

**CITY OF FRANKLIN  
PARKS COMMISSION REGULAR MEETING**

**MONDAY, JULY 13, 2020 – 6:30 P.M.  
FRANKLIN CITY HALL – HEARING ROOM  
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN 53132**

**AGENDA**

**I. CALL TO ORDER AND ROLL CALL**

**II. CITIZEN COMMENT PERIOD**

**III. APPROVAL OF MINUTES**

A. Regular Meeting Minutes of June 8, 2020

**IV. UNFINISHED BUSINESS**

A. Update on parks maintenance, including status as to the condition of the Jack Workman Park tennis court and park pavilion use and maintenance without permit reservations.

B. Status of park rules signage for Kayla's Playground located at 3723 West Puetz Road and Pleasant View Neighborhood Park Pavilion located at 4620 West Evergreen Street.

C. Update on the Pleasant View Park Site Plan.

D. Status of Parkland Acquisition Study contract with Vandewalle and Associates.

E. 2021 Budget. Parks Commission request for information on personnel additions, Capital Outlay Fund needs, Equipment Revolving Fund needs, Street Improvement Fund needs and Major Capital Expenditures to be made with borrowed funds.

F. Update as to the proposal to honor/recognize the service of former Parks Commission Chair Tony Megna.

**V. NEW BUSINESS**

A. Request by Tom Wilde, resident of City of Franklin Aldermanic District No. 2, to install a duck nesting box in Ernie Lake Park, located at 8000 South Chapel Hill Drive.

B. Review of 2015 proposal to accept the transfer of several parcels of land from

the Milwaukee Metro Area Sewerage District for use as City of Franklin Parks and conservancy lands.

**VI. NEXT MEETING DATE**

**VII. ADJOURNMENT**

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 Common 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 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.

**CITY OF FRANKLIN**  
**PARKS COMMISSION MEETING**  
**MINUTES**  
**June 8, 2020**

unapproved

**CALL TO ORDER**

- I. Chair Joseph Musolf called the June 8, 2020 Parks Commission meeting to order at 6:30 p.m. in the Council Chambers located at 9229 W. Drexel Avenue, Franklin, Wisconsin.

Present were Chair Musolf, Vice Chair Wrench, Alderwoman Hanneman and Commissioners, Remington and Bartels and Ex-Officio Runte. Commissioner Lucchesi joined the meeting at 6:32 p.m. remotely. Also present were Department of Public Works Kevin Schlueter and Dale Borchert, Assistant Planner Marion Ecks and City Engineer Glen Morrow. Alderwoman Wilhelm participated remotely.

**CITIZEN COMMENT PERIOD**

- II. The citizen comment period was opened at 6:31 p.m. and closed at 6:32 p.m.. One citizen was present.

**APPROVAL OF MINUTES**

Regular meeting minutes of May 11, 2020.

- III. Commissioner Bartels moved and Alderwoman Hanneman seconded approval of the minutes for the regular meeting held May 11, 2020 as presented. On voice vote, all voted 'aye'. Motion carried (6-0-0).

**UNFINISHED BUSINESS:**

Update on parks maintenance.

- IV.  
A. Update given by Kevin Schlueter and Dale Borchert. Discussion only. No action taken.

Status of park rules signage for Kayla's Playground located at 3723 West Puetz Road and Pleasant View Neighborhood Park Pavilion located at 4620 West Evergreen Street.

- B. Alderwoman Hanneman moved and Vice Chair Wrench seconded a motion to approve \$550 from Lake Country Signs for Kayla's Playground. On voice vote, all voted 'aye'. Motion carried (6-0-0).

Update on the Pleasant View Park Site Plan, public input options.

- C. Site Plan to be provided at the next Parks Commission meeting based on survey. Discussion only. No action taken.

Status of Parkland Acquisition Study contract with Vandewalle and Associates.

- D. No information provided. Discussion only. No action taken.

Trails update: 116th Street Trail and Cascade Creek Park Trail located at 8300 South 60th Street grant funding application.

- E. Glenn Morrow is working on the Grant for 116<sup>th</sup> Street trail. Discussion only. No action taken.

## NEW BUSINESS

Kayla's Playground Ambassador (volunteer) program for 2020 update.

V.

- A. This program has been discontinued for the summer. Discussion only. No action taken.

Kindness Rocks Project at Kayla's Playground located at 3723 West Puetz Road update.

- B. This project is on hold until the coronavirus clears. Discussion only. No action taken.

Oak Leaf Trail segment between West Rawson Avenue and West Drexel Avenue.

- C. Discussion only. No action taken.

2021 Budget. Parks Commission request for information on personnel additions, Capital Outlay Fund needs, Equipment Revolving Fund needs, Street Improvement Fund needs and Major Capital Expenditures to be made with borrowed funds.

- D. Chair Musolf to contact Director of Finance, Paul Rotzenberg, for update on funds. Discussion only. No action taken.

Potential acquisition of property for public park purposes in the City of Franklin and Parks Commission request for property to be considered for the Parkland Acquisition Study. The Parks Commission may enter closed session pursuant to Wis. Stat. § 19.85(1)(e), for market competition and bargaining reasons, to consider the potential acquisition of properties to be used for public park purposes in the City, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

- E. Commissioner Bartels moved and Commissioner Lucchesi seconded a motion to discuss *a Potential acquisition of property for public park purposes in the City of Franklin and Parks Commission request for property to be considered for the Parkland Acquisition Study. The Parks Commission may enter closed session pursuant to Wis. Stat. § 19.85(1)(e), for market competition and bargaining reasons, to consider the potential acquisition of properties to be used for public park purposes in the City, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.* On voice vote, all voted 'aye'. Motion carried (6-0-0).

Vice Chair Wrench moved and Alderwoman Hanneman seconded a motion to reconvene. On voice vote, all voted 'aye'. Motion carried (6-0-0).

Proposal to honor/recognize the service of former Parks Commission Chair Tony Megna.

- F. Commissioner Remington moved and Alderwoman Hanneman seconded a motion to recommend to Common Council to name the Parkland located at Lake Ernie, Tony Megna Park. Commissioner Remington to draft letter from Parks Commission to Common Council stating motion. On voice vote, all voted 'aye'. Motion carried (6-0-0).

## NEXT MEETING DATE

- VI. July 13, 2020

## **ADJOURNMENT**

- VII.** Commissioner Remington moved and Vice Chair Wrench seconded to adjourn the Parks Commission meeting of June 8, 2020 at 8:38 p.m.. On voice vote all voted 'aye'. Motion carried (6-0-0).

DRAFT

**City of Franklin**  
**Monthly Park Impact Fees Collected**  
**27.0000.4291**

Month	<u>Collected Year &amp; Month</u>													2020
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	
Jan	25,497	34,866	6,250	-	-	20,842	7,598	5,632	2,816	-	-	9,765	31,667	43,277
Feb	8,499	14,880	11,465	3,281	83,871	10,851	3,799	5,632	5,914	12,002	6,342	3,423	13,864	18,870
Mar	22,664	8,928	3,125	3,281	10,335	14,468	18,995	8,448	3,098	9,045	6,342	17,115	10,785	30,192
Apr	14,165	5,952	3,125	76,578	10,335	10,851	83,610	43,696	8,871	6,030	6,342	3,423	77,471	37,740
May	11,332	11,904	6,250	3,281	-	7,234	18,995	5,632	54,874	119,591	9,513	77,676	10,785	11,322
Jun	45,328	2,976	6,250	16,405	10,335	36,170	22,794	21,168	14,785	9,045	3,171	87,945	25,165	
Jul	22,396	20,832	15,625	13,124	13,780	94,259	26,593	16,896	2,957	6,030	9,513	145,083	25,165	
Aug	14,165	8,928	12,500	9,843	6,890	21,702	43,066	14,080	11,828	9,045	6,342	81,099	28,760	
Sep	16,998	5,952	3,125	9,843	-	3,617	30,400	19,712	11,828	18,090	9,513	77,676	3,595	
Oct	22,664	11,904	9,375	-	3,445	18,085	40,528	26,800	14,785	3,015	-	13,692	678,505	
Nov	11,332	2,976	-	3,281	17,225	21,702	15,196	8,448	5,914	12,060	-	13,692	14,380	
Dec	5,666	2,976	3,125	6,562	6,890	3,617	5,632	8,448	-	6,030	9,513	338,448	28,760	
Total	220,706	133,074	80,215	145,479	163,106	263,398	317,206	184,592	137,670	209,983	66,591	869,037	948,902	141,401

In danger of Rebating

Regular Holding Period is 10 years from date collected.

**2020 Budget - Projects**

<u>Project</u>	<u>Cost</u>	<u>Impact Fees</u>
Pleasant View Pavilion	132,097	62,085
Pleasant View Park Dev	150,000	70,500
Overflow Parking - Kayla's Playgroun	250,000	117,500
Trails, Bicycle routes & connectivity	350,000	186,000
Neighborhood Park Land Acq	550,000	247,500
Total	1,432,097	683,585

Per Resolution 2016-7177 - Holding period extended to 13 years for fees collected after April 10, 2006. this extended holding period ends Dec 31, 2022.

C:\Users\mecks\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\2VPAEGKA\[Monthly Impact Fees Collected-2004 forward - Copy.xlsx]Collections Summary

**City of Franklin**  
**Summary of Park Impact Fee Availability**  
**12/31/20 - Preliminary**

IV.D. and E.

		Spent By	Current Impact Fees			
			Impact Fee	Interest	Expenditures	Net Total
<b>2020</b>	<b>1st Qtr</b>	2028	92,339.00	54,672.09	23,484.00	123,527.09
	<b>2nd Qtr</b>	2028	49,062.00	0.00	69,641.00	(20,579.00)
	<b>3rd Qtr</b>	2028			0.00	-
	<b>4th Qtr</b>	2028			0.00	-
	<b>2020</b>		141,401.00	54,672.09	93,125.00	102,948.09
<b>2019</b>	<b>2019</b>		948,902.00	120,952.47	212,630.78	857,223.69
<b>2018</b>	<b>2018</b>		869,037.00	47,964.42	202,038.51	714,962.91
2017	2017		66,591.00	33,123.42	661.26	99,053.16
2016	Total		209,983.00	28,120.12	212,221.99	25,881.13
2015	Total		137,670.00	55,558.15	607,299.51	(414,071.36)
2014	Total		184,592.00	133,563.95	626,182.10	(308,026.15)
2013	Total		317,206.00	84,950.58	124,912.10	277,244.48
2012	Total		263,398.00	102,473.34	-	365,871.34
2011	Total		163,106.00	44,506.30	-	207,612.30
2010	Total		145,479.00	66,273.18	46.87	211,705.31
2009	Total		80,215.00	86,651.98	5,459.02	161,407.96
2008	Total		133,074.00	95,987.90	10,913.04	218,148.86
2007	<b>1st Qtr</b>	2020	56,660.00	46,373.12	-	103,033.12
	<b>2nd Qtr</b>	2020	70,825.00	36,677.27	-	107,502.27
	<b>3rd Qtr</b>	2020	53,559.00	48,371.51	1,800.00	100,130.51
	<b>4th Qtr</b>	2020	39,662.00	41,384.48	822,097.23	(741,050.75)
	Total		220,706.00	172,806.38	823,897.23	(430,384.85)
2006	Total		646,907.00	144,950.45	392,618.08	399,239.37
2005	Total		1,006,696.00	63,382.62	471,251.40	598,827.22
2004	Total		1,028,255.00	17,433.14	28,523.46	1,017,164.68
2003	Total		668,917.00	6,283.52	-	675,200.52
2002	Total		275,620.00	3,114.10	-	278,734.10
<b>Total</b>			7,507,755.00	1,362,768.11	3,811,780.35	4,955,794.67
	Spent		3,807,439.00			

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2010- 6634A RESOLUTION ESTABLISHING A CITY BUILDINGS, PARKS AND FACILITIES  
NAMING POLICY

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WHEREAS, the Common Council having considered the value of establishing a uniform policy to address the naming of City buildings, parks and facilities to assist in the consideration of requests received and proposals and considerations made from time to time to name City property; and

WHEREAS, the Parks Commission and the Board of Public Works having considered the terms of a naming policy for City property as directed by the Common Council and having reported their respective recommendations to the Common Council; and

WHEREAS, the Common Council having considered such recommendations in its deliberations and having determined a policy for the naming of City property which will promote the public welfare and best interests of the City.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the naming of City buildings, parks and facilities be conducted as follows:

## City of Franklin Public Buildings, Parks and Facilities Naming Policy

## I. Purpose

The purpose of this policy is to establish a uniform procedure for the naming of City buildings, parks and facilities throughout the City of Franklin.

## II. Authorization

The Common Council shall have the authority for the naming of all City buildings, parks and facilities by passing or rejecting a resolution at a regular or special Common Council meeting. The Common Council shall request the review and recommendation of the Parks Commission for the naming of any public park or park facility. The Common Council shall request the review and recommendation of the Board of Public Works for the naming of any public building. In the event the Common Council does not receive the requested recommendation from the Commission or the Board within 45 days of such request, respectively, the Common Council may take action without such recommendation(s).

## III. Objectives

- Provide name identification ☐



- Provide citizen/neighborhood input into the process ☐
- Insure control for naming policy

#### IV. Qualifying Name

- Geographic location to facility ☐
- Outstanding feature ☐
- Adjoining subdivision ☐
- Historical event, group, or individual; except that eligibility shall commence only after five years following the event or other basis establishing the historical significance ☐
- Exceptional service in the public interest that has had a major impact and benefit to the City by an individual who demonstrates dedication to service to the City and/or to individuals, families, groups, or community services, extraordinarily above and beyond the call of duty; except that in the event of a public employee or elected or appointed official, eligibility shall commence only after five years following the completion of their public service
- Exceptional service in the public building, park or facility's interest
- Contribution to acquisition/development of the public building, park or facility

#### V. Naming City Buildings, Parks and Facilities

The City's approval of a naming proposal is the conferral of a privilege, not a right, and at all times the City shall reserve the right to reject any naming proposal for any reason not prohibited by law. The following guidelines will be used when naming a public building, park or facility:

1. A name is intended to be permanent.
2. Duplication of other places or facility names in the City shall not be considered.
3. Any consideration of a proposal for a name must be commenced by a motion authorizing the same made by the Common Council.
4. Prominent geographic features or local reference points (i.e., hill, stream, lake, notable tree, street, community or neighborhood) shall be considered for a potential name.
5. After the Common Council preliminarily decides upon a name, public notice of the recommended name shall be published as a Class 2 notice, specifying a thirty (30) day public comment period in the City's official newspaper. Citizen comments and recommendations must be in writing to the City Clerk and must be postmarked within the thirty (30) day public comment period.
6. After the thirty (30) day public comment period, the Common Council will pass a resolution adopting or rejecting the name.
7. An existing name of a public building, park and/or facility, particularly one of local or national importance or outstanding feature, shall not be changed unless there are extraordinary circumstances of local or national interest.

#### VI. Renaming

- a. The renaming of public buildings, parks and facilities is strongly discouraged. It is recommended that efforts to change a name be subject to the most critical

examination so as not to diminish the original justification for the name or discount the value of the prior contributors.

b. City buildings, parks and facilities named after individuals shall never be changed unless it is found that the individual's personal character is or was such that the continued use of the name for a park or facility would not be in the best interest of the community.

c. In order for a City building, park or facility to be considered for renaming, the recommended name must qualify according to Sections IV. and V. of this Policy.

#### VII. Other Naming Alternatives

a. City buildings, parks and facilities that are donated to the City can be named by deed restriction by the donor. The naming and acceptance of land is subject to the guidelines set forth above and approval by the Common Council.

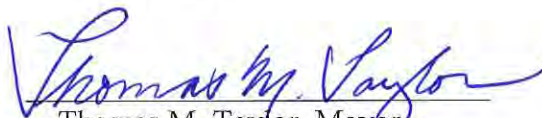
b. A facility within a park, i.e., playground, picnic shelter, etc., can be named separately from the park or facility location subject to this Policy.

c. This Policy does not apply to the naming of public streets.

Introduced at a regular meeting of the Common Council of the City of Franklin this 16th day of March, 2010.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 16th day of March, 2010.

APPROVED:

  
Thomas M. Taylor, Mayor

ATTEST:

  
Sandra L. Wesolowski, City Clerk

AYES 6 NOES 0 ABSENT 0

## **City of Franklin Department of City Development**

Date: July 13, 2020  
To: City of Franklin Parks Commission  
From: Department of City Development – Assistant Planner Ecks  
RE: Ernie Lake Trail Park - Duck Nesting Box

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Alderman Mayer received the following citizen request to install a duck nesting box in Ernie Lake Trail Park:

“The last two falls, we have had wood ducks visit Ernie Lake for about tree weeks before migrating out. Wood ducks often “scout out” locations as they migrate for potential next season homes. I believe if we had a nesting opportunity before this fall, we might get summer nesting and babies. I would like to put up and wood duck house on the lake. I don’t mind buying the materials and building the house. Strangely, I had never seen it until a week ago, but there is a sturdy planted post at the edge of our property and Ernie Lake above the drainage culvert (north end of lake). It would be a perfect post and place for a heavy wood duck house. The post (see picture attached) does not contain a sign or anything now and I don’t remember if it ever did. Could have been a no trespassing sign we put up years ago but I don’t recall it.

So, my question is, not knowing if the post is actually ours or park property I did not want to do anything without clearing it with the city. I did not find who I need to go to. Can you either get me a name or permission to proceed or not please?

Regards,

Tom Wilde”

Mr. Wilde’s photos are attached.

The Department of Public Works determined that the specific location proposed for the nesting box was not appropriate, as a cage in the pond at that location protects a pipe that must be maintained clear of debris. However, they suggest that another location on the lake might be appropriate.

MX















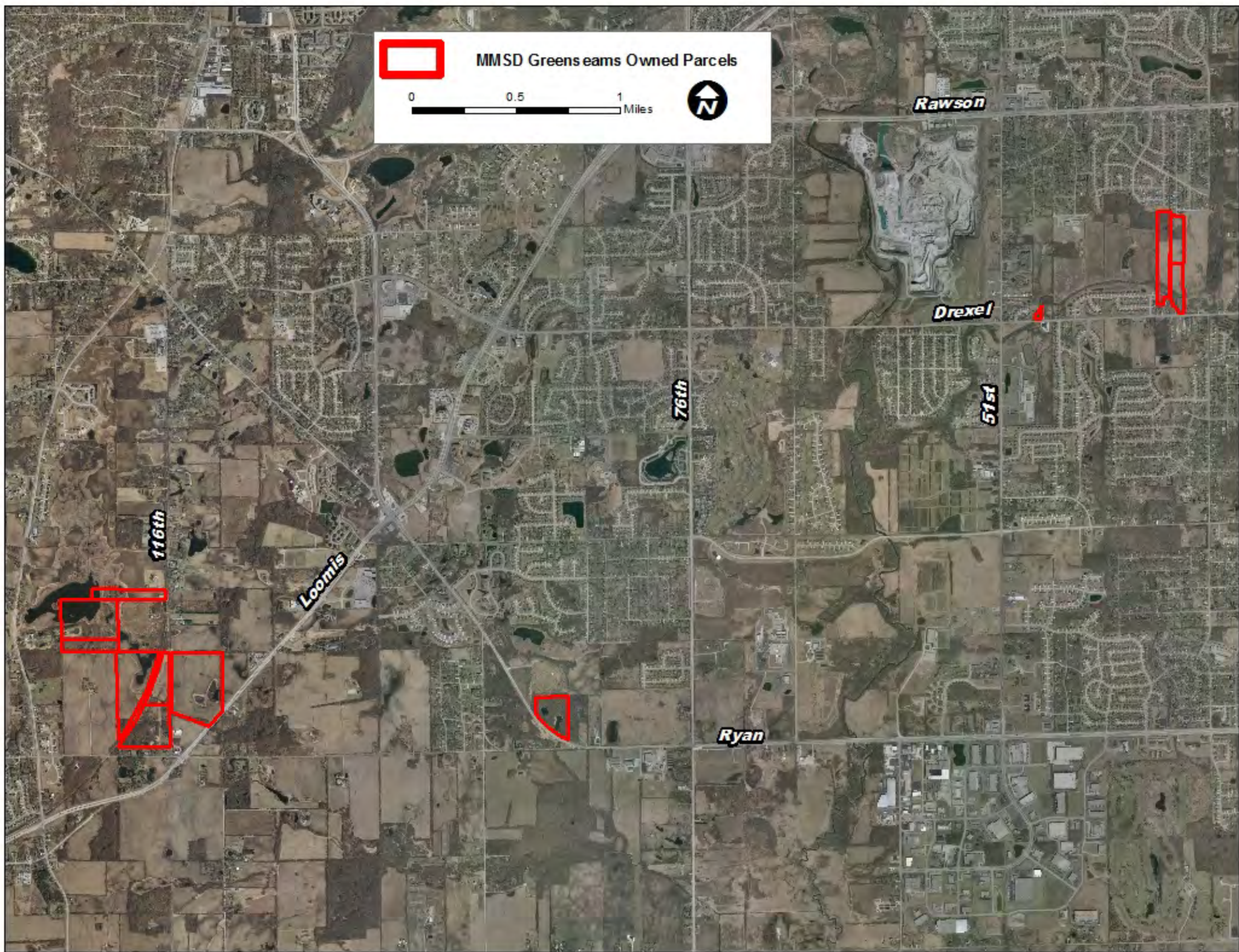
APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE December 15, 2015
REPORTS AND RECOMMENDATIONS	<p>Conveyances to the City of Franklin and the Milwaukee Area Land Conservancy ("MALC") by the Milwaukee Metropolitan Sewerage District with Participation by the Wisconsin Department of Natural Resources of Parcels of Land Acquired Pursuant to the Milwaukee Metropolitan Sewerage District and The Conservation Fund Greenseams® Program Participation and Potential Conveyance to the Wisconsin Department of Natural Resources by the Milwaukee Metropolitan Sewerage District of Certain of the Program Parcels (MMSD provided prior private property owner names and approximate acreage and City Assessor file record documents and GIS information tax key nos.: to</p> <p>WIDNR: Dumke/Olsen 33.24 acres 844 9997 000; Katzman 11.14 acres 844 9996 000; Franklin DC 10.05 acres 844 9998 000; to MALC: 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>	ITEM NUMBER
<p>The above subject matter or components thereof were before the Common Council at its September 15, 2015, September 1, 2015 and July 7, 2015 meetings. Copies of the action sheets and supporting documentation are attached. Since the last meeting on the subject matter(s), staff has engaged in communications with Wisconsin Department of Natural Resources staff and the Milwaukee Area Land Conservancy President. Though substantial detail work remains, the bottom line of the above at this time is as follows. WIDNR will not require the application of State hunting regulations to the transfer of Greenseams lands to MALC, a not-for-profit land conservation entity. MALC would enter into a long-term/perpetuity lease or the like with the City, providing for natural area and recreation and conservation public park purposes. The Environmental Commission and the Parks Commission would assist in the natural area and recreation and conservation public park purposes program and goals. Conservation easements would be exchanged between and among the parties. WIDNR is processing an exemption for the St. Nikola property, which if granted, would exempt that property from State hunting regulations upon conveyance by MMSD to the City (and a return conservation easement to MMSD). WIDNR staff is requesting a letter of intent with regard to the goal of including the Franklin DC approximately 10.05 acre parcel in its Ordinance allowing for shotgun hunting (the other above mentioned for conveyance to WIDNR properties already are in the Ordinance). City staff is requesting Common Council approval to proceed with all transactional matters in the general parameters set forth above, in a like matter as the authority granted by the Common Council at its July 7, 2015 meeting, which allowed for closings on three of those parcels before the month was over. City staff is also reviewing an Aldermanic request with regard to another property owned by the State for consideration in the overall realm of working together in regard to the above.</p> <p style="text-align: center;"><b>COUNCIL ACTION REQUESTED</b></p> <p>As the Common Council may deem appropriate.</p> <p>jw</p>		





MMSD Greens eams Owned Parcels

0 0.5 1 Miles





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

*Draft 12/21/15*

**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, and 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 50 1(e)(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 per calendar year into this Fiduciary Fund, except as provided below.

a. Following notice to MALC, including appropriate documentation, 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.

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 00/1 00ths 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.

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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 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.

**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]

[illegible]

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

[illegible]

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]



## RESOLUTION NO. 2015-\_\_\_\_

A Resolution Accepting and Recognizing the Conveyances to the City of Franklin ("City") and the Milwaukee Area Land Conservancy ("MALC") by the Milwaukee Metropolitan Sewerage District ("MMSD") with Participation by the Wisconsin Department of Natural Resources ("WIDNR") of Parcels of Land Acquired Pursuant to the MMSD and The Conservation Fund Greenseams® Program Participation and Potential Conveyance to the WIDNR by the MMSD of Certain of the Program Parcels; and Authorizing Leasehold Interests Agreements by the City for the Properties to be Conveyed to MALC, and Authorizing Certain Officials to Execute All Documents Necessary to Complete Such Conveyance and Leasehold Interests Transactions and to Enter Into and Deliver Conservation Easements to Further Protect and Promote the Conservation of Such Valuable Natural Resources for the Betterment of the Environment and Humanity by Way of Declarations Therein that Such Properties Shall be Maintained and Protected for Nature Conservation and Public Park Purposes in Perpetuity (MMSD provided prior private property owner names and approximate acreage and City Assessor file record documents and GIS information tax key nos.: to WIDNR: Dumke/Olsen 33.24 acres 844 9997 000; Katzman 11.14 acres 844 9996 000; Franklin DC 10.05 acres 844 9998 000; to MALC: 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)

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WHEREAS, the Common Council having considered the above entitled conveyances and transactions at its regular meeting on December 15, 2015, including the further description thereof as set forth upon the Common Council action sheet and accompanying documents included within the meeting agenda materials previously distributed to and presented to the Common Council; and

WHEREAS, the purpose of such conveyances and transactions in part is to prevent future flooding as part of the Conservation Plan for the Milwaukee Metropolitan Sewerage District, the Conservation Plan complementing structural storm water control by preserving open space and hydric soils at risk for development; and

WHEREAS, the Common Council at its meeting on April 7, 2015, having expressed its interest in accepting the Greenseams parcels conveyance from the Milwaukee Metropolitan Sewerage District, 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 the Common Council having additionally directed the final review by the City Attorney of each parcel's obligations, conditions and restrictions; and

WHEREAS, three Greenseams parcels were conveyed to the City on July 31, 2015, following Common Council consideration and acceptance of same at its regular meeting on July 7, 2015, with the Greenseams parcels remaining from those originally considered by the Common Council on April 7, 2015, having been considered by the Common Council at its regular meetings on September 1, 2015 and September 15, 2015; and

WHEREAS, such remaining Greenseams parcels, as above entitled and described, having also been the subject of meetings and communications among City, WIDNR and MMSD representatives, and communications between City and MALC representatives, such meetings and communications involving in part the concerns expressed at the September Common Council meetings regarding State regulated outdoor activities such as hunting and trapping; the St. Nikola 17.33 acres property bearing tax key no. 787 9992 000 now being the subject of the required WIDNR review process for an exemption from State hunting and trapping regulations upon conveyance of the property from MMSD to the City; the Hack 49.89 acres property bearing tax key no. 889 9990 000, the Franklin DC 44.33 acres property bearing tax key no. 890 9990 000, the St. Sava 23.55 acres property bearing tax key no. 890 9999 000, and the Radicevich 15.68 acres property bearing tax key no. 886-9998-000 being contemplated for conveyance to MALC, which conveyances do not require the property to be subject to State hunting and trapping regulations; and the Dumke/Olsen 33.24 acres property bearing tax key no. 844 9997 000, the Katzman 11.14 acres property bearing tax key no. 844 9996 000, and the Franklin DC 10.05 acres property bearing tax key no. 844 9998 000 being contemplated for conveyance to WIDNR, the Dumke/Olsen and Katzman properties being previously authorized by the Common Council pursuant to Ordinance No. 2010-2016 to allow shotgun hunting and bow hunting as regulated by Wisconsin Law upon those anticipated Big Muskego Lake Wildlife Area lands, with the current request of WIDNR that the Franklin DC 10.05 acres property be considered for such uses and so authorized by inclusion in the Franklin Ordinance by the Common Council; and

WHEREAS, discussions between City and MALC representatives having resulted in a general understanding to enter into long term/perpetual lease or the like agreements and conservation easements, with details remaining to be discussed, with the purpose being to further protect and promote the conservation of such valuable natural resources for the betterment of the environment and humanity by way of declarations therein that such properties shall be maintained and protected for nature conservation and public park purposes in perpetuity.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the conveyance of the St. Nikola 17.33 acres real property bearing tax key no. 787 9992 000, from the MMSD, be and the same is hereby accepted, recognizing the requirement for a return delivery of a conservation easement to protect such lands from the City to MMSD, and conditioned upon the grant of an exemption from State hunting and trapping regulations by the WIDNR.

BE IT FURTHER RESOLVED, that the City supports the conveyance of the Hack 49.89 acres real property bearing tax key no. 889 9990 000, the Franklin DC 44.33 acres real property bearing tax key no. 890 9990 000, the St. Sava 23.55 acres real property bearing tax key no. 890 9999 000, and the Radicevich 15.68 acres real property bearing tax key no. 886-9998-000 from the MMSD to MALC, conditioned upon the entry into long term/perpetual lease or the like agreements and conservation easements for such properties between MALC and the City, and conservation easements to MMSD.

BE IT FURTHER RESOLVED, that the City recognizes the future transfer of the Dumke/Olsen 33.24 acres real property bearing tax key no. 844 9997 000, the Katzman 11.14 acres real property bearing tax key no. 844 9996 000, and the Franklin DC 10.05 acres real property bearing tax key no. 844 9998 000 from MMSD to WIDNR, and that the Franklin DC 10.05 acre property will be the subject of an ordinance to include it within City of Franklin Municipal Code §§183-75A. and 183-76, as were the Dumke/Olsen and Katzman properties pursuant to Ordinance No. 2010-2016, upon completion of all of the other conveyances and transactions Resolved under this Resolution.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk, and Director of Finance and Treasurer as may be required, be and the same are hereby authorized to deliver, receive and accept on behalf of the City all documents necessary for the conveyance of the aforesaid real properties as they pertain to conveyances to MALC and the City, and that the City Clerk is hereby directed to obtain or confirm the recording of such real estate conveyance documents with the Office of the Register of Deeds for Milwaukee County.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk, and Director of Finance and Treasurer as may be required, be and the same are hereby authorized to execute and deliver such additional and collateral agreements and documents as they deem necessary to consummate the conveyances, including, but not limited to conservation easements, following review of same by the City Attorney, and to take such other reasonable and necessary actions toward such end, accordingly.

BE IT FINALLY RESOLVED, that Resolution No. 2015-7106, adopted July 7, 2015, to the extent the terms and provisions thereof as they may pertain to the Radicevich and St. Nikola properties may differ from the terms and provisions of this Resolution, be and the same is hereby amended to be consistent with the terms and provisions of this Resolution.

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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ATTEST:

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

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

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_