

CORRECTED
CITY OF FRANKLIN
SPECIAL COMMON COUNCIL MEETING
FRANKLIN CITY HALL COMMON COUNCIL CHAMBERS
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN
AGENDA*
WEDNESDAY TUESDAY, DECEMBER 23, 2015
AT 6:30 P.M.

- A. Call to Order and Roll Call.
- B. Citizen Comment Period.
- C. Reports and Recommendations:
 - 1. A Resolution Authorizing Certain Officials to Execute A Nature Conservation and Public Park Purposes Lease Agreement between the Milwaukee Area Land Conservancy, Inc. and the City of Franklin, Wisconsin (MMSD provided prior private property owner names and approximate acreage and City Assessor file record documents and GIS information tax key nos.: Hack 49.89 acres 889 9990 000; Franklin DC 44.33 acres 890 9990 000; St. Sava 23.55 acres 890 9999 000; Radicevich 15.68 acres 886-9998-000; to Franklin: St. Nikola 17.33 acres 787 9992 000).
 - 2. West College Avenue Path (South 27th Street to South 35th Street).
 - 3. JSD Professional Services, Inc. Contract for Design Services for a Trail and Bridge Crossing the East Branch of the Root River (River Park Trail Design).
 - 4. Pleasant View Park Playground Equipment Purchase Authorization.
- D. Adjournment.

*Supporting documentation and details of these agenda items are available at City Hall during normal business hours.
[Note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, contact the City Clerk's office at (414) 425-7500.]

REMINDERS:

December 24 & 25	City Hall Closed	
December 31 & January 1	City Hall Closed	
January 5	Common Council Meeting	6:30 p.m.
January 7	Plan Commission	7:00 p.m.

<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">December 23, 2015</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>A Resolution Authorizing Certain Officials to Execute A Nature Conservation and Public Park Purposes Lease Agreement between the Milwaukee Area Land Conservancy, Inc. and the City of Franklin, Wisconsin (MMSD provided prior private property owner names and approximate acreage and City Assessor file record documents and GIS information tax key nos.: Hack 49.89 acres 889 9990 000; Franklin DC 44.33 acres 890 9990 000; St. Sava 23.55 acres 890 9999 000; Radicevich 15.68 acres 886-9998-000; to Franklin: St. Nikola 17.33 acres 787 9992 000)</p>	<p>ITEM NUMBER</p> <p style="text-align: center;"><i>C. 1.</i></p>

The above subject matter is the through current result of the Common Council considerations of the transfers of Milwaukee Metropolitan Sewerage District Greenseams parcels which were before the Common Council at its December 15, 2015 meeting. While the Council authorized the subject transfers at the December 15, 2015 meeting, staff received a subsequent request for specified costs funding for the preservation, maintenance, restoration and enhancement of the subject properties from the Milwaukee Area Land Conservancy, Inc. and determined that such specific cost requirement proposed was potentially outside of the scope of the authority granted by the Common Council on December 15, 2015. A copy of a draft of the subject lease agreement is annexed hereto. It has been reviewed and recommended for approval by the Department of Administration and the Finance Department. Staff will be present at the meeting to provide current information. At the time of this writing, not all participating interested entities have responded regarding the review of a prior draft, the attached draft being inclusive of some changes required by the Wisconsin Department of Natural Resources on December 22, 2015 and a few minor changes by City staff, with an email from the Milwaukee Area Land Conservancy, Inc. advising that proposed changes to the fiduciary account provisions will be forthcoming. The Wisconsin Department of Natural Resources email response to the review of the final draft (as annexed hereto) is also annexed hereto.

COUNCIL ACTION REQUESTED

A motion to adopt A Resolution Authorizing Certain Officials to Execute A Nature Conservation and Public Park Purposes Lease Agreement between the Milwaukee Area Land Conservancy, Inc. and the City of Franklin, Wisconsin.

Sandi Wesolowski

From: Jesse Wesolowski [jweslaw@aol.com]
Sent: Tuesday, December 22, 2015 4:16 PM
To: Sandi Wesolowski; Shirley Roberts
Cc: Steve Olson; Mark Luberd; Paul Rotzenberg
Subject: Fwd: MMSD Greenseams lands conveyances; MALC to Franklin lease draft
Attachments: MMSD lands MALC Franklin lease 12-22-15.pdf; ATT00001.htm

Begin forwarded message:

From: "Foster Felt, Pamela J - DNR" <Pamela.FosterFelt@wisconsin.gov>
Subject: RE: MMSD Greenseams lands conveyances; MALC to Franklin lease draft
Date: December 22, 2015 at 3:24:28 PM CST
To: Jesse Wesolowski <jweslaw@aol.com>
Cc: "Don Dorsan (ddorsan@yahoo.com)" <ddorsan@yahoo.com>, "Henneger, Richard W - DNR" <Richard.Henneger@wisconsin.gov>, "Haag, Douglas J - DNR" <DouglasJ.Haag@wisconsin.gov>

Good afternoon,

This draft lease (attached) is approvable as written. Per Atty. Henneger's comment this afternoon, please do add a page for DNR approval to the signature section. You can prep for my signature – Pamela Foster Felt, Stewardship Nonprofit Grant Manager.

Don, please note that per WI Administrative Code and the terms of the grant contracts, the income MALC receives per this lease (10% of the reimbursable management costs) will be income accruing to Stewardship property and will need to be spent "to further the objectives of the project."

NR 51.005(2) Income accruing to property receiving a grant under this chapter shall be used to further the objectives of the project as stated in the grant contract unless the department authorizes the income to be used to further the objectives of another stewardship project...

Practically, that means that MALC will need to keep your books in such a way to demonstrate that funds received per this agreement are spent on your management of Stewardship lands. I would support and approve MALC investing that income in management of the Fitzsimmons Woods property, as well.

notes about next steps:

Approving transfer:

I have documents ready to sign that will approve reassignment of the properties and grant contract obligations from MMSD to MALC, and can provide those when I've got confirmation from MALC's board that the Conservancy agrees to own these lands, hold title and be accountable for the Stewardship contracts.

There is language in the deed held by MMSD reflecting the State's interest; this is required by statute and should be reiterated in the Deed conveying title from MMSD to MALC.

I will send Dave G. and MALC confirmation that DNR approves the GreenSeams easements to be conveyed to MMSD upon transfer (will do that in separate email).

I am leaving the office for the rest week, but will check my email and make sure those documents can be mailed in time to arrive before the end of next week.

am

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Pamela Foster Felt

Phone: 608-266-0868

Pamela.FosterFelt@Wisconsin.gov

From: Jesse Wesolowski [<mailto:jweslaw@aol.com>]

Sent: Tuesday, December 22, 2015 1:03 PM

To: Henneger, Richard W - DNR

Cc: Foster Felt, Pamela J - DNR

Subject: Re: MMSD Greenseams lands conveyances; MALC to Franklin lease draft

Attached is a highlighted redraft (changes in yellow). I also included 3 additional minor changes that I did not previously mention. And, with regard to my earlier query on potential changes, just to note that maintenance funding discussion may also include terms of how the maintenance might be performed.

Thanks.

Nature Conservation and Public Park Purposes Lease Agreement between the Milwaukee Area Land Conservancy, Inc. and the City of Franklin, Wisconsin

Draft 12/22/15

THIS NATURE CONSERVATION AND PUBLIC PARK PURPOSES LEASE AGREEMENT is entered into by and between the MILWAUKEE AREA LAND CONSERVANCY, INC., a Wisconsin non-profit non-stock corporation (sometimes referred to herein as the "MALC"), and THE CITY OF FRANKLIN, WISCONSIN, a Wisconsin municipal corporation (sometimes referred to herein as the "City"), as of the ____ day of December, 2015.

RECITALS:

WHEREAS, MALC is the owner in fee simple of 133.45 acres consisting of four (4) vacant parcels (the "Property") in the City of Franklin, Milwaukee County, Wisconsin, as described in Exhibit A, and as depicted on the survey of the Property, a copy of which is attached as Exhibit B (the "Survey"); and

WHEREAS, MALC and the City have identified certain conservation values associated with the Property as more fully described on Exhibit C and in the Baseline Documentation Report referred to below (the "Conservation Values"), and MALC and the City recognize that the Conservation Values of the Property and the Property's scenic and open space values have great importance to MALC, the City and the people of the City of Franklin; and

WHEREAS, the goals of this Nature Conservation and Public Park Purposes Lease Agreement (the "Agreement") are to preserve the Conservation Values of the Property and to ensure that the Property contributes to the prevention of future flooding risks and the protection of air and water quality and ecological resources of the region as outlined in the Greenseams Program, adopted by the Commissioners of the Milwaukee Metropolitan Sewerage District; and

WHEREAS, MALC and the City desire, intend and have the common purpose of retaining the Property for conservation purposes, including its preservation as a relatively natural habitat of plants and animals and as open space for the scenic enjoyment of the general public and pursuant to governmental conservation policies, as described in Section 170(h) of the Internal Revenue Code of 1986, by recognizing the existing perpetual restrictions on the use of the Property in part by way of the delivery by MALC to the Milwaukee Metropolitan Sewerage District of Conservation Easements of even-date herewith for the Property, which Conservation Easements are subject to the Wisconsin Department of Natural Resources Stewardship Grant and Management Contract for Non-Profit Land Acquisition as set forth therein, respectively, in order to preserve, enhance and restore the lands, all as described herein; and

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property set forth in the Baseline Documentation Reports for this Property, which are on file at the offices of the Milwaukee Metropolitan Sewerage District (the "Baseline Documentation Reports") which reports are incorporated by this reference as if fully set forth herein, which consist of reports, maps, photographs and other documentation of the Property at the time of this Agreement, and are intended to serve as an objective (but not exclusive) information baseline for monitoring compliance with the terms of this Agreement; and

WHEREAS, the City and MALC agree by entering into this Agreement to honor the goals and values and common purposes stated above and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of the public.

NOW, THEREFORE, in consideration of the mutual covenants and promises of MALC and the City contained herein, the receipt and sufficiency of which are hereby acknowledged, MALC and the City hereto agree that the foregoing Recitals are true and correct and incorporated herein by this reference. This Agreement is subject to the Wisconsin Department of Natural Resources (the "DNR") Stewardship Grant and Management Contract for Non-Profit Land Acquisition for Project No. HA3-12-178, dated July 5, 2012 the "Grant Contract"), which was recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on July 20, 2012 as Document No. 10140514, later assigned (the "Assignment") on November 28, 2012 and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on December 12, 2012 as Document No. 10193462; the Wisconsin Department of Natural Resources (the "DNR") Stewardship Grant and Management Contract for Non-Profit Land Acquisition for Project No. HA2-148, dated June 9, 2010 the "Grant Contract"), which was recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on June 10, 2010 as Document No. 09883070, later assigned (the "Assignment") on August 23, 2010 and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on September 3, 2010 as Document No. 09911737; the Wisconsin Department of Natural Resources (the "DNR") Stewardship Grant and Management Contract for Non-Profit Land Acquisition for Project No. HA2-129, dated May 22, 2009 the "Grant Contract"), which was recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on August 14, 2009 as Document No. 09781289, later assigned (the "Assignment") on November 20, 2009 and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on December 2, 2009 as Document No. 09820140; and the Wisconsin Department of Natural Resources (the "DNR") Stewardship Grant and Management Contract for Non-Profit Land Acquisition for Project No. HA3-13-191, dated March 5, 2013 the "Grant Contract"), which was recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on March 14, 2013 as Document No. 10226346, later assigned (the "Assignment") on May 20, 2013 and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on July 1, 2013 as Document No. 10266031. Copies of the aforesaid Grant Contracts and Assignments are incorporated herein by this reference and are attached as Exhibit D. In the event of any inconsistency between the terms and provisions of this Agreement and the terms and provisions of the aforesaid Grant Contract(s), the terms and provisions of the Grant Contract(s) shall control. MALC and the City further agree as follows:

I. LEASED PREMISES

The Property shall be the leased premises. For and in consideration of the Recitals and premises set forth above, and the rents, covenants and conditions herein set forth, MALC does hereby lease to the City, and the City does hereby lease from MALC, the Property, subject to the terms, conditions and provisions hereof.

II. PURPOSE

It is the purpose of this Agreement to honor the goals and values and common purposes stated above and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of the public as set forth in the recitals and premises set forth above, and to allow for the City to include the Property in its public park system to provide to the public opportunities for passive, nature-based recreational activities, environmental education and research, and land stewardship-related activities.

III. LEASE TERM

The commencement date of this Agreement shall be the above-stated date that this Agreement is entered into (the "Effective Date"). The initial term of this Agreement (the "Initial Term") shall be for a period of ninety-nine (99) years, commencing on the Effective Date and expiring on the date that is ninety-nine (99) years after the Effective Date (the "Expiration Date"), unless sooner terminated as herein provided. This lease Agreement shall automatically renew for like periods (each successive ninety-nine (99) year period being referred to hereinafter as an "Extended Term"), and on like terms and conditions, subject to the following. This Agreement may be terminated upon 120 days notice by the City to MALC, with an accompanying notice from the City to MALC of a right to cure within said 120 days by MALC of: i) a loss of MALC's tax exempt status under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3); ii) the dissolution of MALC; iii) the subjection of any right or interest of MALC in the Property to attachment, execution or other levy, or to seizure under legal process, if not released within ninety (90) days, or if not released within said ninety (90) days, is not being contested actively by MALC; iv) the appointment of a receiver to take possession of the Property or of the MALC interest in the leasehold estate, or of MALC's operations on the Property, for any reason including, but not limited to, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings; and/or v) an assignment by MALC for the benefit of creditors, or the filing of a voluntary or involuntary petition by or against MALC under any law for the purpose of adjudicating MALC a bankrupt; or for extending time for payment, adjustment or satisfaction of MALC's liabilities; or reorganization, dissolution, or arrangement on account of, or to prevent bankruptcy or insolvency; unless, in case of such that are involuntary on MALC's part, the assignment, proceedings, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or terminated within sixty (60) days after the assignment, filing or other initial event. This Agreement may be terminated upon 120 days notice by MALC to the City, with an accompanying notice from MALC to the City of a right to cure within said 120 days by the City of: i) failure of the City to pay any installment of Rent or any other monetary obligations of any nature whatsoever required to be paid by the City under this Agreement when due and payable; and/or ii) failure of the City to obtain and continue in full force insurance coverages required pursuant to par. VII. below.

IV. RENT

The City shall pay MALC, for the use and occupancy of the Property, annual rent in the amount of One and 00/100ths Dollar (\$1.00) ("Rent"). Rent shall be payable on the Effective Date and on each and every anniversary of the Effective Date during the Initial Term. The City shall have the right to pay Rent for all or any portion of the Initial Term or, if applicable, any Extended Term, in advance. No security deposit shall be required.

V. USE AND OCCUPANCY OF LEASED PREMISES

The City shall use or cause the use of the Property solely for the operation of a City public park to provide to the public opportunities for passive, nature-based recreational activities, environmental education and research, and land stewardship-related activities, in compliance with all applicable City ordinances and regulations as they may pertain to City public parks as amended from time to time, and approved by the Common Council of the City, the covenants of the Stewardship Grants and Management Contracts between the Wisconsin Department of Natural Resources and The Conservation Fund and/or the Milwaukee Metropolitan Sewerage District and/or MALC as successor in interest to The Conservation Fund and/or the Milwaukee Metropolitan Sewerage District as referenced above in the Recitals incorporated herein, the Conservation Easements granted to the Milwaukee Metropolitan Sewerage District by MALC also referenced above, and also in compliance with all of the other terms and provisions of this Agreement.

VI. LEASED PREMISES PRESERVATION, MAINTENANCE, RESTORATION AND ENHANCEMENT

The City shall establish a Fiduciary Fund for the purpose of depositing and preserving funds for the preservation, maintenance, restoration and enhancement needs as set forth herein. The City shall serve as the fiduciary agent for the Fiduciary Fund.

1. The City shall deposit \$13,345.00 (\$100.00 per acre) per calendar year into this Fiduciary Fund, except as provided below.

a. Following notice to MALC, including appropriate documentation, and absent written denial by MALC, the City may deduct from this deposit, prior to making the deposit, an amount equivalent to any direct expenditure the City makes toward the preservation, maintenance, restoration and enhancement needs of the Property, including non-supervisory wage costs, but not including charges for equipment owned by the City.

b. The City shall not be required during any calendar year to make a deposit that causes the fund balance to exceed \$40,035.00, but shall make that portion of any such deposit (including considering par. VI.1.a. above) as will increase the Fiduciary Fund balance to \$40,035.00, subject to par. VI.1. above.

2. Following notice by MALC to the City, including reasonably appropriate documentation, of direct expenses payment(s) made by MALC toward the preservation, maintenance, restoration and enhancement needs of the Property, the City shall reimburse MALC from the resources of the Fiduciary Fund for any direct costs duly noticed. Reimbursement for direct costs duly noticed shall include an additional ten percent (10%) of the direct costs for MALC direct costs administration. Volunteer services and donated services and equipment and materials are not eligible for reimbursement (except for direct costs administration aforesaid). Reimbursement shall be limited to the balance of proceeds in the Fiduciary Fund. The notice for reimbursement must be provided to the City before March 1 of the calendar year following the year in which the work was performed.

3. In the event that there is a matter of timely import with regard to the preservation, maintenance, restoration and enhancement needs of the Property requiring timely implementation by MALC, which occurs without reasonable prior notice of the need therefore to

MALC and without the reasonable ability of MALC to pay for the costs of same at the time and prior to the reimbursement of such costs by the City, MALC may notify the City of such cost funding need and request an advance to the Fiduciary Fund or a direct payment of such costs by the City to MALC to provide for same, which request would be subject to approval by the City Common Council, which approval shall not be unreasonably withheld.

4. Following notice to MALC, including appropriate documentation, and upon mutual agreement, which agreement shall be deemed granted if an objection is not provided in writing to the City's Director of Finance and Treasurer within 45 days of receipt of the notice, the City may deduct (withdraw) from the fund balance of the Fiduciary Fund an amount up to but not exceeding any such additional direct expenditures in excess of those that may have offset the annual deposit described in par. VI.1. above.

5. Before April 1 of each year, the City shall provide MALC with a detailed summary of the transaction activity that occurred in the Fiduciary Fund during the calendar year just ended. The Fiduciary Fund shall not accrue interest, as any interest earned shall be retained by the City to offset the cost of administering the fund.

6. The City shall maintain the Fiduciary Fund during the term of this Agreement, including the Initial Term and any Extended Term(s) and for three months after the termination or expiration of this Agreement unless otherwise subsequently agreed to in writing. Any funds remaining in the Fiduciary Fund following the above referenced three-month period shall revert to the property of the City, and MALC shall have no claim to any portion of those funds.

VII. INSURANCE

The City shall at its cost and expense, at all times during the Initial Term, and if applicable, any Extended Term, maintain in force, for the joint benefit of the City and MALC, a broad form coverage policy of commercial general liability insurance issued by a carrier reasonably satisfactory to the City and licensed to do business in State of Wisconsin, by the terms of which the City and MALC are named as insureds and are indemnified against liability for damage or injury to the property or person (including death) of the City, MALC, its invitees or any other person entering upon or using the Property, or any structure thereon or any part thereof. Such insurance policy or policies shall be maintained on the minimum basis of One Million and 00/100ths Dollars (\$1,000,000.00) for damage to property and for bodily injury or death as to any person, and One Million and 00/100ths Dollars (\$1,000,000.00) as to any one accident, and such limits shall be adjusted annually for inflation pursuant to the Consumer Price Index or other index generally recognized in the insurance industry. A certificate of said insurance, together with proof of payment of the premium thereof shall be delivered to MALC upon request, and renewal certificates and proof of payment of premiums therefore shall be delivered to MALC upon request during the Initial Term and any Extended Term. Such insurance shall be cancelable by the insurer only after thirty (30) days' prior written notice to the City and MALC. The City and MALC (and all parties claiming under them) mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by the casualty and liability insurance to be carried on the Property by the City, or in connection with any other improvements on or activities conducted on the Property, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof, and evidence such waiver by endorsement to the required insurance policies, provided that such release shall not

operate in any case where the effect is to invalidate or increase the cost of such insurance coverage (provided that in the case of increased cost, the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereby keeping such release and waiver in full force and effect).

VIII. LEASED PREMISES PRESERVATION, MAINTENANCE, RESTORATION AND ENHANCEMENT COOPERATIVE EFFORTS

The City and MALC agree to work together to seek grant funding, volunteers, donations and volunteer worker power to provide for the preservation, maintenance, restoration and enhancement needs of the Property to offset the Fiduciary Fund investments and expenditures set forth under sec. VI. above to accomplish work on the property required to meet the preservation, maintenance, restoration and enhancement needs of the Property which shall be preserved, maintained, restored and enhanced cooperatively by the City and MALC.

IX. GENERAL PROVISIONS

1. Recitals. The Recitals in this Agreement constitute a part of the substantive Agreement and are material terms and provisions of this Agreement representing the intent of the City and MALC.

2. Conditions and Covenants. All of the provisions of this Agreement shall be covenants running with the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

3. No Waiver of Breach. No failure by either the City or MALC to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

4. Unavoidable Delay: Force Majeure. If either party shall be delayed or prevented from the performance of any act required by this Agreement by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted) (collectively, "Force Majeure Events"), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

5. Notices. All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered or (b) sent to the parties at their respective addresses indicated herein by registered or certified US, mail, return receipt requested and postage prepaid, or by a nationally recognized private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

If to City:

City of Franklin
9229 West Loomis Road
Franklin, Wisconsin 53132
Attn. City Director of Administration
Facsimile: (414) 427-7627

If to MALC:
Milwaukee Area Land Conservancy, Inc.

Franklin, Wisconsin 53132
Facsimile: _____
Attention: _____

If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by overnight courier, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal, any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this paragraph.

6. Entire Agreement. This Agreement contains the entire agreement between the parties regarding the subject matter hereof. Any oral or written representations, agreements, understandings and/or statements shall be of no force and effect.

7. Waiver; Amendment. No modification, waiver, amendment, discharge or change to this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

8. Attorney's Fees. If either party retains an attorney to enforce or interpret this Agreement, the prevailing party shall be entitled to recover, in addition to all other items of recovery permitted by law, reasonable attorneys' fees and costs incurred through litigation, bankruptcy proceedings and all appeals.

9. Time. Time is of the essence of each obligation of each party hereunder.

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

11. Binding Effect. Subject to any provision of this Agreement that may prohibit or curtail assignment of any rights hereunder, this Agreement shall bind and inure to the benefit of the respective assigns and successors of the parties hereto.

12. Execution of Other Instruments. Each party agrees that it shall, upon the other's request, take any and all reasonable steps, and execute, acknowledge and deliver to the other party all further instruments necessary or expedient to effectuate the purpose of this Agreement.

13. Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the City and MALC and their respective successors and assigns. Neither the City nor MALC shall assign this Agreement without the prior written consent of the other party, except as may be required by the Conservation Easements of even-date herewith for the Property granted by MALC to the Milwaukee Metropolitan Sewerage District and the

Wisconsin Department of Natural Resources Stewardship Grant and Management Contract for Non-Profit Land Acquisition as set forth therein as referenced above in this Agreement.

14. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one instrument. Signatures transmitted via facsimile or in PDF format by electronic mail shall be binding upon the parties hereto with the same force and effect as original signatures.

16. Estoppel Certificate. Within twenty (20) days after request by either party, the other shall furnish an estoppel letter certifying, upon the then existent truth thereof, that there are no material breaches of the Agreement by either party, and that the Agreement is in full force and effect.

17. The City shall record this instrument in the office of the Register of Deeds for Milwaukee County, Wisconsin.

IN WITNESS WHEREOF, the City and MALC have caused this Agreement to be effective as of the date first above written.

MILWAUKEE AREA LAND CONSERVANCY, INC.

By: _____
[Name] [Title]

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Personally came before me this ____ day of December, 2015, the above-named _____, being the _____ of the Milwaukee Area Land Conservancy, Inc., a Wisconsin non-profit non-stock corporation, who executed this Agreement and acknowledged execution hereof with the authority of the Board of Directors of said corporation.

Notary Public, State of Wisconsin
My Commission: _____
[NOTARY SEAL]

CITY OF FRANKLIN

By: _____
Stephen R. Olson, Mayor

By: _____
Sandra L. Wesolowski, City Clerk

By: _____
Paul Rotzenberg, Director of Finance and Treasurer

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Personally came before me this ____ day of December, 2015, the above-named Stephen R. Olson, Mayor, Sandra L. Wesolowski, City Clerk and Paul Rotzenberg, Director of Finance and Treasurer, to me known to be such Mayor, City Clerk and Director of Finance and Treasurer of said municipal corporation, respectively, and acknowledged that they had executed the foregoing instrument as such officers as the Deed of said municipal corporation by its authority.

Notary Public, State of Wisconsin
My Commission: _____
[NOTARY SEAL]

Approved as to form:

Jesse A. Wesolowski
City of Franklin
City Attorney

This document was drafted by:
Jesse A. Wesolowski, Esq.
State Bar No. 1003204
11402 West Church Street
Franklin, Wisconsin 53132

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2015-_____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A NATURE CONSERVATION AND PUBLIC PARK PURPOSES LEASE AGREEMENT BETWEEN THE MILWAUKEE AREA LAND CONSERVANCY, INC. AND THE CITY OF FRANKLIN, WISCONSIN

(MMSD provided prior private property owner names and approximate acreage and City Assessor file record documents and GIS information tax key nos.: Hack 49.89 acres 889 9990 000; Franklin DC 44.33 acres 890 9990 000; St. Sava 23.55 acres 890 9999 000; Radicevich 15.68 acres 886-9998-000; to Franklin: St. Nikola 17.33 acres 787 9992 000)

WHEREAS, the Common Council having considered the above entitled conveyance and transaction at its regular meeting on December 15, 2015, and again at its special meeting on December 23, 2015, and recognizing the natural resources conservation values and the open space use of such property by the City and the Community, such use being consistent with the City of Franklin Comprehensive Outdoor Recreational Plan, and that such properties shall be maintained and protected for nature conservation and public park purposes in perpetuity; and

WHEREAS, the Common Council having reviewed the above entitled Nature Conservation and Public Park Purposes Lease Agreement with the Milwaukee Area Land Conservancy, Inc. and having found such agreement to be reasonable and that such agreement will promote the health, safety and welfare of the Community.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Nature Conservation and Public Park Purposes Lease Agreement between the Milwaukee Area Land Conservancy, Inc. and the City of Franklin, Wisconsin, in such form and content as annexed hereto, together with any minor changes which may be approved by the City Attorney, be and the same is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor, City Clerk and Director of Finance and Treasurer be and the same are hereby authorized to execute and deliver such agreement.

BE IT FINALLY RESOLVED, that the City Clerk be and is hereby directed to obtain the recording of a certified copy of this Resolution in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2015.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2015.

RESOLUTION NO. 2015-_____

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APPROVED:

ATTEST:

Stephen R. Olson, Mayor

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

<p>APPROVAL</p> <p><i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>December 23, 2015</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>West College Avenue Path (South 27th Street to South 35th Street)</p>	<p>ITEM NUMBER</p> <p><i>C. 2.</i></p>

The above subject matter is presented to the Common Council following its previous deliberations and actions thereon, with regard to the potential immediate furthering of the project with regard to the matching obligations expenditures of impact fees as they pertain to parks otherwise being considered by the City. Staff has considered the potential to inquire of Milwaukee County and the Wisconsin Department of Transportation of the ability to accomplish the above project by way of a change order between the County and WisDOT, with the County then entering into an agreement with the City whereunder the City forthwith (prior to January 1, 2016) pays to Milwaukee County the cost of the change order for WisDOT to complete the above project and also grants an easement to the City for the pedestrian way.

COUNCIL ACTION REQUESTED

A motion to authorize staff to undertake communications with Milwaukee County and to authorize the Mayor, City Clerk and Director of Finance to enter into an agreement with Milwaukee County to pay for the costs of a change order with the Wisconsin Department of Transportation to complete the portions of the College Avenue pathway and to enter into an agreement or receive delivery of an easement from Milwaukee County for such improvement, with expenditures by the City to not exceed \$50,000.00 for such purpose and with such funding to be provided by the Capital Improvement Fund General Park Appropriations or the Capital Outlay Fund Contingency Appropriations.

<p>APPROVAL</p> <p><i>Slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>December 23, 2015</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>JSD Professional Services, Inc. Contract for Design Services for a Trail and Bridge Crossing the East Branch of the Root River (River Park Trail Design)</p>	<p>ITEM NUMBER</p> <p><i>C.3.</i></p>

The above subject matter is presented to the Common Council following its previous approval of the above contract in the amount of \$103,631, with regard to the potential immediate furthering of the project with regard to the matching obligations expenditures of impact fees as they pertain to parks otherwise being considered by the City. Staff has considered the potential to inquire of contractor as to whether a contract price discount would be available in exchange for an advance payment of the contract price before January 1, 2016. Staff will report on the status of the follow up of that considered proposal at the meeting.

COUNCIL ACTION REQUESTED

A motion to authorize the Mayor, City Clerk and the Director of Finance and Treasurer to execute an amendment to the bridge and trail design contract with JSD Professional Services, Inc., subject to review by the City Attorney, to provide for an advance payment in exchange for a discount to the project cost, and to authorize staff to pay such agreed upon advance payment from the Capital Improvement Fund General Park appropriations or the Capital Outlay Fund Contingency Appropriations.

<p>APPROVAL</p> <p><i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>December 23, 2015</p>
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<p>REPORTS AND RECOMMENDATIONS</p>	<p>Pleasant View Park Playground Equipment Purchase Authorization</p>	<p>ITEM NUMBER</p> <p><i>C. 4.</i></p>
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The above subject matter is presented to the Common Council with regard to the potential immediate furthering of the project with regard to the matching obligations expenditures of impact fees as they pertain to parks otherwise being considered by the City. The Parks Commission has provided guidelines for the appropriate types of playground equipment to be acquired for City parks. The Director of Public Works is prepared to purchase such equipment for the Pleasant View Park playground.

COUNCIL ACTION REQUESTED

A motion to authorize the Director of Public Works to purchase playground equipment pursuant to the Parks Commission guidelines for the Pleasant View Park playground and to do so if payment shall be made prior to January 1, 2016 and in an amount not to exceed \$52,000.00, with the funding therefore to be provided by the Capital Improvement Fund General Park Appropriations or the Capital Outlay Fund Contingency Appropriations.