

Metropolitan Parks and Open Space Commission Report

For the Community Development Committee meeting of July 15, 2019

Subject: Park Acquisition Opportunity Fund Grant for Nine Mile Creek Regional Trail, Three Rivers Park District, New City Covenant Church Easement

Proposed Action

That the Metropolitan Council:

1. Approve a grant of up to \$509,869.50 to Three Rivers Park District to acquire the 26,636 square-foot easement from the New City Covenant Church located at 6400 Tracy Avenue in the City of Edina for Nine Mile Creek Regional Trail, contingent on Council approval of the 2019 Quarter 2 Unified Budget Amendment, Business Item 2019-166 JT; and;
2. Authorize the Community Development Director to execute the grant agreement and restrictive covenant on behalf of the Council;
3. Consider reimbursing Three Rivers Park District for up to \$169,956.50 from its share of a future Regional Parks Capital Bonding Program; and
4. Inform Three Rivers Park District that the Council does not under any circumstances represent or guarantee that the Council will grant future reimbursement and that expenditure of local funds never entitles a park agency to reimbursement.

Summary of Committee Discussion/Questions

Tracey Kinney, Planner, presented the staff report to the Metropolitan Parks and Open Space Commission at its meeting on July 9, 2019. Jonathan Vlaming, Associate Superintendent – Planning, Design & Technology for Three Rivers Park District, was also in attendance.

Commissioner Harris requested information on the condemnation of the property. Jonathan Vlaming responded that acquiring this property through condemnation was a last resort method due to failed negotiations to preserve federal transportation funding for the regional trail.

Commissioner Andreason asked about the safety of the regional trail as a result of the court action. Jonathan Vlaming responded that Three Rivers Park District conducted a robust engagement process during the design phase of the trail that built awareness among the area surrounding the trail of the long-term vision for the trail alignment.

The Metropolitan Parks and Open Space Commission approved the proposed action with five Commissioners voting in favor, one voting in opposition, and one abstaining.

Metropolitan Parks and Open Space Commission

Meeting date: July 9, 2019

For the Community Development Committee meeting of July 15, 2019

For the Metropolitan Council meeting of July 24, 2019

Subject: Park Acquisition Opportunity Fund Grant for Nine Mile Creek Regional Trail, Three Rivers Park District, New City Covenant Church Easement

MPOSC District Member: C – Margie Andreason

Council District, Member: 5 – Molly Cummings

Policy/Legal Reference: Minn. Stat. § 85.53 Subd. 3(4) and Minn. Stat. § 473.315; *2040 Regional Parks Policy Plan* Siting and Acquisition Policy – Strategy 1 and Strategy 4 (for new trails); Planning Policy – Strategy 1; System Protection Strategies 3 and 4; Finance Strategy 5

Staff Prepared/Presented: Tracey Kinney, Planner (651-602-1029), Regional Parks

Division/Department: Community Development / Regional Planning

Proposed Action

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4. Inform Three Rivers Park District that the Council does not under any circumstances represent or guarantee that the Council will grant future reimbursement and that expenditure of local funds never entitles a park agency to reimbursement.

Background

Acquisition via eminent domain

This easement has been acquired via eminent domain, and the Agency is requesting reimbursement of its acquisition costs as well as their associated legal and court costs. A normal acquisition with which the Council assists is the product of negotiations between an Agency and a willing seller. In the normal course of an acquisition, the Agency must request a Park Acquisition Opportunity Fund (PAOF) grant before it closes on the property. In contrast, the condemnation process requires that the Agency pays a pre-determined amount to the seller at the beginning of the court proceedings, then finalizes the award amount through the court. The Agency must pay the balance when the court process is complete. Because all of these actions must be finished before the total project amount can be determined, the Council's process allows the Agency to request a grant at the end of the process.

The Agency notified the Council of its intent to begin condemnation proceedings in July 2016 after negotiations with the seller failed. The Agency paid the seller \$161,400 in August 2016 and took possession of the easement. The court

proceedings were finalized in December 2018, and the Agency paid the \$451,100 balance of the award amount on January 3, 2019. The settlement has since been finalized. A copy of the original notification and the Agency's formal grant request are attached as Exhibits 3 and 4, respectively.

Funding sources

The Council's Park Acquisition Opportunity Fund (PAOF) provides resources to purchase property and easements via two state sources: the Parks and Trails Legacy Fund (PTLF) and the Environment and Natural Resources Trust Fund (ENRTF). The Council contributes further by matching every \$3 in state funds with \$2 in Council bonds proceeds. Between them, state and Council funds contribute up to 75% of the purchase price and eligible costs; the Regional Park Implementing Agency (Agency) contributes the remaining 25% as local match. ENRTF funds cannot be used for properties acquired through eminent domain proceedings; therefore, the Council will fund this grant through PTLF and Council match.

Council review

Council staff:

- reviews each PAOF request to ensure that the proposed acquisition complies with state statute and Council policy;
- ensures that all necessary documentation is in place and that the appraisal is reasonable and appropriate; and
- processes requests on a first-come-first-served basis.

Subject property

The easement is within the Council-approved boundary of Nine Mile Creek Regional Trail and is located in the Edina West segment. The property over which the easement was obtained faces Tracy Avenue and backs up to Nine Mile Creek, and it is home to the New City Covenant Church. Approximately 15% of the 26,636 square feet of the permanent easement is within the floodplain/floodway. The balance of easement runs alongside the church's driveway, higher up the creek bank.

While there are small areas of natural resources within the easement area, they have been significantly impacted by the greater habitat surroundings, which consist of invasive species and are subject to heavy flooding. These areas will be maintained as open space and flood storage.

Rationale

This acquisition is consistent with:

- *The 2040 Regional Parks Policy Plan*
 - Planning Policy Strategy 1 requires that before an Agency can receive a grant for acquisition, the proposed project must be consistent with a Council-approved master plan. The master plan for Nine Mile Creek Regional Trail was approved by the Council on November 13, 2013, [*Business Item 2013-013*](#).
 - Siting and Acquisition Strategy 1 requires that lands with natural resource features, access to water, and/or restoration potential will be a priority for the Regional Parks System. The recommended easement borders Nine Mile Creek, providing access to water.
 - Siting and Acquisition Strategy 4 requires that new regional trails serve a regional audience and provide connections between regional park units without duplication. The recommended easement will establish a needed link for the regional trail without duplication, thereby providing uninterrupted trail access to serve a regional audience.

- System Protection Strategy 4 requires that a Phase 1 Environmental Site Assessment (ESA) must be completed on land that is suspected to be contaminated or land suspected to have abandoned wells as part of its due diligence process for land acquisition. The conditions and history of this property do not require an ESA as historical use of this property has not raised suspicion of contamination.
- Finance Strategy 7 authorizes the use of PAOF as the funding mechanism for the acquisition of Regional Park lands and matching every \$3 in state funds with \$2 in Council bonds; and
- All requirements of the Parks and Trails Legacy Fund and the state fiscal year 2020 appropriation.

Thrive Lens Analysis

This request is consistent with Thrive’s Livability outcome because the Council’s investment in the Regional Trail will increase access to nature and outdoor recreation, thereby enhancing the region’s quality of life. This request is also consistent with Thrive’s Stewardship outcome since the easement allows Three Rivers Park District to manage our region’s natural resources and water access.

Funding

Project budget

Once a party commits to acquisition through eminent domain, it is not uncommon that the cost of the property or easement, plus the associated legal and closing costs, may be significantly higher than the original appraised acquisition price. The appraised value is \$280,000, and the Agency has paid the seller 218.75% of the appraised amount plus closing and other costs as shown in Table 1 below.

Table 1. Project Budget and Grant Structure

Budget item	Requested amount
Purchase price	\$612,500.00
Due diligence (appraisal, Phase I environmental site assessment, etc.)	22,000.00
Holding and closing costs	45,326.00
Stewardship	0.00
Total costs	\$679,826.00
Grant structure	
State FY 2020 PTLF PAOF	\$305,921.70
Council bonds	<u>\$203,947.80</u>
Grant amount not to exceed	\$509,869.50
Local match	\$169,956.50

Future reimbursement consideration

The Agency is also requesting that the Council consider reimbursing its local match of \$169,956.50 for this acquisition at some point in the future as a part of a regular Regional Park Bonding Program. A request for “future reimbursement consideration” is the first step in a process Agencies may use to request repayment of their match amount for this acquisition in a future bonding cycle. Because the Council issues bonds to cover exactly 40% of costs for a given state bonding cycle, such reimbursements are limited. The Council is under no obligation to reimburse this amount.

Known Support / Opposition

There is no known opposition.

Exhibit List

- Exhibit 1: Images
- Exhibit 2: Notice of intent to pursue eminent domain
- Exhibit 3: Grant request letter
- Exhibit 4: Grant application
- Exhibit 5: Board approval to purchase property
- Exhibit 6: Finalized agreement
- Exhibit 7: Appraisal excerpt

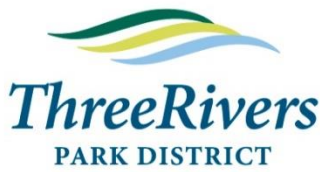
Exhibit 1 – Images



Figure 1: Easement along church driveway (PE: Permanent easement; TE: Temporary easement)



Figure 2: Aerial of church property, with easement shown in yellow and Tracy Avenue to the right



July 20, 2016

Three Rivers
Park District
Board of
Commissioners

Mr. Emmett Mullin, Manager
Regional Parks and Natural Resources Unit
Community Development Division
390 North Robert Street
St. Paul, MN 55101

Penny Steele
District 1

RE: Nine Mile Creek Regional Trail - Notice of Condemnation and Intent to Request a Park Acquisition Opportunity Fund Grant at a Future Date

Jennifer DeJournett
District 2

Dear Emmett,

This letter serves as Three Rivers Park District's notification to the Metropolitan Council of its intent to pursue condemnation of a public trailway easement for Nine Mile Creek Regional Trail in the City of Edina and to seek an Acquisition Opportunity Fund Grant at a later date.

Daniel Freeman,
Vice Chair
District 3

Immediate Request

Please review this request and, at your earliest convenience, confirm receipt and inform me of any concerns.

John Gunyou,
Chair
District 4

Condemnation Need and Affected Properties

The associated \$5.72 million Federal Surface Transportation Grant requires that all right-of-way is secured and paid for by June 1, 2017. If this requirement is not met, the Park District is at risk of losing the grant and ultimately not being able to fund construction of the Nine Mile Creek Regional Trail: Edina West Segment. As such the Park District has commenced condemnation for a regional trail easement across the property listed below.

John Gibbs
District 5

Larry Blackstad

Appointed
At Large

Parcel	Location	Description
Parcel 8	6400 Tracy Avenue, Edina, MN 55439 PID 05-116-21-24-0011	26,636 square feet of permanent easement

Steve Antolak
Appointed
At Large

Cris Gears
Superintendent

Park Acquisition Opportunity Fund Grant Requirements

In accordance with the Park Acquisition Opportunity Fund Grant Rules, I am attaching the documentation listed below and will forward the final settlement/award, certificate, and other required documents upon settlement.

- 1) Agency's authorization to file condemnation petition
- 2) Condemnation petition and intent to file condemnation
- 3) Associated appraisals, appraisal reviews, and offer letters
- 4) Aerial and general location map

Settlement Prior to Condemnation Completion

The Park District is still actively negotiating with the property owner to reach a settlement agreement on a willing seller basis. As such, it is possible that the Park District will reach a settlement agreement before the completion of the condemnation. The Park District will keep the Metropolitan Council apprised of any successful negotiation efforts.

I would appreciate if you would confirm receipt and inform me of any concerns regarding this notification by the end of next week. As always, thank you for your assistance with the above matter.

Sincerely,



Heather Kuikka
Administrative Specialist - Planning

Enclosures

C: Kelly Grissman, Director of Planning
Jonathan Vlaming, Associate Superintendent
Eric Nelson, Senior Manager of Engineering
Deb Jensen, Metropolitan Council



December 21, 2018

Three Rivers
Park District
Board of
Commissioners

Mr. Emmett Mullin, Manager
Regional Parks and Natural Resources Unit
Community Development Division
390 North Robert Street
St. Paul, MN 55101

Penny Steele
District 1

RE: Park Acquisition Opportunity Grant Fund Request
Nine Mile Creek Regional Trail: Parcel 8 – New City Covenant Church

Jennifer DeJournett
District 2

Dear Emmett,

Three Rivers Park District respectfully requests a Park Acquisition Opportunity Grant for Nine Mile Creek Regional Trail in the amount of \$509,869.50 for acquisition of one easement located in Edina and acquired through condemnation. Please process this request and forward to the Metropolitan Parks Open Space Commission, Community Development Committee, and Metropolitan Council for consideration and approval.

Daniel Freeman,
Vice Chair
District 3

Reimbursement Request Reference Number

For communication and tracking purposes, this request is designated as Nine Mile Creek Regional Trail Parcel 8.

John Gunyou,
Chair
District 4

Background

The associated \$5.72 million Federal Surface Transportation Grant required that all right-of-way for Nine Mile Creek Regional Trail: Edina West Segment, be secured and paid for by June 1, 2017.

John Gibbs
District 5

Due to preliminary unsuccessful negotiations, and as required by the federal grant, the Park District commenced condemnation in spring 2015 on four public trailway easements including Parcel 8. The Metropolitan Council was notified of the Park District's intent to utilize condemnation and seek an Acquisition Opportunity Fund Grant at a later date on July 20, 2016.

Larry Blackstad
Appointed
At Large

We recently completed all the condemnation proceedings for Parcel 8 and are requesting reimbursement for associated costs.

Steve Antolak
Appointed
At Large

Easement Payment

In accordance with the condemnation process, the Park District has already issued payment to the easement property owner. As such, this grant request is for expenses generally already incurred by the Park District and as allowed by the Park Acquisition Opportunity Grant rules.

Cris Gears
Superintendent

Previously Submitted Documentation

The following documentation was previously conveyed to the Metropolitan Council:

- Notification of intent to pursue condemnation (July 2016)
- Park District authorization to file condemnation petition
- Notice of Intention to Take Title and Possession of Property
- Petition and Motion for An Order Authorizing Transfer of Title
- Appraisals

Please process this request in accordance with the Metropolitan Council’s standard review and approval processes. In addition, please notify me of the tentative review and approval meetings.

Thank you for your continued assistance through this process.



Heather Kuikka
Planning Administrative Specialist

Enclosures

C: Jonathan Vlaming, Associate Superintendent
Kelly Grissman, Director of Planning



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Application

Instructions

Print to PDF will convert the application plus any PDF attachments into a single PDF file. Release for Review will change the status of the application to Under Review and move it on to the evaluation process. Negotiation will allow you to unlock one or more sections of the application and route the application back to the applicant for further editing. Annotations allow internal staff to add notes that are visible to internal staff only and possibly also reviewers if they have a special security privilege. The applicant cannot see these notes. Versions will display all component versions that were created as a result of the negotiation process. Feedback allows staff to enter feedback about the application to the applicant. The feedback text will appear at the bottom of the application and will be visible to anyone who has access to the application. Withdraw changes the status of the application to Withdrawn and removes the app from the evaluation process.

Application Details

Map | Print to PDF | Negotiation | Annotations(0) | Versions | Feedback | Withdraw

10851 - 2019 Parks Acquisition Opportunity Fund - Final Application

11973 - Nine Mile Creek Regional Trail Easement - New City Covenant Church Parks Grants Acquisition

Status: Under Review Submitted Date: 12/27/2018 11:31 AM

Applicant Information

Primary Contact:

Name: Ms. Heather Kuikka
Title: Administrative Specialist - Planning
Department:
Email: Heather.Kuikka@threeiversparks.org
Address: 3000 Xenium Lane N
City: Plymouth State/Province: Minnesota Postal Code/Zip: 55441
Phone: 763-559-9000
Fax:
What Grant Programs are you most interested in?: Parks Grants Acquisition

Authorized Official

Name: Ms. Kelly Kristin Grissman
Title: Director of Planning
Department: Planning
Email: kgrissman@threeiversparkdistrict.org
Address: 3000 Xenium Lane North
City: Plymouth State/Province: Minnesota Postal Code/Zip: 55441
Phone: 763-694-7635

Fax: 763-557-5248
 What Grant Programs are you most interested in?* Parks Grants Acquisition

Organization Information

Name:* THREE RIVERS PARK DISTRICT

Jurisdictional Agency (if different):

Organization Type:

Organization Website:

Address:* RESERVATIONS
 3000 XENIUM LN N

* PLYMOUTH Minnesota 55441-2661
City State/Province Postal Code/Zip

County:* Hennepin

Phone:* 763-559-6700

Ext.

Fax:

PeopleSoft Vendor Number 0000057347A1

Project description

Please limit acquisition requests to a single park or trail

Park or trail name Nine Mile Creek RT-Three Rivers Park District

Master plan

An acquisition request will not be considered complete or added to an ENRTF work plan until the property is included in a Council-approved master plan.

Is the project consistent with a Council-approved master plan? Yes

If yes, name of master plan and date of Council approval Nine Mile Creek Regional Trail 12/11/2013
Name of master plan Council approval date - Format: mmddyyyy (Do not enter any punctuation.)

If no, has a master plan amendment been submitted to the Council for review and approval?

Acquisition method

Acquisition method Condemnation

If the acquisition method is anything other than routine, provide more detail.

This question seeks a general description of the acquisition method - is this a routine purchase, or does it involve a land donation, park dedication fees, condemnation, or some combination? Please use this space to describe the overall acquisition project.

Due to preliminary unsuccessful negotiations, and as required by the federal grant, the Park District commenced condemnation in spring 2015 on four public trailway easements including Parcel 8. The Metropolitan Council was notified of the Park District's intent to utilize condemnation and seek an Acquisition Opportunity Fund Grant at a later date on July 20, 2016. In accordance with the condemnation process, the Park District has already issued payment to the easement property owner. As such, this grant request is for expenses already incurred as well as future/final legal and recording expenses by the Park District and as allowed by the Park Acquisition Opportunity Grant rules.

Public domain

Is any portion of the property currently in the public domain? No

If yes, describe/name the entity and the portion of the property it owns, as well as why this public-to-public transfer is necessary.

The property was not in public domain prior to condemnation proceedings.

Eminent domain

If condemnation will be involved, include documentation of your governing body's authorization (on the Other Acquisition Attachments web page).

If condemnation is involved, date the petition was/will be filed. 03/31/2016

If condemnation is involved,

expected settlement date 12/04/2018

Are there easements or other encumbrances on any part of the property? No

If yes, describe

Closing date

*The Council will process all acquisition requests expeditiously, but we do not guarantee that the approval process will be completed to meet your requested closing date. This date will be considered an **estimate** only. However, the acquisition must be completed during the grant term.*

Estimated closing date 10/03/2016
Format: mmddyyyy (Do not enter any punctuation.)

Date purchase agreement expires
Format: mmddyyyy (Do not enter any punctuation.)

Relocation costs

Payment of relocation costs are subject to both state and federal law. Please consult with Agency attorneys to determine applicability for this acquisition. If the seller has waived relocation rights, you must upload an executed copy of the waiver.

Does the requested grant amount include relocation costs? No

Appraisal

*The appraisal must have an effective date within one year of the date the purchase agreement is signed. The appraisal **MUST** list the Metropolitan Council as an intended user, and the intended use must include "negotiation and grant reimbursement."*

Appraisal effective date 11/25/2016

Appraised value \$280,000.00

Amount being offered the seller (net of closing and other costs) \$612,500.00 218.75%
% of appraised value

Appraisal date 02/22/2016

Who performed the appraisal? Day Group

Who contracted for the appraisal (i.e., was it done at arms' length)? Three Rivers Park District

Was a survey done? No

Quality of natural resources - is the property...

...undeveloped? Yes
Fully Partially

...wooded? Yes
Fully Partially

...shoreline? Partially
Fully Partially

Describe the existing natural resources it contains

The property is partially developed with the eastern half being developed as a church with parking lot, lawns and access drive and the western portion being undeveloped with part of it in flood plain/low land forest and wetland.

Suggested funding source

*For guidance, see the PAOF rules in the 2040 Regional Parks Policy Plan at <http://metro council.org/Parks/Publications-And-Resources/POLICY-PLANS/2040-Regional-Parks-Policy-Plan.aspx>; for **ENRTF fee title acquisition project requirements**, see http://www.lccmr.leg.mn/pm_info/enrtf_fee-title-acquisition-project-requirements.pdf*

The Council will review your project specifics and work with you to determine the optimal funding source(s).

Anticipated funding source PTLF Legacy / Council match
Select as many as apply

Structures currently on the property

Does the property contain ANY structures? Yes

If yes, are there any habitable structures? No

If yes, what is the plan for the structure(s)? Structure will remain - this is for an easement only.

If there are habitable structures, could they be relocated? If yes, how? If no, why not? No. The structure is a church.

For ENRTF funding only

If this will use ENRTF funding, LCCMR rules require that you describe the selection process used to identify these proposed parcels.

NOTICE: ENRTF funding has specific requirements for disseminating information to the public when property is purchase through the Trust Fund. It is the agency's responsibility to meet those requirements and to provide documentation to the Council BEFORE payment will be made.

Does the property currently contain any revenue-generating businesses? No

If the property contains habitable structures or revenue-generating businesses, describe:

The property is currently a religious institution and while this could generate revenue from members through donations, it does not seem in the spirit of what the question is asking. In addition, the required easement does not prohibit the church from operating or collecting donations from members or visitors.

Relocation costs are governed by both state and federal law. If relocation costs are not requested as part of the grant, Agencies must upload an executed copy of the relocation waiver.

Does the grant request include relocation costs? No

Is the Agency aware of any opposition to this acquisition? Yes

If yes, explain: As a condemnation proceeding the owner was not supportive of providing an easement at least not at the appraised value. Ultimately, the owner agreed to the settlement prior to the commission hearing indicating at least some level of support or acceptance.

Stewardship and minimal access

Describe the stewardship plan.

The easement will be maintained as a regional trail corridor focusing on user safety (maintaining trail clearance zones). While there are small areas of natural resources within the easement area, they are significantly impacted by the greater habitat surroundings which do consist of invasive species and are heavily subject to flooding. As such, these areas will be maintained as open space and flood storage.

How will the stewardship implementation be funded?

Any stewardship work is envisioned to be funded through Three Rivers general operation budget/tax revenue unless part of a greater creek restoration project which, if particularly funded by Three Rivers, could be funded through a wide variety of funding options including both tax revenue and grants.

Are you requesting funds to provide minimal access to the property (prior to it being open to the public) as part of this grant request? No

If yes, how will those funds be used?

Site Description

Land Use History

Current land uses Commercial, Woods, Wetland
Select as many as apply

Previous land uses Residential, Commercial, Woods, Wetland
Select as many as apply

Adjacent land uses Residential, Woods, Wetland
Select as many as apply

Inspection

Does the property contain any of the following? Select as many as apply

Sellers and parcels

Seller name	Parcel address	PID	Acres	Date PA signed	Habitable structures?	MN House district	City	County	Met Council district	MPOSC	Latitude	Longitude
New City Covenant Church	6400 Tracy Avenue, Edina, MN 55439	05-116-21-24-0011	0 0.00		No	49A	Edina	Hennepin	5	District C	44.886437	-93.369236

Local match

Source of local match

Three Rivers GO Bonds or Land Acquisition Development Betterment Fund

Will you be requesting consideration for future reimbursement of any part of your local match?

Yes

If yes, how much?

\$169,956.50

Grant agreement signatories

Full name	Title	If this is an attorney, is the signature 'for form only'?
Boe R. Carlson	Superintendent and Secretary to the Board	

Acquisition Costs

Cost Items	Amount
Purchase price	
Negotiated purchase price	\$612,500.00
Appraisal expenses	
Appraisal	\$22,000.00
Appraisal review	\$0.00
Environmental expenses	
Phase I environmental site assessment	\$0.00
Phase II environmental site assessment	\$0.00
Environmental contamination remediation	\$0.00
Holding expenses	
Interest	\$0.00
Land stewardship	\$0.00
Land development	\$0.00
Pro-rated share of all property taxes/assessments	\$0.00
Legal services and closing costs	\$18,826.00
Property tax equivalency payment-473.341	\$0.00
Relocation costs to seller	\$0.00
State deed tax/conservation fee	\$0.00
Title insurance	\$0.00
Well disclosure statement	\$0.00
Other holding	\$0.00
Other expenses	
Other expenses	\$26,500.00
Totals	\$679,826.00

Total Estimated Acquisition Costs

Totals	Total acquisition cost	Total paid with state funds	Total paid with metro funds	Total paid by agency	Total grant amount
Total Estimated Acquisition Cost (calculated after costs above are entered)	\$679,826.00	\$305,921.70	\$203,947.80	\$169,956.50	\$509,869.50

Required Attachments - Acquisition

THREE RIVERS PARK DISTRICT

RESOLUTION NO. 16-03

A RESOLUTION APPROVING AND AUTHORIZING THE USE OF EMINENT DOMAIN FOR ONE PARCEL LOCATED IN THE WEST SEGMENT OF NINE MILE CREEK REGIONAL TRAIL IN THE CITY OF EDINA

WHEREAS, the City of Edina (City) participated in and provided a Resolution of Support for the Nine Mile Creek Regional Trail (Trail) Master Plan on May 22, 2012; and

WHEREAS, the City approved the final alignment for the Trail on July 15, 2014; and

WHEREAS, the City entered into a Trailway Cooperative Agreement (Agreement) for the Trail with the Park District on February 3, 2015; and

WHEREAS, the Agreement requires the Park District to acquire at Park District cost any additional non-public property rights as may be necessary to provide a continuous and contiguous Trail corridor where achievable through direct purchase; and

WHEREAS, the Agreement requires the City to approve acquisition by Park District of said property rights and approve the use of eminent domain to obtain property rights if Park District is unable to acquire property through direct purchase; and

WHEREAS, the City passed a resolution to approve acquisition by Park District of said property rights and approve the use of eminent domain to obtain property rights if Park District is unable to acquire property through direct purchase on February 3, 2015; and

WHEREAS, at this time it is necessary to acquire one (1) public trailway easement from the owner(s) for the west segment of the Trail in order to provide a continuous and contiguous Trail corridor; and

WHEREAS, the Park District is actively negotiating with the property owner with the intent to acquire property rights for the parcel described below through direct purchase; and

Public Trailway Easements

Parcel	Location	Description
Parcel 8	6400 Tracy Avenue, Edina, MN 55439 PID 05-116-21-24-0011	26,636 square feet of permanent easement and 1,982 square feet of temporary easement

WHEREAS, failure to secure property rights for the aforementioned property jeopardizes the availability of a \$5.72 Million Federal Surface Transportation Program Grant and ultimately the ability of the Park District to construct the Trail; and

WHEREAS, the Park District will seek to obtain required property rights through eminent domain if it is unsuccessful obtaining said rights through negotiation and direct purchase; and

WHEREAS, an appraisal has been prepared and provided to the owners of Parcel 8; and

WHEREAS, the appraised value of Parcel 8 is as follows:
Parcel 8:\$161,400

THEREFORE, BE IT RESOLVED, that the Park District, in accordance with Minn. Stat. § 398.09 subd. b, approves the direct purchase of Parcel 8 for the west segment of Nine Mile Creek Regional Trail, approves the appraisal value for the parcel identified in this resolution, and approves and authorizes the use of eminent domain, including quick take acquisition, to obtain the property rights described in this resolution if direct purchase is not reasonably obtainable.

Adopted this 7th day of January 2016.

Three Rivers Park District, a public corporation and political subdivision of the State of Minnesota

Dated: 01/07/16

By: [Signature]
Its Chair - Board of Commissioners

Dated: 01/07/16

By: Boe R. Carlson
Its Superintendent
and Secretary to the Board

CASE TYPE: 2
CONDEMNATION

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Three Rivers Park District,

Court File No.: 27-CV-16-4378

Petitioner,

v.

STIPULATION OF SETTLEMENT

New City Covenant Church, John D. March and Sallie S. March, and all other parties unknown having any right, title, or interest in the premises herein, together with the unknown heirs or devisees, if any, of the parties that may be deceased, and including unknown spouses, if any,

Respondents.

THIS STIPULATION is made by and between Petitioner Three Rivers Park District (“Park District”) and Respondents New City Covenant Church, John D. March, and Sallie S. March (collectively “Respondents”).

RECITALS

1. The following recitals are a part of the parties’ stipulation.
2. New City Covenant Church is the fee owner of real property identified as Parcel 8 on *Exhibit A* to the Park District’s March 31, 2016 Petition in this matter (“the Property”). A copy of the applicable part of *Exhibit A* is attached and incorporated herein.
3. The Park District commenced this condemnation action to acquire a permanent easement and a temporary construction easement over portions of the Property (“Subject

Interests”) as described in *Exhibit A*, in order to construct the Nine Mile Creek Regional Trail (“Project”).

4. On or about August 9, 2016, the Park District paid \$161,400 jointly to New City Covenant Church, John D. March, and Sallie S. March pursuant to Minn. Stat. § 117.042 (“2016 Payment”). Pursuant to the Court’s Order dated June 1, 2016, the Subject Interests vested in the Park District on August 9, 2016.

5. The Park District and Respondents (“Parties”) have reached a full and final settlement and compromise of the matters in dispute.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, it is hereby stipulated and agreed between the Parties as follows:

1. Settlement Amount. The Park District and Respondents agree to a full and final settlement of all claims of Respondents with respect to the Park District’s acquisition of the Subject Interests for the total amount of \$612,500.00 (“Settlement Amount”). The Settlement Amount shall be determined to be the just compensation due and owing by the Park District inclusive of interest and any fees and costs to which Respondents may have been entitled pursuant to Minn. Stat. § 117.031.

2. Payment. Within 10 business days of the execution of this Agreement, the Park District shall pay \$451,100 jointly to New City Covenant Church, John D. March, and Sallie S. March which represents the balance of the Settlement Amount less the amount of the 2016 Payment.

3. Other Considerations. The parties agree to the following additional terms:

- a. New City Covenant Church acknowledges that New City Covenant Church will not have to, and does not intend to, relocate as a result of the Project.
 - b. New City Covenant Church acknowledges that New City Covenant Church did obtain its own appraisal in connection with the condemnation action.
4. Full and Final Compromise. Respondents and the Park District acknowledge that the terms and conditions of this Stipulation of Settlement constitute a full and final compromise of all matters in dispute with respect to Parcel 8. In consideration of the Settlement Amount and other terms and conditions of this Stipulation of Settlement, Respondents waive any and all claims Respondents may have against the Park District in connection with this condemnation action, including without limitation, just compensation, statutory remedies, any other damages, interest, relocation benefits, appraisal fees, attorney fees, and costs and disbursements to which Respondents may otherwise be entitled.
5. Condemnation Action. The Park District shall file this Stipulation of Settlement with the District Court. After payment of the balance of the Settlement Amount pursuant to Paragraph 3 of this Agreement, the Park District will file a Final Certificate in this action with respect to Parcel 8. Each of the parties will bear its own costs in connection with this action. The District Court shall retain jurisdiction to enforce the terms of this Stipulation of Settlement.
6. Entire Agreement. The undersigned state and represent that they have fully read this Stipulation of Settlement, and that they each know and understand the consequences and legal effect thereof. The Stipulation of Settlement contains the entire agreement of the parties with regard to the matters set forth herein.
7. Execution. The parties agree that this Stipulation of Settlement may be executed in separate counterparts which, taken together, shall be and comprise one agreement.

8. Authority. The persons signing this Stipulation of Settlement in their representative capacities represent and warrant by signing this Agreement that it is their intent to bind their respective principals and/or clients to the terms and conditions set forth herein, that the persons signing in their representative capacity have been authorized to bind their respective principals and/or clients to such terms, and that it is the respective principals' and/or clients' intent to be so bound.

Dated: December 20, 2018

THREE RIVERS PARK DISTRICT

By: 

Its: Board Chair

Dated: December __, 2018

NEW CITY COVENANT CHURCH

By: _____

Its: _____

Dated: December __, 2018

By: _____
JOHN D. MARCH

Dated: December __, 2018

By: _____
SALLIE S. MARCH

8. Authority. The persons signing this Stipulation of Settlement in their representative capacities represent and warrant by signing this Agreement that it is their intent to bind their respective principals and/or clients to the terms and conditions set forth herein, that the persons signing in their representative capacity have been authorized to bind their respective principals and/or clients to such terms, and that it is the respective principals' and/or clients' intent to be so bound.

Dated: December __, 2018

THREE RIVERS PARK DISTRICT

By: _____

Its: _____

Dated: December 24, 2018

NEW CITY COVENANT CHURCH

By: [Signature]

Its: Lead Pastor

Dated: December 23, 2018

By: [Signature]

JOHN D. MARCH

Dated: December 23, 2018

By: [Signature]

SALLIE S. MARCH

EXHIBIT A
PROPERTY TO BE TAKEN

Parcel No. 8: Property I.D. No. 05-116-21-24-0011

Property Address: 6400 Tracy Avenue, Edina, MN 55439

Description of Subject Property:

That part of Outlot 4 and the Easterly 100 feet of Outlot 5 as measured at right angles to the Easterly line of said Outlot 5, Creek Valley Addition, according to the plat thereof on file and of record in the office of the County Recorder, Hennepin County, Minnesota.

("Parcel No. 8").

Description of Easements to be Taken:

26,636 square feet of permanent easement for trail purposes over, under and across Parcel No. 8. The centerline of said permanent trail easement is described as follows:

Commencing at the Southeast Corner of Outlot 3 of said plat, thence South 58 degrees 04 minutes 30 seconds West, assumed bearing, along the South line of said Outlot 3 a distance of 110.15 feet to the westerly right-of-way of Tracy Avenue; thence North 14 degrees 20 minutes 44 seconds West 182.91 feet along the westerly right-of-way line of Tracy Avenue to the beginning of the line to be described; thence South 87 degrees 31 minutes 31 seconds West 132.06 feet; thence westerly 178.80 feet along a tangential curve concave to the north having a radius of 262.83 feet and a central angle of 38 degrees 58 minutes 44 seconds, thence South 55 degrees 46 minutes 39 seconds West 27.13 feet; thence North 54 degrees 47 minutes 14 seconds West 106.12 feet; thence North 41 degrees 35 minutes 41 seconds West 157.34 feet; thence North 18 degrees 24 minutes 04 seconds, and the chord of said curve is 160.85 feet in length and bears North 70 degrees 53 minutes 43 seconds West to a point on the west line of the east 100 feet of Outlot 5; thence North 11 degrees 37 minutes 12 seconds East along the west line of the east 100 feet of Outlot 5 a distance of 20.06 feet; thence southerly a distance 274.97 feet along a non-tangential curve concave to the south , having a radius of 410.00 feet, a central angle of 39 degrees 11 minutes 06 seconds, and the chord of said curve is 274.97 feet in length and bears South 62 degrees 59 minutes 15 seconds East; thence South 43 degrees 23 minutes 42 seconds East 166.19; thence easterly 208.17 feet along a tangential curve concave to the north having a radius of 242.59 feet and a central angle of 49 degrees 09 minutes 52 seconds; thence North 87 degrees 30 minutes 47 seconds East to the westerly right-of-way line of Tracy Avenue; thence South 14 degrees 20 minutes 44 seconds East along the westerly right-of-way line of Tracy Avenue; thence South 14 degrees 20 minutes 44 seconds East along the westerly right-of-way of Tracy Avenue to the point of beginning and said line there terminating.

Together with a temporary easement for construction purposes, from November 30, 2016 to November 30, 2017, over, under, and across Parcel No. 8, lying southerly of the above described permanent trail easement and northerly of the line described as follows:

Commencing at the Southeast Corner of said Outlot 3; thence South 58 degrees 04 minutes 30 seconds West, assumed bearing, along the south line of said Outlot 3 a distance of 110.15 feet to

EXHIBIT A
PROPERTY TO BE TAKEN

the westerly right-of-way of Tracy Avenue; thence North 14 degrees 20 minutes 44 seconds West 172.27 feet along the westerly right-of-way line of Tracy Avenue to the beginning of the line to be described; thence South 87 degrees 36 minutes 19 seconds West 165.04 feet; thence North 78 degrees 05 minutes 18 seconds West 76.14; thence North 59 degrees 44 minutes 51 seconds West 70.50; thence North 35 degrees 28 minutes 28 seconds East 2.95 feet to a point on the southerly line of the above described permanent trail easement and said line there terminating.

Also together with a temporary easement for trail construction purposes, from November 30, 2016 to November 30, 2017, over, under and across the first described property lying easterly of a line described as follows:

Commencing at the Southeast corner of Outlot 3 of said plat, thence South 58 degrees 04 minutes 30 seconds West, assumed bearing, along the South line of said Outlot 3 a distance of 110.15 feet to the westerly right-of-way line of Tracy Avenue; thence North 14 degrees 20 minutes 44 seconds West 220.37 feet along the westerly right-of-way line of Tracy Avenue to the beginning of the line to be described; thence South 87 degrees 31 minutes 09 seconds West 20.00 feet; thence North 14 degrees 20 minutes 44 seconds West 20.00 feet; thence North 87 degrees 31 minutes 09 seconds East 20.00 feet to a point on the easterly line of the above described parcel and said line there terminating.

Also together with a temporary easement for trail construction purposes, from November 30, 2016 to November 30, 2017, over, under and across the first described property lying southerly of the above described permanent trail easement and northerly of a line described as follows:

Commencing at the Southeast corner of Outlot 3 of said plat, thence South 58 degrees 04 minutes 30 seconds West, assumed bearing, along the South line of said Outlot 3 a distance of 110.15 feet to the westerly right-of-way line of Tracy Avenue; thence North 14 degrees 20 minutes 44 seconds West 220.37 feet along the westerly right-of-way line of Tracy Avenue to the beginning of the line to be described; thence South 87 degrees 31 minutes 31 seconds West 132.06 feet; thence westerly 178.80 feet along a tangential curve concave to the north having a radius of 262.83 feet and a central angle of 38 degrees 58 minutes 44 seconds; thence South 55 degrees 46 minutes 39 seconds West 27.13 feet; thence North 54 degrees 47 minutes 14 seconds West 106.12; thence North 41 degrees 35 minutes 41 seconds West 157.34 feet; thence North 18 degrees 24 minutes 04 seconds West 57.37 feet; thence North 59 degrees 52 minutes 29 seconds West 11.98; thence North 76 degrees 08 minutes 32 seconds West 9.80 feet; thence North 67 degrees 27 minutes 09 seconds East 19.44; thence North 57 degrees 47 minutes 13 seconds West 24.24 to a point on the southerly line of the above described permanent trail easement and said line there terminating.

The proposed permanent trail easement encompasses 26,636 SF of PID 05-116-21-24-0011.

The proposed temporary construction easement encompasses 1,985 SF of PID 05-116-21-24-0011.

Interests Being Encumbered Within the Taking Areas Described Above:

EXHIBIT A
PROPERTY TO BE TAKEN

Name	Nature of Interest
New City Covenant Church	Fee Owner
John D. March and Sallie S. March	Mortgagees
All other parties unknown, together with unknown successors, assigns, heirs, devisees and spouses, if any, of any of the named parties	Any right, title, or interest within the acquired portion of Parcel No. 8

Notwithstanding the foregoing attempt to identify all interests held by a party named herein, it is Petitioner's intent to encumber all interest owned or claimed by the named Respondents in Parcel No. 8 within the taking areas described above.

SUBJECT IDENTIFICATION AND EXECUTIVE SUMMARY (CONTINUED)

Summary and Allocation of Damages

	Total	Per Lot
Before acquisition market value	\$2,400,000	\$218,182
Permanent damages before additional severance:		
Land for PE (23,086 sf @ 90% of \$8.44/sf, or \$7.60/sf), including value of volunteer growth/trees	(\$175,454)	(\$15,950)
Land for PE (3,550 sf @ 90% of \$1.27/sf, or \$1.14/sf), including value of volunteer growth/trees	(\$4,047)	(\$368)
Cost-to-cure left for property owner to address: none	\$0	\$0
Total permanent damages before severance damages (rounded)	(\$180,000)	(\$16,364)
Additional permanent severance damages:		
Creekside bisecting influence of trail & additional development costs for future landscape screening	(\$95,000)	(\$8,636)
Total permanent severance damages	(\$95,000)	(\$8,636)
Total permanent damages	(\$275,000)	(\$25,000)
Less special benefit - none (trail enhancement considered a general benefit for the district)	\$0	\$0
Net permanent damages (rounded)	(\$275,000)	(\$25,000)
Less temporary construction easement (1,982 sf for 12 months and volunteer growth/tree loss)	(\$4,500)	(\$409)
Less temporary additional onsite construction-related interference	\$0	\$0
Combined temporary damages	(\$4,500)	(\$409)
Total damages (rounded)	(\$280,000)	(\$25,455)
After acquisition market value	\$2,120,000	\$192,727

Before and After Values, and Total Damages

	Total Value	Per Net Acre	Per Unit
Before-Taking Market Value	\$2,400,000	\$386,159	\$218,182
After-Taking Market Value	\$2,120,000	\$341,107	\$192,727
Diminution in Market Value	\$280,000	\$45,052	\$25,455

Allocation of Damages

	Total	Per Unit	Percent of Total
Land value loss	\$275,000	\$25,000	98%
Site improvements value loss	\$0	\$0	0.00%
Building value loss	\$0	\$0	0.00%
Temporary construction easement	\$4,500	\$409	2%
Additional constructed-related interference	\$0	\$0	0.00%
Total Just Compensation (rounded)	\$280,000	\$25,455	100.00%