

# Committee Report

Community Development Committee



For the Metropolitan Council: November 9, 2022

## Business Item: 2022-285 SW

Vermillion Highlands Greenway Regional Trail, Park Acquisition Opportunity Fund (McMenomy), Dakota County

### Proposed Action

That the Metropolitan Council approve a grant of up to \$187,860 to Dakota County to acquire a 5.72-acre easement on the McMenomy property, located at 120<sup>th</sup> Street West in Rosemount, for Vermillion Highlands Greenway Regional Trail.

### Summary of Community Development Committee Discussion/Questions

Jessica Lee, Senior Parks Planner, presented the staff report to the Community Development Committee on November 7, 2022.

Chair Robert Lilligren asked why the item was same week. Ms. Lee responded that Dakota County needs to close on the property by the end of the month, and because of the upcoming holiday, the item needed to be on the November 7<sup>th</sup> agenda to accommodate that timeline.

The Community Development Committee voted unanimously to approve the proposed action.

Motion by Council Member Wendy Wulff, seconded by Council Member Molly Cummings. Motion carried.

# Committee Report

Metropolitan Parks and Open Space Commission



**Community Development Committee Meeting:** November 7, 2022 **For the Metropolitan Council:** November 9, 2022

## Business Item: 2022-285 SW

Vermillion Highlands Greenway Regional Trail, Park Acquisition Opportunity Fund Award (McMenomy), Dakota County

### Proposed Action

That the Metropolitan Council approve a grant of up to \$187,860 to Dakota County to acquire a 5.72-acre easement on the McMenomy property, located at 120<sup>th</sup> Street West in Rosemount, for Vermillion Highlands Greenway Regional Trail.

### Summary of Metropolitan Parks and Open Space Commission Discussion/Questions

Jessica Lee, Senior Parks Planner, presented the staff report to the Metropolitan Parks and Open Space Commission on November 3, 2022. Al Singer, Dakota County Land Conservation Manager, was in attendance and responded to questions.

Commissioner Jeremy Peichel asked about the Wiklund Preserve in Figure 4. Mr. Singer replied that the County purchased that property with the City of Rosemount in 2006, and it is not part of the greenway corridor, but that the greenway corridor will be located on the parcel to the south of the preserve.

Commissioner Robert Moeller asked why the County was purchasing an easement on the property rather than acquiring full ownership. Mr. Singer responded that the County is purchasing a natural area easement on the property to ensure that the land will be protected as a natural area with minimum development.

The Metropolitan Parks and Open Space Commission voted unanimously to approve the proposed action.

Motion by Commissioner Peichel, seconded by Commissioner Moeller. Motion carried.

# Business Item

Metropolitan Parks and Open Space Commission



Community Development Committee Meeting: November 7, 2022 For the Metropolitan Council: November 9, 2022

## Business Item: 2022-285 SW

Vermillion Highlands Greenway Regional Trail, Park Acquisition Opportunity Fund Award (McMenomy), Dakota County

<b>District(s), Member(s):</b>	District H, Todd Kemery District 15, Phillip Sterner
<b>Policy/Legal Reference:</b>	Minn. Const. art. XI, sec. 15; Minn. Stat. § 473.315; 2040 Regional Parks Policy Plan, Chapter 4, Siting and Acquisition Policy- Strategy 1; Chapter 5, Planning Policy- Strategy 1; Chapter 8, Finance Policy- Strategy 7. FM 15-2 Grant/Loan Approval Policy, FM 14-2 Expenditures for the Procurement of Goods and Services Policy.
<b>Staff Prepared/Presented:</b>	Jessica Lee, Senior Planner, 651-602-1621
<b>Division/Department:</b>	Community Development / Regional Planning

### Proposed Action

That the Metropolitan Council approve a grant of up to \$187,860 to Dakota County to acquire a 5.72-acre easement on the McMenomy property, located at 120<sup>th</sup> Street West in Rosemount, for Vermillion Highlands Greenway Regional Trail.

### Background

#### **Regional Park Implementing Agency and Project Request**

Dakota County requested a Park Acquisition Opportunity Fund (PAOF) grant on September 28, 2022, to fund the acquisition of a 5.72-acre easement for Vermillion Highlands Greenway Regional Trail. A copy of the Agency's request is attached to this item as Exhibit 2 with application details in Exhibit 3. The 5.72-acre property is part of a larger 69-acre parcel, and the County will also be acquiring an easement for most of the remaining acres to conserve as a natural area (see Exhibit 1, Figures 4 and 5). The acquisition of the remaining acreage is not part of this business item.

The Vermillion Highlands Greenway Regional Trail is a 13-mile planned trail that will connect Lebanon Hills Regional Park to the 3,000-acre natural area encompassing the Vermillion River Aquatic Management Area and Wildlife Management Area, Whitetails Woods Regional Park, and the Vermillion River (see Exhibit 1, Figures 2 and 3).

#### **Subject Property**

The subject 5.72-acre property is within the Council-approved boundary of Vermillion Highlands Greenway Regional Trail. The property, undeveloped with high-quality oak forest and nearby

wetlands, will be maintained as a greenway corridor adjacent to a natural conservation area.

### **Park Acquisition Opportunity Fund (PAOF)**

The Council's Park Acquisition Opportunity Fund (PAOF) Program provides funding 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 by matching every \$3 in state funds with \$2 in Council funds. The \$3 to \$2 match is required at the program level, not the individual project level.

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.

### **Project Budget**

The appraised value of the easement is \$235,000, and the Seller has agreed to a purchase amount of \$246,848, which is 105% of the appraised total value. Council policy allows for grants up to 110% of the certified appraised value. See Exhibit 4 for more information on the appraisal. The total project cost including legal fees, taxes, and appraisal is \$250,480, as shown in Table 1 below.

*Table 1. Project Budget*

<b>Budget item</b>	<b>Requested amount</b>
Purchase price	\$246,848
Stewardship	\$0
Appraisal, legal fees, taxes, closing costs	\$3,632
Environmental assessments	\$0
<b>Total Costs</b>	<b>\$250,480</b>
<b>Grant structure</b>	
Grant amount	\$187,860
Local match	\$62,620

### **Acquisition Details**

This is a straightforward trail easement acquisition.

### **Rationale**

Council staff conduct the review of each PAOF request on a first-come-first-served basis under the following standards:

- the proposed acquisition complies with state statute and Council policy
- all necessary documentation for the acquisition is in place
- the appraisal is reasonable and appropriate

This acquisition is consistent with:

- The Parks and Trails Legacy Fund
- 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 Council approved the Vermillion Highlands Greenway Regional Trail master plan in 2012. The proposed acquisition is within the boundaries of the approved master plan.
  - Siting and Acquisition Strategy 1 prioritizes the acquisition of lands with natural resource features, access to water, and/or restoration potential for the Regional Parks System. The subject easement is necessary to complete the Vermillion Highlands Greenway Regional Trail, several portions of which are a habitat corridor connecting high-quality natural



areas, including Lebanon Hills Regional Park and Whitetail Woods Regional Park. The property is high-quality oak forest with nearby diverse wetlands.

- 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.

### **Thrive Lens Analysis**

This request is consistent with *Thrive MSP 2040's* Livability and Stewardship outcomes. The Council's investment in Vermillion Highland Greenway Regional Trail will provide additional access to nature and the outdoors and enhance quality of life.

### **Funding**

The Council will fund the 75% share with Parks and Trails Legacy Fund and Council funds. The PAOF program has available funds in the Council's Authorized Capital Program.

Dakota County will provide a local match of \$62,620.

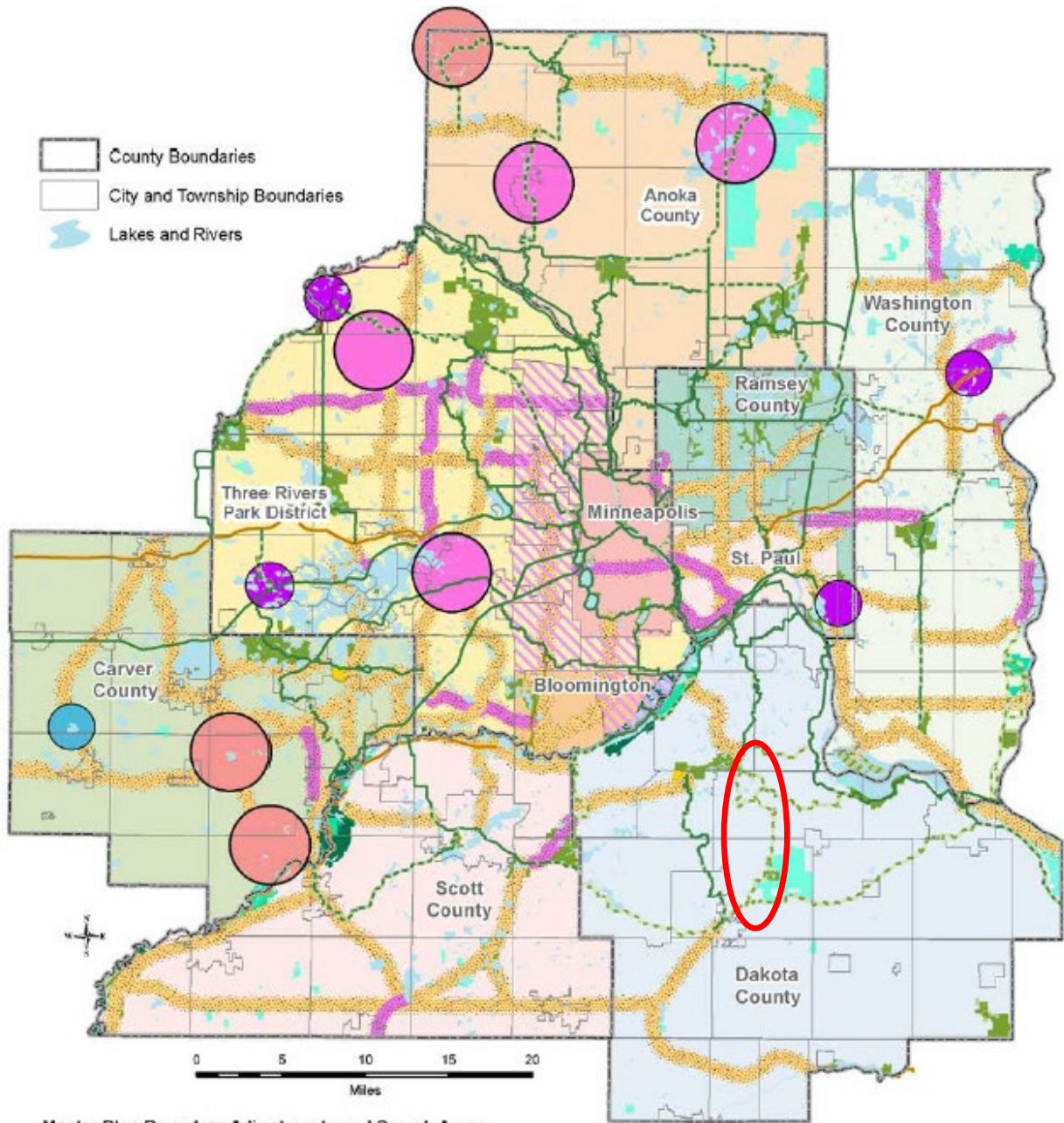
### **Exhibit List**

- Exhibit 1: Images
- Exhibit 2: Grant request letter
- Exhibit 3: Grant application
- Exhibit 4: Appraisal excerpt
- Exhibit 5: Board approval to purchase property
- Exhibit 6: Purchase agreement



# Exhibit 1 – Images

Figure 1. Map of the Regional Parks System and the Vermillion Highlands Greenway Regional Trail (circled in red)



### Master Plan Boundary Adjustments and Search Areas

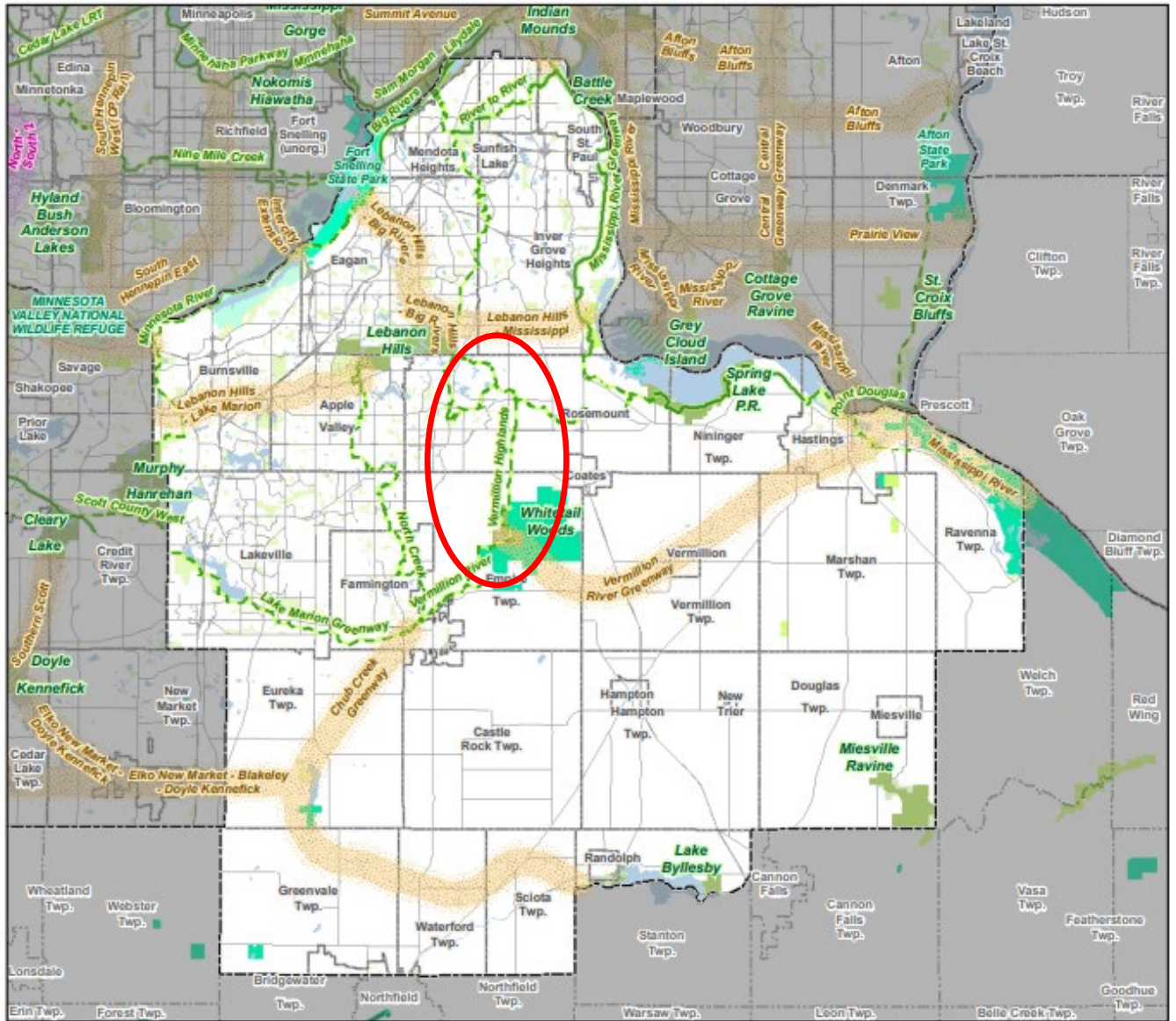
- |   |   |
|---|---|
| Existing:                                     | 2020 Amendment:                               |
| Boundary Adjustment                           | Boundary Adjustment                           |
| Park Search Area                              | Park Search Area                              |
|   | First-Ring City Bridging Facility Search Area |
| 2020 Amendment Regional Trail Search Corridor |   |
| Regional Trail Search Corridors               |   |

- Regional Trails (Open to the Public)
- Regional Trails (Not Open to the Public)
- State Trails
- Regional Trail Planned (Not Open to Public)
- Regional Parks (Open to the Public)
- Regional Parks (Not Open to the Public)
- Planned Parks (Not Open to the Public)
- State Wildlife Management Areas
- State Parks
- MN Valley National Wildlife Refuge
- Minnesota Valley State Trail and Recreation Area
- Special State Recreation Features



Figure 2. Map of Dakota County and the Vermillion Highlands Greenway Regional Trail (circled in red)

## Regional Parks System Dakota County



### Regional Parks

- Existing
- In Master Plan
- ▨ Planned Parks and Reserves

### Regional Trails

- Existing Regional Trails
- - - Planned Regional Trails
- Regional Trail Corridor Land

### Regional Park Search Areas and Regional Trail Search Corridors

- Boundary Adjustments
- Search Areas
- ▨ Regional Trail Search Corridors
- ▨ Regional Trails - 2040 System Additions

- Minnesota Valley National Wildlife Refuge
- State Parks
- State Wildlife Management Areas (Publicly Accessible)
- Scientific and Natural Areas (SNA)
- Other Parks and Preserves
- Existing State Trails
- Street Centerlines (NCompass)
- Lakes and Major Rivers

Figure 3. Segment 1 of the Vermilion Highlands Greenway Regional Trail from the 2012 master plan, with the approximate McMenemy easement location circled in red

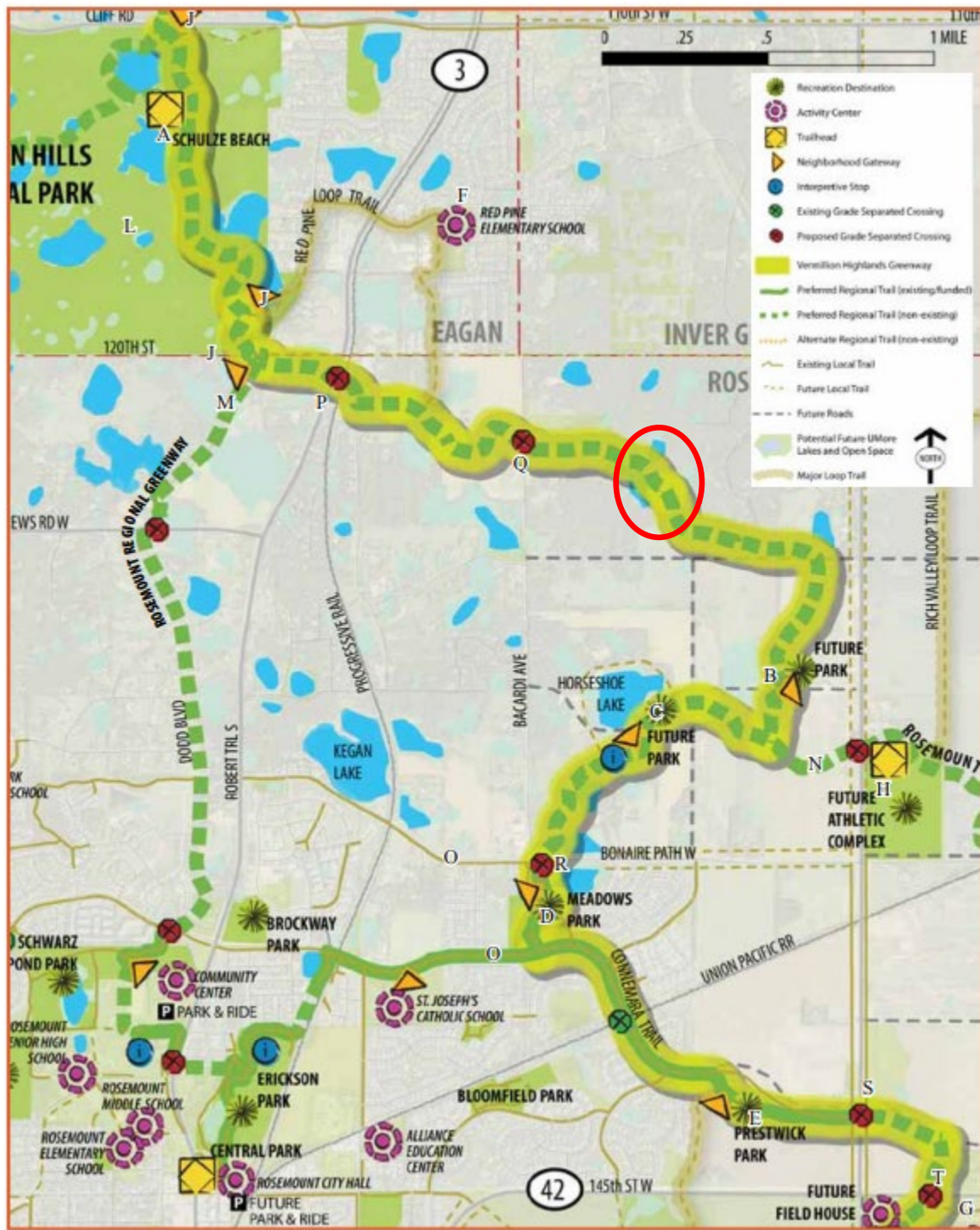




Figure 4. Aerial image showing the larger McMenemy property and the master-planned Vermillion Highlands Greenway Regional Trail

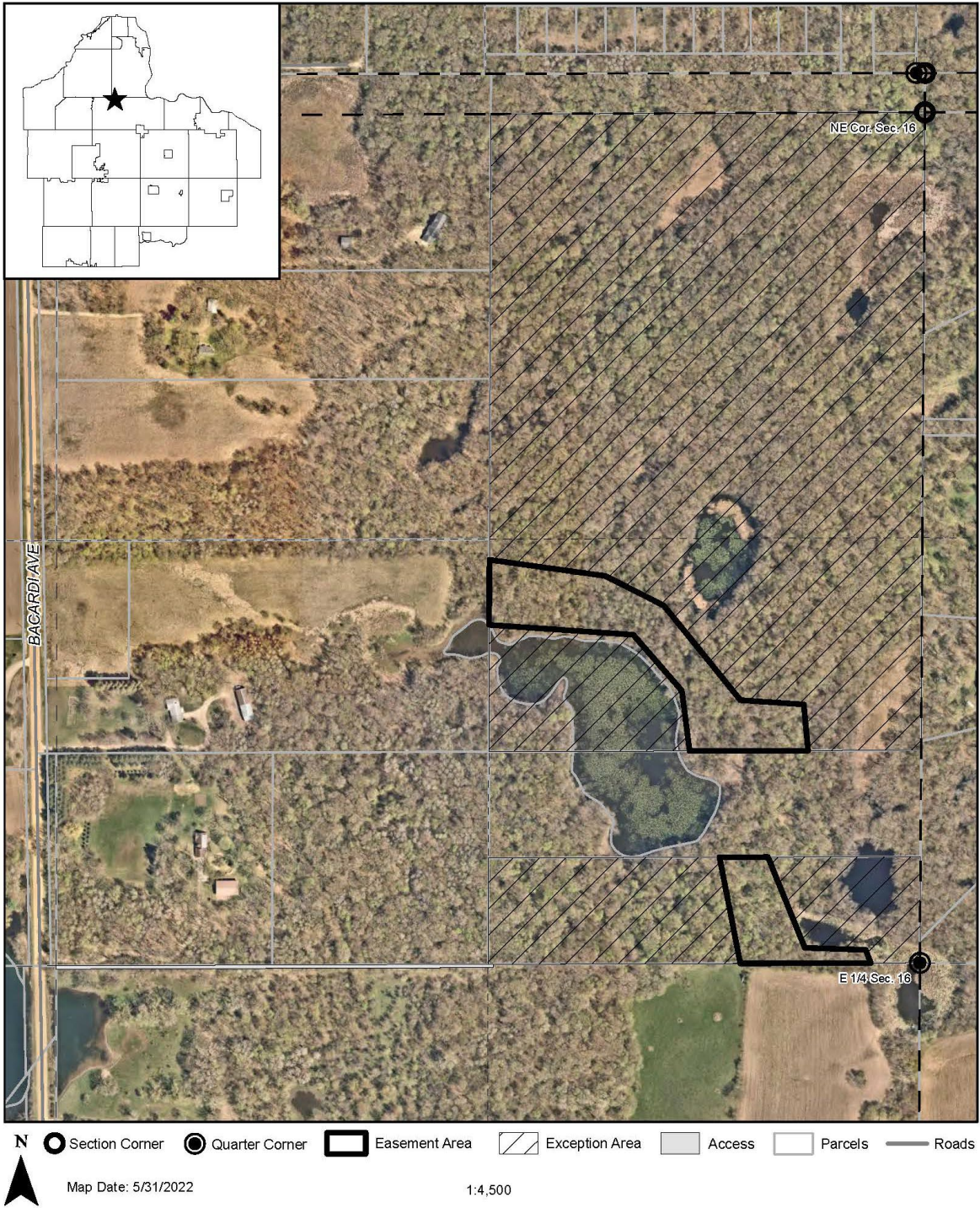


Figure 5. Aerial image of the 5.72-acre trail corridor easement

Exhibit A-1

# McMenomy Greenway Easement

PLS Section 16, 115-19  
Total Easement Acres 5.72



Metropolitan Council

## Exhibit 2: Grant request letter



September 28, 2022

Jessica Lee  
Metropolitan Council  
390 North Robert Street  
St. Paul, MN 55101

Dear Jessica:

Dakota County requests Metropolitan Council consideration for a \$187,860 Parks Acquisition Opportunity Fund (PAOF) grant for the purchase of the 5.72-acre regional corridor easement for a segment of the Vermillion Highlands Greenway.

The Vermillion Highlands Greenway is located between Lebanon Hills and Whitetail Woods Regional Parks in the cities of Eagan and Rosemount and Empire Township. The Master Plan identifying the general trail alignment through an area of lakes, high quality forest and wetlands was approved by the Dakota County Board of Commissioners on July 31, 2012, and by the Metropolitan Council on November 28, 2012.

The McMenemy family owns a 69-acre parcel in the City of Rosemount which has long been identified as a local priority for natural area protection. The Dakota County Board of Commissioners authorized acquisition of the regional greenway easement and an adjacent 63.2-acre natural area conservation on the McMenemy property and submission of an AOF grant request for the greenway easement at its June 21, 2022, meeting. The City of Rosemount will be acquiring fee title to the entire parcel as part of the overall project. The County executed the purchase agreement with the property owners on August 29, 2022.

This PAOF grant request is based on the following estimated expenses:

Expense Item	Amount
Purchase Price of Greenway Easement	\$246,848
Estimated Closing Costs and Title Insurance	\$1,882
Appraisal (50% of \$3,500 total cost)	\$1,750
<b>Total</b>	<b>\$250,480</b>
75 percent of total	<b>\$187,860</b>
25 percent of total	\$62,620

### Environmental Resources

Thank you for considering this request.

Sincerely,



Niki Geisler, Parks Director



Al Singer, Land Conservation Manager

C: Taud Hoopingarner, Parks, Facilities and Fleet Director  
Tara Zgoda, Financial Analyst

## Exhibit 3: Grant application



Application

17132 - 2022 Park Acquisition Opportunity Fund Program

18253 - Acquisition of Easement on McMenomy Property for Vermillion Highlands Greenway Regional Trail

Parks Grants Acquisition

Status: Under Review  
Original Submitted Date: 09/15/2022 7:57 AM  
Last Submitted Date: 09/28/2022 1:45 PM

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### Primary Contact

**Name:\*** AI Singer  
Pronouns First Name Middle Name Last Name

**Title:** Land Conservation Manager

**Department:** Environmental Resources

**Email:** al.singer@co.dakota.mn.us

**Address:** 14955 Galaxie Avenue

\* Apple Valley Minnesota 55124  
City State/Province Postal Code/Zip

**Phone:\*** 952-891-7001  
Phone Ext.

**Fax:**

**What Grant Programs are you most interested in?** Parks Grants Acquisition

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### Organization Information

**Name:** DAKOTA COUNTY

Jurisdictional Agency (if different):

Organization Type: County Government

Organization Website:

Address: PARKS  
14955 GALAXIE AVE

\* APPLE VALLEY Minnesota 55124  
City State/Province Postal Code/Zip

County: Dakota

Phone:\* 952-891-7991  
Ext.

Fax:

PeopleSoft Vendor Number 0000026855A13

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## Project description

*PAOF grants are limited to a single park or trail. Do not mix properties from more than one park or trail on a single request.*

Park or trail name Vermillion Highlands Greenway RT-Dakota County

### Master plan

*An acquisition request will not be considered complete 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  
Vermillion Highlands Greenway Master Plan 11/28/2012  
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 Easement

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**.*

N/A

Does this acquisition involve eminent domain? No

### Eminent domain

*If eminent domain is being used:*

*(1) you must upload a copy of the notice your Agency provided to the Council that the petition to the Court was filed.*

*(2) Include documentation of your governing body's authorization (on the Other Acquisition Attachments web page).*

**When was the Council notified of your intention to use eminent domain?**

**Date the petition was filed.**

**Settlement date**

**Public domain**

*Note that ENRTF funding cannot be used for acquisitions of property already in the public domain unless a minimum of 12 LCCMR commissioners approve the transaction. If this is a public domain acquisition and if you propose using ENRTF, be sure your closing schedule accommodates planning to be included on a future LCCMR agenda.*

**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.**

**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 standard one-year grant term unless prior approval is obtained from the Council or the grant term is amended.*

**Estimated closing date** 11/30/2022

*Format: mmddyyyy (Do not enter any punctuation.)*

**Type of agreement** Purchase Agreement

*i.e., purchase agreement, offer letter, etc.*

**Date agreement expires** 11/30/2022

*Format: mmddyyyy (Do not enter any punctuation.)*

**Relocation costs**

*Payment of relocation costs is required by both state and federal law, unless the seller waives those rights. 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** 04/18/2022

**Appraised value** \$235,000.00

**Amount being offered the seller (net of closing and other costs)** \$246,848.00 105.04%  
% of appraised value

**Who performed the appraisal?** Nagell Appraisal Inc.

**Who contracted for the appraisal (i.e., was it done at arms' length)?** Dakota County

**Survey**

**Was a survey done?** No

**Quality of natural resources - is the property...**

...undeveloped?	Yes	
	Fully	Partially
...wooded?		Yes
	Fully	Partially
...shoreline?		Yes
	Fully	Partially

**Describe the existing natural resources it contains**

High quality oak forest with nearby diverse wetlands

**Known opposition**

Is the Agency aware of any opposition to this acquisition? No

If yes, explain:

**Encumbrances**

To your knowledge, are there any current or anticipated assessments or liens on property? No

If yes, describe.

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

If yes, describe

**Clear title**

To your knowledge, does the current owner have clear title to the property? Yes

If not, what must be done to clear the title, and when will that be completed?

**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](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, ENRTF / Council match

*Select as many as apply*

**Funding source comments, if desired**

While this would be a good fit for ENRTF, we believe we will need to use PTLF due to the purchase price exceeding the appraisal.

**Structures currently on the property**

Does the property contain ANY structures? No

If yes, are there any habitable structures?

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

If yes, what is the plan for the structure(s)?





McMenomy Family	XXXX 120th Street West, Rosemount, MN 55068	34- 01610- 01-010	5.72	08/29/2 022	No	57B	Rosemount	Dakota	15	H	44.7724 78	93.0980 55	
			6										

## Local match

### Source of local match

County funds

## Grant agreement signatories

Full name	Title	If this is an attorney, is the signature 'for form only'?
Georg Fischer	Physical Development Division Director	
TBD	Assistant County Attorney	Yes

## Acquisition Costs

Cost Items	Amount	State funds	Metro funds	Match funds
<b>Purchase price</b>				
Negotiated purchase price	\$246,848.00	\$111,081.60	\$74,054.40	\$61,712.00
<b>Appraisal expenses</b>				
Appraisal	\$1,750.00	\$787.50	\$525.00	\$437.50
Appraisal review	\$0.00	\$0.00	\$0.00	\$0.00
<b>Environmental expenses</b>				
Phase I environmental site assessment	\$0.00	\$0.00	\$0.00	\$0.00
Phase II environmental site assessment	\$0.00	\$0.00	\$0.00	\$0.00

Environmental contamination remediation	\$0.00	\$0.00	\$0.00	\$0.00
<b>Holding expenses</b>				
Interest	\$0.00	\$0.00	\$0.00	\$0.00
Land stewardship	\$0.00	\$0.00	\$0.00	\$0.00
Land development	\$0.00	\$0.00	\$0.00	\$0.00
Pro-rated share of all property taxes/assessments	\$0.00	\$0.00	\$0.00	\$0.00
Legal services and closing costs	\$0.00	\$0.00	\$0.00	\$0.00
Property tax equivalency payment-473.341	\$0.00	\$0.00	\$0.00	\$0.00
Relocation costs to seller	\$0.00	\$0.00	\$0.00	\$0.00
State deed tax/conservation fee	\$0.00	\$0.00	\$0.00	\$0.00
Title insurance	\$0.00	\$0.00	\$0.00	\$0.00
Well disclosure statement	\$0.00	\$0.00	\$0.00	\$0.00
Other holding	\$0.00	\$0.00	\$0.00	\$0.00
<b>Other expenses</b>				
Other expenses	\$1,882.00	\$846.90	\$564.60	\$470.50
<b>Totals</b>	<b>\$250,480.00</b>	<b>\$112,716.00</b>	<b>\$75,144.00</b>	<b>\$62,620.00</b>

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### Total Estimated Acquisition Costs

<b>Totals</b>	<b>Total acquisition cost</b>	<b>Total paid with state funds</b>	<b>Total paid with metro funds</b>	<b>Total paid by agency</b>	<b>Total grant amount</b>
Total Estimated Acquisition Cost (calculated after costs above are entered)	\$250,480.00	\$112,716.00	\$75,144.00	\$62,620.00	\$187,860.00

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**SUMMARY OF IMPORTANT FACTS & CONCLUSIONS**



<b>General Description:</b>	Land	
<b>Appraisal Report:</b>	Appraisal Report	
<b>Current Use:</b>	Vacant Land	
<b>Extraordinary Assumptions:</b>	None	
<b>Hypothetical Assumptions:</b>	Yes, see rear of report	
<b>Total Site Area:</b>	Gross: 69.5 acres (3,027,420 SF), per county	
<b>Acquisition:</b>	Natural Area Easement: 60.6 acres Regional Greenway Corridor: 5.8 acres Total: 66.4 acres	
<b>Building Improvements:</b>	None, the site is vacant land	
<b>Building Rights:</b>	The upland appears to be developable at this time	
<b>Zoning:</b>	AGP, Agricultural Preserve	
<b>Guided Land Use:</b>	RR, Rural Residential (max 1 unit/5 acre)	
<b>Highest and Best Use:</b>	Varies depending on area, see highest and best use section for more information.	
<b>Property Rights Appraised:</b>	Fee Simple	
<b>Business Value / FF&amp;E:</b>	No business value or FF&E included	
<b>Scenario:</b>	<b>Before</b>	<b>After</b>
<b>Northern Parcel – A:</b>	<b>\$2,685,000</b>	<b>\$270,000</b>
<b>Southern Parcel – A:</b>	<b>\$590,000</b>	<b>\$315,000</b>

# DNR APPRAISAL SUMMARY

NA-00598-04

## APPRAISAL SUMMARY

Project County acquisition for park purposes		Acquisition No. n/a	Project No. n/a	Parcel McMenomy	County Dakota
APPRAISER:  Ethan Waytas, MAI William R. Waytas  Telephone No. 952-544-8966			OWNER:  Robert McMenomy  Telephone No. 612-859-4681		
County Property Tax I.D. Number 34-01610-01-010	Section 16	Township 115	Range 19		
Zoning AG, Agricultural	Township/Municipality Rosemount	Population 25,650	School District Rosemount Public Schools ISD 196		
Real Estate Taxes - Current Year \$568	Delinquent Amount \$0	Special Assessments \$0	Assessment Balance \$0		

Road Frontage: The subject only has public ROW frontage along the eastern property line. There is no direct road frontage to the site.

Water Frontage: Nature ponds on site

Recreational Quality of Water Frontage: Nature ponds, limited recreational use (fishing, swimming, or boating)

Public Hazards: Not noted, appraiser not an expert

Total contiguous ownership consists of 69.5 acres.

Proposed ACQUISITION consists of 66.4 acres.

66.4 acres of total site area at \$40,512 per acre \$2,690,000 rounded

North Parcel – A:  
     Natural Easement Area: 55.4 acres value \$2,245,000  
     Greenway Corridor: 4.20 acres value \$170,000

South Parcel – B:  
     Natural Easement Area: 5.2 acres value \$210,000  
     Greenway Corridor: 1.6 acres value \$65,000

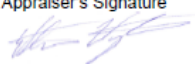

Total Acres \_\_\_\_\_ Sub Total: \$2,690,000

Utility Value of Improvements: \$0

**Severance Damages** \$0

**Marketing Time Estimate 12 months +/-**

**TOTAL:** \$2,690,000

Appraiser's Signature 	Date
, License #40368613	04-18-2022
Appraiser's Signature 	Date
, License #4000813	04-18-2022

# Exhibit 5: Board approval to purchase property

## 3.0 Board Resolution

### BOARD OF COUNTY COMMISSIONERS DAKOTA COUNTY, MINNESOTA

June 21, 2022

Resolution No. 22-280

Motion by Commissioner Atkins

Second by Commissioner Hamann-Roland

#### Acquisition Of Natural Area Conservation And Greenway Easements On McMenomy Property

WHEREAS, the McMenomy Family (McMenomy) owns 311 acres in the city of Rosemount (City) including a 69.5-acre parcel that contains high-quality forest and wetlands; and

WHEREAS, the 69.5-acre parcel was identified by the Minnesota Department of Natural Resources (DNR) as having high biological diversity; and

WHEREAS, the 2002 Farmland and Natural Area Protection Plan identified that portion of the McMenomy Family property as one of the top nine sites to protect in the County; and

WHEREAS, the McMenomys initially submitted a 2006 land protection application to the County for consideration and its other subsequent applications did not proceed to acquisition due to disagreements among family members; and

WHEREAS, the 2020 Land Conservation Plan for Dakota County identified 24 Preliminary Conservation Focus Areas (CFA), including the Lebanon Hills CFA; and

WHEREAS, the McMenomy property is located in the Lebanon Hills CFA; and

WHEREAS, in 2021, the McMenomy's renewed discussion with the County and the City about acquisition options in association with planned residential development of other portions of their property; and

WHEREAS, the proposed land protection project included the County acquiring the 63.3-acre natural area conservation easement (NA Easement) and a 5.7-acre Vermillion Highlands Regional Greenway Easement (RG Easement) with the City acquiring fee title to 69.5 acres and then managing the property as a new City park; and

WHEREAS, an independent appraisal of the McMenomy property was completed in May 2022, and County staff reviewed and approved the report that indicated that the appraised fee title value of the property is \$3,127,500, with allocated values of \$2,563,650 for a NA Easement and \$230,850 for an RG Easement; and

#### STATE OF MINNESOTA County of Dakota

	YES		NO
Slavik	<u>  X  </u>	Slavik	_____
Gaylord	<u>  X  </u>	Gaylord	_____
Halverson	<u>  X  </u>	Halverson	_____
Atkins	<u>  X  </u>	Atkins	_____
Workman	<u>  X  </u>	Workman	_____
Holberg	<u>  X  </u>	Holberg	_____
Hamann-Roland	<u>  X  </u>	Hamann-Roland	_____

I, Jeni Reynolds, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 21<sup>st</sup> day of June 2022, now on file in the County Administration Department, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal of Dakota County this 21<sup>st</sup> day of June 2022.



Clerk to the Board

WHEREAS, during subsequent negotiations, the County, City and McMenumys agreed to a sale price six percent greater than the appraised total value or \$3,315,150, including \$2,715,322 for the NA Easement and \$246,848 for the RG Easement; and

WHEREAS, the estimated closing costs are \$7,500; and

WHEREAS, the estimated natural resource restoration costs are \$300,000; and

WHEREAS, staff met the Rosemount City Council on June 7, 2022, during a workshop and all members supported the expenditure of up to \$352,980 to acquire fee title to the property following County acquisition of the two easements and ownership of the property as a new park; and

WHEREAS, acquisition of the NA Easement and restoration is eligible for state Outdoor Heritage (OH) funding appropriated to the County by the Minnesota Legislature in 2019 (ML19); and

WHEREAS, due to the high value of the NA Easement, the OH funding requires a technical review and approval of the appraisal by a second appraiser selected by the DNR prior to expenditure of OH funds as a contingency within the purchase agreement (PA); and

WHEREAS, the 2022 Environmental Resources (ER) Capital improvement Program (CIP) budget includes adequate fund balance from ML19 OH funds and County grant-match funds for the NA Easement project; and

WHEREAS, the NA Easement PA must be fully executed by June 30, 2022, or the balance of unspent ML19 OH funds will be returned to the State of Minnesota; and

WHEREAS, expenditure of OH funds by the County requires the County Board Chair to sign and the County to record a Notice of Funding Restriction (NOFR) for the NA Easement on the McMenumy property, if funded with OH funds; and

WHEREAS, there are Metropolitan Council (MC) Acquisition Opportunity Funds (AOF) available to provide 75 percent of the cost to acquire the RG Easement; and

WHEREAS, the 2022 Parks CIP budget includes adequate fund balance for the 25 percent County AOF match necessary for the RG Easement acquisition expense; and

WHEREAS, the Physical Development Director (PDD) is required to sign the PA to acquire the NA Easement and RG Easement on the McMenumy property; and

WHEREAS, the final acquisition costs of the McMenumy property will be determined after the settlement statements are finalized and all associated acquisition expenses have been invoiced.

NOW, THEREFORE, BE IT RESOLVED, That the Dakota County Board of Commissioners hereby authorizes the expenditure of up to \$3,269,670, including \$2,715,322 to acquire the 63.2-acre NA Easement on the McMenumy property, \$246,848 to acquire the 5.7-acre RG Easement, an estimated \$7,500 in closing costs, and \$300,000 for estimated restoration costs; and

**STATE OF MINNESOTA**  
County of Dakota

	YES		NO
Slavik	<u>  X  </u>	Slavik	_____
Gaylord	<u>  X  </u>	Gaylord	_____
Halverson	<u>  X  </u>	Halverson	_____
Atkins	<u>  X  </u>	Atkins	_____
Workman	<u>  X  </u>	Workman	_____
Holberg	<u>  X  </u>	Holberg	_____
Hamann-Roland	<u>  X  </u>	Hamann-Roland	_____

I, Jeni Reynolds, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 21<sup>st</sup> day of June 2022, now on file in the County Administration Department, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal of Dakota County this 21<sup>st</sup> day of June 2022.



Clerk to the Board

BE IT FURTHER RESOLVED, That the Dakota County Board of Commissioners hereby authorizes the PDD to execute the PAs with McMenemy's to acquire the two easements, subject to approval by the County Attorney's Office (CAO) as to form; and

BE IT FURTHER RESOLVED, That the Dakota County Board of Commissioners hereby authorizes the Board Chair to execute a NOFR as required for use of ML19 OH funds for acquiring the NA Easement on the McMenemy property, subject to approval by the CAO as to form; and

BE IT FURTHER RESOLVED, That the 2022 Environmental Resources (ER) CIP budget is hereby amended as follows:

<b>Expense</b>	
ML 19 OH (LC00009)	(\$3,021,322)
Acquisition of the NA Easement on the McMenemy property (LC10070)	\$2,721,322
Restoration of the NA Easement (LC30046)	<u>\$ 300,000</u>
<b>Total Expense</b>	<b>\$0</b>

<b>Revenue</b>	
<u>Acquisition :</u>	
ML 19 OH (LC00009)	(\$2,040,992)
ML 19 OH County Grant Match (LC00009)	(\$ 680,330)
ML 19 OH Grant Funding – McMenemy Acquisition (LC10070)	\$2,040,992
ML 19 OH County Grant Match – McMenemy Acquisition (LC10070)	<u>\$ 680,330</u>
<b>Total Revenue – Acquisition</b>	<b>\$0</b>

<u>Restoration:</u>	
ML 19 OH Grant Funding (LC00009)	(\$ 225,000)
ML 19 OH County Grant Match (LC00009)	(\$ 75,000)
ML 19 OH Grant Funding – McMenemy Restoration (LC30046)	\$ 225,000
ML 19 OH County Grant Match – McMenemy Restoration (LC30046)	<u>\$ 75,000</u>
<b>Total Revenue - Restoration</b>	<b>\$0</b>

; and

BE IT FURTHER RESOLVED, That following acquisition of the NA Easement on the McMenemy property, staff will submit the necessary forms and documentation to the State of Minnesota (State) to receive approximately \$2,265,992 in reimbursement funds; and

BE IT FURTHER RESOLVED, That such reimbursement from the State will be returned to the 2022 ER CIP; and

**STATE OF MINNESOTA**  
County of Dakota

	YES		NO
Slavik	<u>X</u>	Slavik	_____
Gaylord	<u>X</u>	Gaylord	_____
Halverson	<u>X</u>	Halverson	_____
Atkins	<u>X</u>	Atkins	_____
Workman	<u>X</u>	Workman	_____
Holberg	<u>X</u>	Holberg	_____
Hamann-Roland	<u>X</u>	Hamann-Roland	_____

I, Jeni Reynolds, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 21<sup>st</sup> day of June 2022, now on file in the County Administration Department, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal of Dakota County this 21<sup>st</sup> day of June 2022.



Clerk to the Board



BE IT FURTHER RESOLVED, That following final completion of the acquisition of the RG Easement on the McMenemy property, staff will submit the necessary forms and documentation to the Metropolitan Council to receive approximately \$186,621 in MC AOF reimbursement funds; and

BE IT FURTHER RESOLVED, That such reimbursement from the Metropolitan Council will be returned to the 2022 Parks Capital Improvement Program budget.

**STATE OF MINNESOTA**  
County of Dakota

	YES		NO
Slavik	<u>  X  </u>	Slavik	_____
Gaylord	<u>  X  </u>	Gaylord	_____
Halverson	<u>  X  </u>	Halverson	_____
Atkins	<u>  X  </u>	Atkins	_____
Workman	<u>  X  </u>	Workman	_____
Holberg	<u>  X  </u>	Holberg	_____
Hamann-Roland	<u>  X  </u>	Hamann-Roland	_____

I, Jeni Reynolds, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 21<sup>st</sup> day of June 2022, now on file in the County Administration Department, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal of Dakota County this 21<sup>st</sup> day of June 2022.



\_\_\_\_\_  
Clerk to the Board

**Exhibit 6: Purchase agreement**

Dakota County Contract C0035519

**AGREEMENT FOR THE PURCHASE OF A PERMANENT REGIONAL GREENWAY  
CORRIDOR EASEMENT ON THE MCMENOMY PROPERTY**

Tract No. 360

This Agreement, made and entered into on the 29<sup>th</sup> day of AUGUST, 2022 (hereinafter called the "Effective Date"), by and between Michael F. McMenemy, having an undivided 29.2857% interest; John McMenemy, having an undivided 25.0% interest; Elizabeth A. McMenemy as trustee under the trust agreement of Elizabeth A. McMenemy, having an undivided 16.4286% interest; Daniel McMenemy, having an undivided 7.321425% interest; Robert McMenemy, having an undivided 7.321425% interest, Terry McMenemy, having an undivided 7.321425% interest; and William McMenemy, having an undivided 7.321425% interest; (hereinafter collectively called the "Seller"); and the COUNTY OF DAKOTA, a political subdivision of the State of Minnesota, (hereinafter called the "Buyer").

**WITNESSETH**

**WHEREAS**, the above named individuals collectively referred to as Seller is not a partnership, joint venture or agent of each other, but rather individuals or trusts who each own an individual undivided interest as tenants in common in the percentage of ownership as stated above to the Property and the Easement Area;

**WHEREAS**, the above individual sellers are not liable for the actions or omissions of each other and are not liable for the individual representations and warranties made herein by each individual seller;

**WHEREAS**, each individual seller agrees to sell and Buyer agrees to buy a permanent Regional Greenway Corridor Easement (hereinafter called a "Corridor Easement") on a portion of Seller's property.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants and agreements stated in this document, it is agreed by and between the individual sellers and Buyer as follows:

**AGREEMENT**

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the meaning provided herein:

- a. "Access" shall mean a temporary pedestrian access easement commencing from the date of closing for three (3) years as legally described in **Exhibit A** and generally depicted in **Exhibit A-1**, attached hereto. Said access easement shall terminate if new access is provided from the north or the south.
- b. "Agreement" shall mean this Agreement for the purchase of a Corridor Easement between Buyer and Seller as of the Effective Date.

- c. "Closing" shall mean the process by which the Buyer, Seller and Title Company execute all necessary documents for the Seller to sell and the Buyer to buy the Corridor Easement, together with any other documents required by the Seller or the Title Company.
- d. "Closing Date" shall mean on or before November 30, 2022.
- e. "Corridor Easement" shall mean an instrument encumbering the Easement Area to preserve it primarily in its present state for the conservation purpose of protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, or as that section may be amended from time to time, and in the regulations promulgated thereunder; and to allow a paved recreational trail and associated trail amenities, substantially in form and content as the attached **Exhibit B**;
- f. "Easement Area" shall mean that certain real estate encumbered by the Corridor Easement situated in Dakota County, Minnesota, as legally described in **Exhibit A** and generally depicted in **Exhibit A-1** attached hereto.
- g. "Effective Date" shall mean the last date of execution by either of the Parties to this Agreement.
- h. "Environmental Law" shall mean each and every federal, state, and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement pertaining to the protection of human health and safety or the environment.
- i. "Hazardous Substance" shall mean any substance which is (i) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof, (iii) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic, or reproductive toxicant, (iv) regulated pursuant to any Environmental Law(s), or (v) any pesticide regulated under state or federal law.
- j. "Natural Area Conservation Easement" shall mean an instrument encumbering a portion of the Property to preserve it in its present state for the conservation purpose of protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, or as that section may be amended from time to time, and in the regulations promulgated thereunder.
- k. "Natural Resource Management Plan" shall mean a written compilation of natural resource conditions and required and recommended natural resources management practices for the Easement Area to be implemented after the Closing Date.
- l. "Parties" shall mean the Buyer and the Seller, as defined above, collectively.

- m. "Property" shall mean that separate tax parcel of the Total Property having Property Identification Number 34-01610-01-010 and partially encumbered by the Corridor Easement.
- n. "Property Report" shall mean a written description of baseline conditions of the Easement Area as of the Closing Date.
- o. "Purchase Price" shall mean the sum of **Two Hundred Forty-Six Thousand Eight Hundred Forty-Eight Dollars (\$246,848)**.
- p. "Title Company" shall mean DCA Title Company at 7373 - 147th Street West, Suite 161, Apple Valley, Minnesota 55124.
- q. "Total Property" shall mean that real property owned by Seller that includes the Easement Area and other real property owned by Seller adjacent to or in proximity to the Easement Area as identified in attached **Exhibit A-1**.

2. FEE OWNER. Each individual seller represents that they own an undivided interest as tenant in common in the Property as stated above and hereby agrees to encumber the Easement Area with a Corridor Easement, subject only to the following exceptions:

- a. Building and zoning laws, ordinances, State and Federal regulations.
- b. Utility, drainage, and public road easements of record.
- c. Natural Area Conservation Easement (hereinafter referred to as the "Conservation Easement"), and other easements, restrictions and reservations of record, if any.

3. DEVELOPMENT RIGHTS. There are two development rights currently allowed by local ordinance on the Property. Seller previously agreed to convey all existing development rights to Buyer upon the conveyance of a Conservation Easement on the Property, and Seller shall retain no development rights. Upon the Closing, no development rights shall remain within the Easement Area. The status of any development rights shall be subject to the terms and conditions of the Conservation Easement and Corridor Easement.

4. TITLE EXAMINATION. Within twenty (20) days after the Effective Date, Buyer shall pay the entire cost for updating the title insurance commitment/binder. Buyer shall be allowed up to twenty (20) days after receipt for examination of the title documents and to make any objections to title. Buyer shall make any such objection in writing or the objection shall be deemed to be waived. If any objections are made, Seller shall have one hundred twenty (120) days to make title marketable. Pending correction of title, the payments required by this Agreement shall be postponed, but upon correction of title, and within twenty (20) days of written notice to Buyer, the Parties shall perform this Agreement according to its terms.

If title is not marketable and is not made so within one hundred twenty (120) days from the date of written objection as provided above, this Agreement shall, at Buyer's option, be void and neither Party shall be liable for damages or costs to the other Party.

If Buyer obtains title insurance, Buyer is not waiving the right to obtain a good and marketable title of record from Seller.

Buyer agrees to take all actions necessary to obtain recordable subordination agreements from all persons or entities having a recorded interest in the Property, to the effect that the Corridor Easement shall take priority to, and not be affected by, the foreclosure of any mortgage or lien against Seller's title, and that the purchaser at a foreclosure sale of such mortgage or lien shall take title subject to the Buyer's Corridor Easement.

5. PAYMENT TERMS. As consideration for the covenants and agreements made herein, Buyer agrees to pay the Purchase Price to Seller for the Corridor Easement on the Easement Area, less closing costs, payable in cash upon the execution and delivery of the Corridor Easement encumbering the Easement Area and other documents necessary to complete the Closing on the Closing Date.

Payment shall be distributed as follow:

- a. Michael F. McMenemy shall receive \$72,292
- b. John McMenemy shall receive \$61,711
- c. Elizabeth A. McMenemy shall receive \$40,553
- d. Daniel McMenemy shall receive \$18,073
- e. Robert McMenemy shall receive \$18,073
- f. Terry McMenemy shall receive \$18,073
- g. William McMenemy shall receive \$ 18,073

6. CLOSING COSTS.

- a. Seller shall be responsible for, and pay the following costs: tax and judgment search, any corrective title action taken by Seller and fees associated with Seller's efforts to make title marketable, if any, Seller's attorney's fees, and fifty (50) percent of closing fees charged by the Title Company. If a power of attorney is necessary for Seller to complete the Closing, then Seller is responsible for all costs associated with the power of attorney document including, but not limited, to the preparation costs and recording fees.
- b. Buyer is responsible for paying the following costs: special assessment search, title commitment and supplements, examination fee, name search, property inspection, title insurance premium, property inspection, and fifty (50) percent of closing fees charged by the Title Company.

7. SELLER'S CLOSING DOCUMENTS. Seller agrees to execute and deliver the following documents to Buyer on the date of closing:

- a. A Corridor Easement encumbering the Easement Area substantially in form and content as the attached **Exhibit B**.
  - b. Standard Seller's Affidavit regarding Parties in possession.
  - c. Any other document(s) requested by Buyer or Title Company to effectuate the closing and the terms of this Agreement.
8. TAXES AND SPECIAL ASSESSMENTS. Seller will pay all current, past due and future property taxes, if not escrowed and any special assessments levied or to be levied against the Property.
9. SELLER'S WARRANTIES. Each individual seller warrants that:
- a. Each individual seller has full power and authority to enter into this Agreement (and the person signing this Agreement for the Seller has full power and authority to sign for the Seller and to bind it to this Agreement) and to sell, transfer and convey all of his or her individual rights, title and interest in and to the Property.
  - b. To each individual seller's knowledge, the execution of this Agreement will not constitute a breach or default under any agreement to which the individual seller is bound and/or to which the Property is subject.
  - c. To each individual seller's knowledge, there is no suit, action, arbitration, or legal, administrative or other proceeding or injury pending or threatened against the Property or any portion thereof or pending or threatened against the individual seller which could affect the individual seller's title to the Easement Area or any portion thereof, affect the value of the Property or Easement Area, or subject an owner of the Easement Area to liability.
  - d. To each individual seller's knowledge, there is no lease, license, permit, option, right of first refusal or other agreement, oral or written, which affects the Easement Area.
  - e. To each individual seller's knowledge there is not a right of access to the Easement Area from a public right of way.
  - f. To each individual seller's knowledge, there are no present violations of any restrictions relating to the use or improvement of the Property or any uncured notices which have been served upon the individual Seller by any governmental agency notifying any individual seller of any violations of statute, order, ordinance, rule, requirement, or regulation which would affect the Property or any portion thereof.
  - g. To each individual seller's knowledge, the Property is not subject to any lien for Medical Assistance or other such public assistance.

- h. To each individual seller's knowledge, the individual seller has no knowledge, nor reason to know, of any condition at, on, under or related to the Easement Area presently or potentially posing a significant hazard to human health or the environment (whether or not such condition constitutes a violation of Environmental Laws, as previously defined).
- i. To each individual seller's knowledge, the individual seller has no knowledge, nor reason to know, of any production, use, treatment, storage, transportation, or disposal of any Hazardous Substance (as previously defined) on or under the Easement Area, nor has there been any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Easement Area or into or upon ground or surface water at the Easement Area or within the immediate vicinity of the Easement Area, except for application and storage of gasoline, fertilizer, pesticides, herbicides and other substances, if any, which may have been applied and stored in accordance with applicable laws at the time of use in connection with the prior agricultural use of the Property.
- j. To each individual seller's knowledge, the individual seller is in compliance with all laws and regulations in connection with any handling, use, storage or disposal of Hazardous Substances at the Easement Area, including the maintenance of all required permits and approvals.
- k. To each individual seller's knowledge, the individual seller is in compliance with all Environmental Laws with respect to the Easement Area.
- l. To each individual seller's knowledge, it has been disclosed to Buyer in writing the location of any individual sewage treatment systems located on the Easement Area that the individual seller knows about.
- m. To each individual seller's knowledge, it has disclosed to Buyer in writing the location of any individual wells located on the Easement Area which individual seller knows about.
- n. To the best of each individual seller's knowledge, methamphetamine production has not occurred on the Easement Area.

Each of the above representations is material and is relied upon by Buyer with the understanding that Buyer will be performing its own due diligence investigation in regard to the Property and the transaction herein. Except insofar as the Seller has advised Buyer in writing to the contrary, each of the above representations shall be deemed to have been made as of Closing and shall survive Closing for a period of one (1) year after the Closing Date.

At Closing, if Buyer so requests, the Seller shall deliver to Buyer a certificate in a form satisfactory to Buyer stating that each of the above representations is true and correct as of Closing.

If, before the Closing, the Seller discovers any information or facts that would materially change these warranties and representations, the Seller shall immediately give notice to Buyer of those facts and

information. If any of the foregoing representations and warranties ceases to be true before the Closing, and the problem is not remedied before Closing, Buyer may elect to either (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the Corridor Easement or (b) defer the Closing until such problem has been remedied. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

10. CORRIDOR EASEMENT. The Seller shall deliver a fully executed Corridor Easement to the Buyer on or before the Closing Date. At least twenty-one (21) days prior to the Closing Date, Buyer shall provide a final copy of the Corridor Easement to the Seller, in substantially the same form as the form attached hereto as **Exhibit B**, with the inclusion of revisions and/or additional terms to address issues specific to the Easement Area.

11. ACCESS EASEMENT. Legal access to the southern portion of the Easement Area is not currently available via adjacent public land or right of way. Conveyance of the Corridor Easement shall include a temporary pedestrian Access Easement to the adjacent Conservation Easement to annually monitor the Easement Area and to monitor the natural resource conditions and status of the Natural Resource Management Plan.

12. PROPERTY REPORT. Buyer shall prepare a Property Report describing the current condition of the Easement Area and providing the basis for annual monitoring reports. Buyer shall provide the Property Report to the Seller for review at least ten (10) days prior to the Closing Date. Seller agrees to deliver signed copies of the Property Report on or before the Closing Date and shall sign an Acknowledgement of Condition, certifying that the Property Report accurately reflects the condition of the Easement Area on the Closing Date.

13. NATURAL RESOURCE MANAGEMENT PLAN. Buyer and Seller have jointly prepared a preliminary Natural Resource Management Plan describing the required and recommended natural resources management practices to be implemented on the Easement Area after the Closing Date.

14. CONDITIONS PRECEDENT FOR BUYER. In addition to the title examination, the purchase of the Corridor Easement by Buyer is contingent upon:

- a. Buyer determining in its sole discretion that the condition of the Easement Area is acceptable. From the date of this Agreement thru October 1, 2022, the Buyer shall have the right to inspect and investigate the Easement Area at reasonable times and to perform any tests it deems necessary, including tests to evaluate the environmental condition of the Easement Area. Buyer shall coordinate any such inspection to accommodate the schedule of Seller, who shall not unreasonably withhold permission to inspect or investigate. This contingency shall be deemed satisfied upon Buyer delivering the Property Report to Seller no later than October 30,



2022 , so long as the Easement Area remains in the condition described in the Property Report at the time of closing. Buyer shall repair any damage to the Property occurring in connection with any such testing and restore the land and property to its original condition prior to the testing to Seller's reasonable satisfaction. Buyer agrees to promptly refill holes dug and repair any damage to the Property as a result of its activities. Buyer shall keep the property free of any liens or third-party claims as a result of testing or their activities on the Property. Buyer agrees to indemnify and hold harmless Seller from any loss, cost or expense (including reasonable attorneys' fees) for death, bodily injury or damage to the Property related to Buyer's tests or to Buyer's or its agents or contractors presence on the Property.

- b. Minnesota Department of Natural Resources (hereinafter referred to as the "DNR") acceptance of the appraised value of the Property as determined by an independent technical review appraiser hired by the DNR to evaluate the appraisal report.
- c. Sellers executing a separate purchase agreement with the Buyer to convey a 63.2-acre Conservation Easement to the Buyer for **Two Million Seven Hundred Fifteen Thousand three Hundred Twenty-Two Dollars (\$2,715,322)**.
- d. The Metropolitan Council approving a 75 percent Acquisition Opportunity Fund grant to the Buyer for the purchase of the Corridor Easement.
- e. The City of Rosemount (hereinafter referred to as the "City") approving the purchase of the Property for **Three Hundred Fifty-Two Thousand Nine Hundred Eighty Dollars (\$352,980)** as documented by a resolution approving the purchase by the City Council.
- f. Sellers signing and executing a separate purchase agreement with the City of Rosemount to convey fee title of the Property to the Buyer for **Three Hundred Fifty-Two Thousand Nine Hundred Eighty Dollars (\$352,980)**.

If the above contingencies are not satisfied, this Agreement shall, at Buyer's option, be void and neither Party shall be liable for damages to the other Party.

15. CONDITION PRECEDENT FOR SELLER. The grant of the Corridor Easement by Seller to Buyer is conditioned upon the following:

- a. Buyer executing a separate purchase agreement with the Seller to convey a Natural Area Conservation Easement to the Buyer for **Two Million Seven Hundred Fifteen Thousand Three Hundred Twenty-Two Dollars (\$2,715,322)**.
- b. The City approving the purchase of the Property for **Three Hundred Fifty-Two Thousand Nine Hundred Eighty Dollars (\$352,980)** as documented by a resolution approving the purchase by the City Council.
- c. Seller's approval of the terms of the Access Easement.
- d. Seller's approval of the terms of the Wastewater Facility Rights Agreement and Easement and the location of the Wastewater Facility in favor of the Metropolitan Council under the Corridor Easement.

- e. Seller's approval of the preliminary Natural Resource Management Plan.
- f. Payment of the full purchase price under this Agreement and the Purchase Agreements for the Natural Area Conservation Easement and the City of Rosemount Purchase Agreement
- g. Seller's requested revisions, if any, to the Easement Agreements to conform to the provisions of the Purchase Agreement.
- h. Buyer closing all of the transactions contemplated herein.

If the above conditions are not satisfied, this Agreement and all ancillary agreements shall, at Seller's option, be terminated, cancelled and made void and neither party shall be liable for damages to the other Party.

16. METROPOLITAN COUNCIL FUNDING RESTRICTIONS AND COVENANTS. The Grantor and Grantee acknowledge that the Grantee's purchase of this Corridor Easement may be funded, in part, by a grant from the Metropolitan Council (hereinafter referred as the "Council") which requires the following additional restrictions on the Property for funding eligibility, and hereby place such restrictions and covenants on the Property in addition to the restrictions placed on the Property as follows:

- a. Conveyances. Grantee may not sell, lease, or mortgage the Easement Area or any portion thereof, or otherwise convey or grant any other easement or allow any other encumbrance to be placed against the Corridor Easement or restrict the use thereof unless the written approval of the Council or its successors is duly filed and recorded at the time of the filing and recording of the instrument to which such approval pertains.
- b. Regional Purpose. The Corridor Easement shall be used solely for regional recreational open space purposes as those purposes are from time to time defined by the Council or its successors, unless the Council or its successors shall consent to the other use or uses by written instrument duly filed and recorded and designating the nature, extent, and duration of the use for which such consent is given. Without limiting the foregoing, the Regional Trail and Wastewater Facilities (see Section 15.c. below), together with uses such as benches, bike racks, local trail connections, information kiosks, retaining walls, drinking fountains, and tables, and fences are permitted uses for regional recreational open space purposes.
- c. Wastewater Facilities. The Grantor acknowledges that as a condition for the Grantee to receive funding from the Council, Grantee must grant the Council the option to construct, operate and maintain Wastewater Facilities in the Easement Area. Grantor consents to and permits the Grantee to assign the rights necessary to accomplish the construction, operation and maintenance of the Wastewater Facility (hereinafter referred to as the "Wastewater

Facility Rights”) to the Council, its successors or assigns. Upon written request by and at no cost to the Council, Grantee will execute and deliver to the Council an assignment of rights in the allowing the Council to construct, install, operate and maintain the Wastewater Facilities over, under and across the Easement Area substantially in the form of the assignment attached hereto and incorporated herein as the attached **Exhibit C** for the location or locations described by the Council in its written request to Grantee. The Parties acknowledge that pursuant to a Grant Agreement entered or to be entered between the Council and the Grantee, Council may exercise its contractual right to the Wastewater Facilities Rights on one or more occasions. The Grantee agrees that the Wastewater Facilities Rights may not be exercised unless assigned to the Council, its successors or assigns.

If the Grantee is eligible to receive Council funding for the Property, Grantor will allow the above-described, additional Council-required restrictions within the Property.

17. CLOSING. The Closing shall occur on the Closing Date at Title Company’s office. The time of day will be scheduled by the Title Company so as to be mutually acceptable to Buyer and Seller. Seller and Buyer may mutually agree in writing to alter the Closing Date.

18. RISK OF LOSS. Until the completion of Closing, all risk of loss is on the Seller. If the Easement Area is damaged prior to closing, Seller shall give the Buyer notice within five (5) business days after such damage has occurred. The notice shall include Seller’s proposal for repairing the damage. From the date that Buyer receives Seller’s notice, Buyer shall have three (3) business days to inspect the Easement Area and an additional (2) business days to determine if the damages and the Seller’s proposal for repairs are acceptable to Buyer. If Buyer does not accept Seller’s proposal for repairs within the five (5) business day period, this Agreement shall be void.

19. REMEDIES UPON DEFAULT. In the event that the Seller defaults in the performance of any of its obligations under this Agreement, Buyer shall, in addition to any and all other remedies provided in this Agreement or at law or in equity, have the right of specific performance against the Seller. In the event that Buyer defaults in the performance of any of its obligations under this Agreement, the Seller shall have, as its sole and exclusive remedy, the right to cancel this Agreement as permitted by Minnesota Statutes § 559.21.

20. NO BROKER’S COMMISSION. The Buyer has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement and the parties agree that the Buyer is not responsible for any portion of a broker’s commission or finder’s fee related to the Seller. In the event that the Seller has used a broker, or any person asserts a claim for a broker’s commission or finder’s fee

related to the Seller, that the Seller will indemnify and hold the Buyer harmless from and against the claim and this indemnification shall survive Closing or any earlier termination of this Agreement.

21. WAIVER OF DISCLOSURE. Unless otherwise required herein, Buyer waives the written disclosures required under Minnesota Statutes §§ 513.52 to 513.60.

22. MISCELLANEOUS.

- a. Performance. The Parties hereto agree that time is of the essence in the performance of this Agreement.
- b. Notices. Notices to be given under this Agreement shall be in writing and sent by registered or certified mail, addressed to the Parties at the following addresses:

With respect to Buyer:

Alan Singer, Land Conservation Manager, or Successor  
Dakota County  
14955 Galaxie Avenue  
Apple Valley, MN 55124

With respect to Seller:

Michael F. McMenomy  
1838 Fairmount Avenue  
St Paul, MN 55105

John McMenomy  
1419 Park Street  
White Bear MN 55110

Elizabeth A. McMenomy as trustee under the trust agreement of Elizabeth A.  
McMenomy  
3610 Upper 143 ST W  
Rosemount, MN 55068

Daniel McMenomy  
6097 East Ironwood Drive  
Scottsdale, AZ 85266

Robert McMenomy  
2912 Rose Avenue  
McHenry, IL 60050

Terry McMenomy  
28390 S Larch Road  
St. Maries, ID 83861

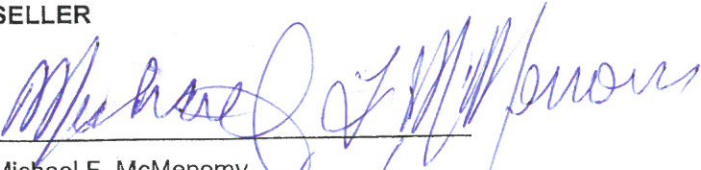
William McMenomy  
9331 SE 170<sup>th</sup> Humphreys Loop  
The Villages, FL 32162

- c. Non-Joint Venture. The Parties agree that nothing contained herein shall be considered a partnership or joint venture undertaken by the Parties.
- d. Minnesota Law. This Agreement shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Agreement, or breach thereof, shall be in the state or federal court with competent jurisdiction in Dakota County, Minnesota.
- e. Representation by Counsel. The Seller understands that the Buyer and the County Attorney's Office do not represent the Seller in this matter. The Seller has had an opportunity to review the terms of this Agreement with Seller's own legal counsel, whether Seller has elected to consult with counsel or not. Seller has read and understands the terms of this Agreement and agrees to be bound by the terms of this Agreement.
- f. Entire Agreement. This Agreement, along with any exhibits, appendices, addendums, schedules, and written amendments hereto, encompasses the entire agreement of the Parties, and supersedes all previous understandings and agreements between the Parties, whether oral or written.
- g. Amendments. Any amendments or modifications to this Agreement shall be in writing and shall be executed by the same Parties who executed the original Agreement or their successors.
- h. Severability. Each provision of this Agreement is severable from any other provision of this Agreement. Should any provision of this Agreement for any reason be unenforceable, the balance of the Agreement shall nonetheless be of full force and effect.
- i. Headings. The headings used in this Agreement are for convenience of reference only and shall not operate or be construed to alter or affect the meaning of any of the provisions in this Agreement.
- j. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.
- k. Exchange. Any Individual Seller may take steps to effectuate a 1031 Tax Exchange in any part of the transactions contemplated herein and Buyer agrees to reasonably cooperate with an Individual Seller to facilitate a 1031 Tax Exchange provided there will be no cost to the Buyer.


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IN TESTIMONY WHEREOF, the Parties hereto have caused this instrument to be executed the day and year first recited herein.

**SELLER**

  
\_\_\_\_\_  
Michael F. McMenemy

Date of Signature 9/29/2022

  
\_\_\_\_\_  
John McMenemy

Date of Signature 8-15-2022

\_\_\_\_\_  
Elizabeth A. McMenemy, as trustee under the trust agreement of Elizabeth A. McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Daniel McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Robert McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Terry McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_



**IN TESTIMONY WHEREOF**, the Parties hereto have caused this instrument to be executed the day and year first recited herein.


**SELLER**

\_\_\_\_\_  
Michael F. McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
John McMenemy

Date of Signature \_\_\_\_\_

DocuSigned by:  


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\_\_\_\_\_  
Elizabeth A. McMenemy, as trustee under the trust agreement of Elizabeth A. McMenemy

Date of Signature 08/11/2022 | 9:12 AM PDT

\_\_\_\_\_  
Daniel McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Robert McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Terry McMenemy

Date of Signature \_\_\_\_\_

**IN TESTIMONY WHEREOF**, the Parties hereto have caused this instrument to be executed the day and year first recited herein.

**SELLER**

\_\_\_\_\_  
Michael F. McMenomy


Date of Signature \_\_\_\_\_

\_\_\_\_\_  
John McMenomy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Elizabeth A. McMenomy, as trustee under the trust agreement of Elizabeth A. McMenomy

Date of Signature \_\_\_\_\_

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Daniel McMenomy

Date of Signature 08/11/2022 | 8:53 PM PDT

\_\_\_\_\_  
Robert McMenomy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Terry McMenomy

Date of Signature \_\_\_\_\_



**IN TESTIMONY WHEREOF**, the Parties hereto have caused this instrument to be executed the day and year first recited herein.

**SELLER**

\_\_\_\_\_  
Michael F. McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
John McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Elizabeth A. McMenemy, as trustee under the trust agreement of Elizabeth A. McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Daniel McMenemy

Date of Signature \_\_\_\_\_

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Robert McMenemy

Date of Signature 08/11/2022 | 10:47 AM CDT

\_\_\_\_\_  
Terry McMenemy

Date of Signature \_\_\_\_\_

**IN TESTIMONY WHEREOF**, the Parties hereto have caused this instrument to be executed the day and year first recited herein.

**SELLER**

\_\_\_\_\_  
Michael F. McMenomy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
John McMenomy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Elizabeth A. McMenomy, as trustee under the trust agreement of Elizabeth A. McMenomy

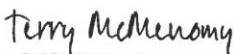
Date of Signature \_\_\_\_\_

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Daniel McMenomy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Robert McMenomy

Date of Signature \_\_\_\_\_

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Terry McMenomy

Date of Signature 08/12/2022 | 10:38 AM CDT  
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**IN TESTIMONY WHEREOF**, the Parties hereto have caused this instrument to be executed the day and year first recited herein.

**SELLER**

\_\_\_\_\_  
Michael F. McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
John McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Elizabeth A. McMenemy, as trustee under the trust agreement of Elizabeth A. McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Daniel McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Robert McMenemy

Date of Signature \_\_\_\_\_

\_\_\_\_\_  
Terry McMenemy

Date of Signature \_\_\_\_\_

DocuSigned by:  
*William McMenemy*  
\_\_\_\_\_

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William McMenomy

Date of Signature 08/11/2022 | 9:40 AM PDT

**BUYER**

DAKOTA COUNTY

\_\_\_\_\_  
Georg T. Fischer , Director  
Physical Development Division

Date of Signature \_\_\_\_\_

Approved as to form:

/s/ Joseph Marek  
Assistant Dakota County Attorney

Date of Signature: August 9, 2022  
KS-2022-00333  
Contract No. C0035519

Approved by Dakota County  
Board Resolution No. 22-280

William McMenemy

Date of Signature \_\_\_\_\_

**BUYER**

DAKOTA COUNTY

DocuSigned by:  
*Georg Fischer*

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Georg T. Fischer, Director  
Physical Development Division

Date of Signature 08/12/2022 | 3:50 PM CDT

Approved as to form:

/s/ Joseph Marek  
Assistant Dakota County Attorney

Date of Signature: August 9, 2022  
KS-2022-00333  
Contract No. C0035519

Approved by Dakota County  
Board Resolution No. 22-280