

Minutes of the Meeting of the Tourism Commission
Hearing Room, 9229 W. Loomis Road, Franklin, Wisconsin
September 20, 2023 – 6:00 p.m.

Members Present		Others Present
Ed Holpfer	x	
Jeff Kuderski (Vice Chair)	x	
Lance Schaefer (Vice Chair)	x	John Regetz – Economic Development Director
Mark Wylie (Secretary / Treasurer)		
Barbara Wesener	x	

- I. Call to Order and Roll Call - The meeting of the Franklin Tourism Commission was called to order by Chairman Shaefer at 6:00 p.m.
- II. Citizen Comment Period - The floor was opened for citizen comment at 6:01 p.m. Citizen Comment Period closed at 6:01 p.m.
- III. Draft Minutes Approval, August 16, 2023 Meeting – Motion by Holpfer, second by Wesener to approve. Motion carried.
- IV. Engage Franklin
 - A. Update – Laura Nelson – no attendance by Engage Franklin
 - B. Consideration of Contract Approval
 Motion by Holpfer, second by Wesener to enter closed session. Motion carried
 The Tourism Commission may enter closed session pursuant to Wis. Stat. & 19.85 (1) (e), to deliberate upon the Franklin Field Naming Rights Agreement between the Franklin Tourism Commission and Milwaukee Milkmen Baseball, LLC, effective July 1, 2020, and a proposed Tourism Entity Agreement between the Franklin Tourism Commission and Engage Franklin, the negotiation of provisions and terms and the investing of public funds in relation thereto, for competitive or bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.
 Renter Open Session - Motion by Wesener, second by Holpfer to approve. Motion carried.

 Motion by Wesener, second by Kuderski, to approve the following: The Franklin Tourism Commission approves the Tourism Entity Agreement with Engage Franklin as edited and presented at the September 20, Tourism Commission meeting. Motion carried
- V. Consideration of Budget Approval – Regetz presented a draft budget based on discussions at Tourism Commission meetings, with the administration and Finance Dept. \$1,000 was added to Conferences and Schools, \$250 to Mileage, and Advertising reduced from \$1,900 to \$650. The Chair questioned the signage (banners) budget and would like to discuss it more at the next meeting.
- VI. Voucher Approvals – none.
- VII. Next meeting – October 81, 6:00 p.m.... The Chair asked about new business items being discussed when submitted at the next meeting. Regetz will bring the EDC operating procedures to the next meeting for placement of New Business and other items for future agendas.
- VIII. Adjournment – Commissioner Wesener announced a Library Foundation fundraiser was to be held on October 10, 12:00 p.m. to 2:30 p.m. at the Polish Center. Motion by Kuderski, second by Wesener to adjourn. Motion approved.

*Notice is given that a majority of the Common Council may attend this meeting to gather information about an Agenda item over which they have decision making responsibility. This may constitute a meeting of the Council per State ex rel. Badke v. Greendale Village Board, even though the Common Council will not take formal action at this meeting. Notice is also given that upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, please contact the Franklin City Clerk’s office at (414) 425-7500

FRANKLIN TOURISM COMMISSION & ENGAGE FRANKLIN
TOURISM ENTITY AGREEMENT

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Section 02 - DEFINITIONS

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This **TOURISM ENTITY AGREEMENT** (“Agreement”) is entered into effective as of October 1, 2023 (the “Effective Date”) by and between Franklin Tourism Commission of the City of Franklin, Wisconsin (“Commission”), and Engage Franklin, Inc. (“DMO”), a Wisconsin nonstock corporation that is a non-profit tax-exempt entity under Section 501(c)(4) of the Internal Revenue Code, collectively the “Parties” or individually a “Party”.

WHEREAS, the City of Franklin (“City”), is authorized by the laws of Wisconsin to impose, collect, and distribute a portion of the proceeds of hotel/motel room taxes to promote and develop tourism and for improving the economic well-being of the entire community, and has funded such a program since at least 1994; and

WHEREAS, the City has enacted an ordinance imposing a uniform tax on the privilege of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations which are available to the public pursuant to Wis. Stat. § 66.0615 (“Room Tax Act”); and

WHEREAS, the City has imposed a Room Tax of eight percent (8%); and

WHEREAS, the City has created the Commission to oversee the proper expenditures of room taxes in accordance with the requirements of the Room Tax Act; and

WHEREAS, the Commission desires to enter into a contract with Engage Franklin, Inc., as a qualifying “Tourism Entity” as defined in Section (1)(f)1 of the Room Tax Act, for Engage Franklin, Inc. to provide the Commission with staff, support services, assistance, facilities and materials in developing and implementing programs that foster tourism promotion and tourism development in the City to visitors as provided in Section (1m)(b)4 of the Room Tax Act and Engage Franklin, Inc. desires to enter into such a contract with the Commission; and

WHEREAS, Engage Franklin, Inc. represents and agrees that, in compliance with Section (1)(f)1 of the Room Tax Act, it shall spend at least 51 percent of its revenues on tourism promotion and tourism development, and provides destination marketing staff and services for the tourism industry in Franklin; and

WHEREAS, the agreements of the Parties as to such services shall be as set forth herein.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

SECTION 1 - RECITALS.

The foregoing Recitals are hereby incorporated in and made a part of this Agreement.

SECTION 2 - DEFINITIONS.

- a. “DMO” shall mean Engage Franklin, Inc., a Wisconsin tax-exempt organization that operates as a destination marketing organization.
- b. “Room Tax” shall mean a tax imposed on the privilege of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators, marketplace providers, and other persons furnishing accommodations which are available to the public pursuant to the Room Tax Act.
- c. “Room Tax Act” shall mean Wis. Stat. § 66.0615, as amended during the term of this Agreement.
- d. “Tourism promotion and tourism development” shall mean any of the following that are significantly used by transient tourists and reasonably likely to generate paid overnight stays at more than one establishment on which a tax under Section (1m)(a) of the Room Tax Act may be imposed, that are owned by different persons and located within the City:
 - i. Marketing projects, including advertising media buys, creation and

distribution of printed electronic promotional tourist materials, or efforts to recruit conventions, sporting events, or motor coach groups;

- ii. Transient tourist informational services;
- iii. Tangible municipal development, including a convention center;
- iv. Room taxes shall not be used to construct or develop a lodging facility.

- e. "Transient" shall mean any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public in accordance with the Room Tax Act.

SECTION 3 - PURPOSE.

The purpose of this Agreement is to set forth the respective responsibilities, powers, duties and obligations of the parties hereto in collecting and utilizing Room Tax Revenues generated in the City under the provisions of the Room Tax Act and spent in accordance with the requirements of the Room Tax Act.

SECTION 4 - ROOM TAX REVENUES.

The City has imposed an 8% room tax on transient visitors who stay at the lodging properties within the City. The City may change the Room Tax rate in accordance with the Room Tax Act at any time.

- a. Pursuant to City Ordinance, which shall be in accordance with Wisconsin State Statutes, the City may retain the greater of 30% of total Room Tax revenue OR \$151,900 (the amount retained for general fund in 2010). The remainder of the Room Tax revenue is to be allocated to the Commission.
- b. The monies allocated to the Commission will be spent by the Commission in accordance with Wisconsin state law for room taxes. This includes contracting with the DMO for staff and tourism promotion and development services as defined in the Room Tax Act.
- c. During the term of this Agreement, the Commission agrees to pay seventy-five percent (75%) of the monies allocated to the Commission by the City to the DMO beginning January 1, 2024. These funds shall be transferred to the DMO within 30 days of receipt from the City. The Commission and the DMO agree to work together with the City to effectuate the distribution of the funds as expeditiously as possible in accordance with the Room Tax Act.

SECTION 5 - TOURISM ENTITY.

Pursuant to the Room Tax Act Section (1m)(b)1, the Commission, hereby contracts with the DMO as its Tourism Entity. As the Tourism Entity, DMO will spend 100% of the room tax funds it

receives pursuant to this Agreement on tourism promotion and development through staff and services. As further consideration for this Agreement, the DMO, in accordance with its bylaws, will:

1. Designate one (1) voting ex-officio Director position of the Board of Directors of DMO to be appointed by the City Council;
2. Designate one (1) voting ex-officio Director position of the Board of Directors to be appointed by the Commission;
3. Designate three (3) voting Director positions to be filled by individuals who have no ownership or legal partnership with ROC Ventures, LLC, or affiliated entities with ROC Ventures, LLC.

SECTION 6 - ASSIGNMENT OF THE NAMING RIGHTS AGREEMENT.

In accordance with Section 4.4 of the agreement entered into effective July 1, 2020 by Milwaukee Milkmen Baseball, LLC, ROC Ventures, LLC, and the Franklin Tourism Commission (the “Naming Rights Agreement”), the Commission assigns the rights and responsibilities of the Naming Rights Agreement to DMO, DMO accepts this assignment, and an agreement with the Milwaukee Milkmen Baseball, LLC, and ROC Ventures, LLC will be executed to effectuate the assignment to DMO, subject to an amendment of the Naming Rights Agreement (the “Naming Rights Agreement Amendment”) to be approved by Milwaukee Milkmen Baseball, LLC, ROC Ventures, LLC and the Parties to this Agreement. The execution of the Naming Rights Agreement Amendment shall be a condition of this Agreement, and must be completed by December 31, 2023. The Naming Rights Agreement Amendment shall specify, among other conditions, that the maximum annual expenditure for the Naming Rights, as defined in the Naming Rights Agreement, shall be \$150,000.00 for the duration of the Agreement.

If this Agreement expires or is terminated, and the Naming Rights Agreement remains in effect, DMO shall assign the rights and responsibilities of the Naming Rights Agreement to the Commission. In that event, DMO shall execute an agreement with the Milwaukee Milkmen Baseball, LLC, and ROC Ventures, LLC, to effectuate the assignment from DMO to the Commission.

SECTION 7 - DMO RESPONSIBILITIES.

The DMO shall be responsible for the following:

- a. Administrative Support.** The DMO will be required to obtain staff, support services, and assistance in developing and implementing programs to promote tourism promotion and tourism development within the City. Any notices or documentation required to be

provided to the City or the Commission by the DMO shall be forwarded to the Chairperson of the Commission. It is further acknowledged that, upon reasonable prior notice, the DMO will attend meetings called by the City or the Commission to discuss issues pertaining to room tax collection and expenditures and otherwise cooperate to achieve the purposes of the Room Tax Act.

- b. Accounting.** The DMO shall provide the City and the Commission with an accounting of the activities and of the expenditures of the room tax revenues, on a quarterly basis, and the DMO shall have not more than thirty (30) days following each quarter to provide said report. Additionally, an annual review shall be conducted at the DMO's expense. The DMO shall provide to the City and the Commission, a copy of its annual review conducted by an independent accounting firm, along with a copy of the DMO's federal tax return within thirty (30) days of its tax return submission.
- c. Financial Budget Plan.** Not later than October 15th of each year, or as otherwise agreed, the DMO shall generate a written Financial Budget Plan for the year. The parties agree that the Financial Budget Plan may be revised from time to time and, if so, the Commission will be so notified and provided a revised Financial Budget Plan. It is understood that the Commission shall have no approval rights of the Financial Budget Plan but may provide comment or recommendation to the DMO which may be implemented at the DMO's discretion.
- d. Reports.** The DMO agrees to prepare a separate Department of Revenue ("DOR") Form that is created and provided to the DOR for the City, on or before April 1st beginning in 2024 as provided in Section (4) of the Room Tax Act, unless an extension in filing the DOR Form to the DOR has been approved. If so, the DMO shall submit the DOR Form to the Commission on or before thirty (30) days before it is due to the DOR. The Commission agrees to cooperate with the DMO in completing this form.
- e. Compliance.** The DMO agrees to comply with applicable laws pertaining to its non-profit status.

SECTION 8 - EVENTS OF DEFAULT.

1. Each of the following shall be an Event of Default (only following the applicable cure period) by the DMO:
 - a. The failure to provide an accounting review hereunder after thirty (30) days written notice of DMO's failure to do so by the City or the Commission, as applicable;
 - b. The failure to provide a Financial Budget Plan hereunder after thirty (30) days written notice of DMO's failure to do so by the Commission;

- c. The failure to provide the DOR Form to the City hereunder, unless excused by the City or the DMO is unable to provide the form in a timely manner due to circumstances beyond its control; and/or
 - d. The failure of DMO to abide by any material term of this Agreement, including but not limited to the intentional misuse of the Room Tax revenues provided to DMO.
 - e. Failure of the DMO to amend the Naming Rights Agreement by December 31, 2023 as referenced in Section 6.
2. Each of the following shall be an Event of Default (only following the applicable cure period) by the Commission:
- a. The failure to transfer to DMO 75% of the funds allocated to the Commission within 30 days of receipt.

SECTION 9 - TERM.

This Agreement shall commence on the Effective Date, and expire on June 30, 2030 (the "Initial Term"). After the Initial Term, the Agreement shall renew for successive periods of one (1) year, unless either party provides notice no later than ninety (90) days prior to the expiration of the Initial Term or any successive periods or unless the Agreement is terminated as follows:

The Commission may terminate this Agreement at any time if (i) it is found that the DMO, or its agents, has committed a material breach of this Agreement, including but not limited to, the intentional misuse of the Room Tax revenues for purposes outside of which are permitted by the Room Tax Act, or including the Events of Default identified in Section 9, which material breach is not cured within thirty (30) days of the DMO's receipt of written notice from the Commission containing a sufficient description of the material breach alleged, or (ii) the DMO is no longer acting as a "Tourism Entity" as defined in the Room Tax Act.

- a. In the event of termination, all funds provided by the Commission in the possession of the DMO shall be remitted to the Commission, less any expenses accrued prior to the termination date. The Commission shall make no further remittances to the DMO under this Agreement. Any funds provided by the Commission that are found to have been misspent will be reimbursed by DMO to the Commission.
- b. Following termination, the Commission shall have no further obligation to the DMO.

However, the obligations of DMO to provide an accounting review as described in paragraph (7)(b) and a report as described in paragraph (7)(d), shall survive termination of this Agreement. Any financial review or report after termination by the Commission shall be completed at the Commission's expense.

SECTION 10 – INDEMNIFICATION.

The Commission and DMO each agree to indemnify and hold harmless the other party from all claims, losses, expenses, fees including attorney fees, costs, and judgements that may be asserted against that party by a third party that result from the acts or omissions arising from this Agreement of the indemnifying party, and, if any, its employees and agents.

SECTION 11 - MODIFICATION.

This Agreement shall not be modified without an express written agreement executed by the Parties.

SECTION 12 - SEVERABILITY.

If any provision or provisions of this Agreement shall be held to be invalid, such holding shall not in any way whatsoever affect the validity of the remainder of this Agreement.

SECTION 13 - GOVERNING LAW.

This Agreement has been drawn and executed and shall be performed in the State of Wisconsin and shall be governed by the laws of the State of Wisconsin.

SECTION 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 other terms or conditions of this Agreement.

SECTION 15 - ENFORCEMENT.

Enforcement of this Agreement may be by proceedings at law or in equity against any Party violating any term or condition in this Agreement, either to restrain the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing Party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing Party.

SECTION 16 - ENTIRE AGREEMENT.

This Agreement, along with the Naming Rights Agreement and Amendment to be executed concurrently with this Agreement, sets forth the entire understanding of the Parties and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof. There are no representations, arrangements, understandings, or agreements, oral or written, not contained

herein.

SECTION 17 - AUTHORITY.

In signing this Agreement, the Parties represent and warrant that the terms herein have been approved by their respective governing bodies and that appropriate authority rests in the signatories on behalf of the parties.

SECTION 18 - PUBLIC RECORDS.

DMO understands that the City and Commission are bound by the Wisconsin Public Records Law, Wis. Stat. § 19.21, et. seq. Pursuant to Wis. Stat. § 19.36(3), the City and/or Commission may be obligated to produce, to a third (3rd) party, the records of DMO that are provided by DMO as a condition of this Agreement (“Records”). DMO is therefore obligated to retain such Records and produce them to the City and/or Commission to the extent it is required under the Wisconsin Public Records Law. DMO’s failure to maintain and produce Records as required by this Section 18 shall constitute a material breach of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement, comprising 18 Sections, as of the date first above written.

FRANKLIN TOURISM COMMISSION

By: _____
 , Chair

Attest: _____

ENGAGE FRANKLIN, INC.

By: _____
 Darrel R. Malek, President

By: _____
 Laura Nelson, Executive Director

City of Franklin, WI

TOURISM COMMISSION 2024 DRAFT BUDGET per 9/20/23 mtg

Tourism Commission

DESCRIPTION	2021 Actual Activity	2022 Actual Activity	2023 <u>Projected#</u> YE 2023	2024 DEPT REQUEST BUDGET
COMMISSION				
MOTEL ROOM TAX	191,247	319,684	331,900	332,900
INTEREST ON INVESTMENTS	642	2,903	11,000	17,000
MISCELLANEOUS INTEREST	29	4	0	
DONATIONS-Cash	0	0	0	
Total Resources	191,918	322,591	342,900	349,900
SALARIES-FT	0	0	0	
LEGAL SERVICES	19,553	0	20,000	10,000
SUNDRY CONTRACTORS	300,375	150,000	150,000	249,000
POSTAGE	319	244	150	50
OFFICE SUPPLIES	77	0	0	50
OFFICIAL NOTICES/ADVERTISING	0	0	0	
MEMBERSHIPS/DUES	1,000	1,250	1,250	
TOURISM EVENTS	0	0	0	1,000
CONFERENCES & SCHOOLS		0	0	1,000
MILEAGE		0	0	250
MARKETING SERVICES		864	100,000	20,000
ADVERTISING	25,425	10,220	0	650
STREETSCAPE-SIGNAGE, BILLBOARDS ETC		0	15,000	50,000
Total Expenditures	346,749	162,578	286,400	332,000
Net Resources (Expenditures)	(154,831)	160,013	56,500	17,900
Beginning Fund Balance*	388,940	234,109	394,122	450,622
Ending Fund Balance*	234,109	394,122	450,622	468,522

Assumes full expenditure of budget

* Requires confirmation from City of Franklin

Tech Correction - Figures switched to match account identification codes

Tech Correction - Updated with actual additional revenue