 6 J. WALZ.....AYE        |
| 7 J. GRANT.....AYE       | 8 E. HIGHUM.....AYE      |
| 9 J. HEINRICH.....AYE    | 10 D. SWAN.....AYE       |
| 11 C. HOWARD.....AYE     | 12 P. WOLFF.....AYE      |
| 13 P. DECKER.....AYE     | 14 C. PETTIS.....AYE     |
| 15 B. MITCHELL.....AYE   | 16 M. CROWLEY.....AYE    |
| 17 D. PAULSON.....AYE    | 18 L. NELSON.....AYE     |
| 19 K. CUMMINGS.....AYE   | 20 T. SCHELLINGER....AYE |
| 21 W. ZABOROWSKI.....AYE | 22 P. JASKE.....AYE      |
| 23 K. HAMMITT.....AYE    | 24 S. WHITTOW.....AYE    |
| 25 G. YERKE.....AYE      |                          |

TOTAL AYES-25

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS           

TOTAL VOTES-25