

## Metropolitan Parks and Open Space Commission Report

For the Community Development Committee meeting of February 7, 2022

For the Metropolitan Council meeting of February 23, 2022

**Subject:** Lake Byllesby Regional Park, Park Acquisition Opportunity Fund (Augustine/Schluesner), Dakota County

### Proposed Action

That the Metropolitan Council:

1. Approve a grant of up to \$363,411 to Dakota County to acquire the 110.3-acre Augustine/Schluesner property, located in Randolph and Sciota Townships, for Lake Byllesby Regional Park.
2. Authorize the Community Development Director to execute the grant agreement and restrictive covenant on behalf of the Council.

### Summary of Committee Discussion/Questions

Jessica Lee, Senior Planner, presented the staff report to the Metropolitan Parks and Open Space Commission at its meeting on February 3, 2022.

There were no questions and the Commission voted unanimously to approve the proposed action.

## Metropolitan Parks and Open Space Commission

Meeting date: February 3, 2022

For the Community Development Committee meeting of February 7, 2022

For the Metropolitan Council meeting of February 23, 2022

**Subject:** Lake Byllesby Regional Park, Park Acquisition Opportunity Fund (Augustine/Schluesner), Dakota County

**MPOSC District:** District H, Todd Kemery

**Council District, Member:** 16, Wendy Wulff

**Policy/Legal Reference:** 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.

**Staff Prepared/Presented:** Jessica Lee, Senior Parks Planner (651-602-1621)

**Division/Department:** Community Development

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### Background

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

Dakota County requested a Parks Acquisition Opportunity Fund (PAOF) grant on December 18, 2021, to fund the acquisition of a 110.3-acre property for Lake Byllesby Regional Park. A copy of the Agency's request is attached to this item as Exhibit 2 with application details in Exhibit 3. Lake Byllesby Regional Park is located on the southern border of Dakota County in the Cannon River Valley on one of the largest lakes in the County, Lake Byllesby.

#### *Subject Property*

As shown in Exhibit 1, the subject property is within the Council-approved boundary of Lake Byllesby Regional Park. The property is along the Cannon River, with one mile of shoreline. Stewardship needs include restoring a portion of the property to its natural state, as it has been farmed. There are no structures on the property, and it offers significant natural resources benefits.

#### *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 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 property is \$440,600 and the Seller has agreed to 101.3% of the appraised amount, \$446,600. See Exhibit 4 for more information on the appraisal. The total project cost including legal fees, taxes, and stewardship is \$484,548, as shown in Table 1 below.

Table 1. Project budget

<b>Budget item</b>	<b>Requested amount</b>
Purchase price	\$446,600
Stewardship, environmental assessments	\$13,968
Appraisal, closing costs, taxes, legal fees	\$23,980
<b>Total costs</b>	<b>\$484,548</b>
<b>Grant structure</b>	
Grant amount	\$363,411
Local match	\$121,137

### **Acquisition Details**

This is a straightforward, fee simple transaction. There are no easements or lease constraints on the property.

### **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 *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 Lake Byllesby Regional Park master plan in 2018 ([Business Item 2018-114](#)). 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 property is along the Cannon River and will be added to the existing natural resource features at Lake Byllesby Regional Park.
  - 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.
- All requirements of PTLF. This funding aligns with the goals of the *25-year, Parks and Trails Legacy Plan*, strategic direction of “Acquire land – create opportunities.”

## **Thrive Lens Analysis**

This request is consistent with Thrive's Livability and Stewardship outcomes. The Council's investment in Lake Byllesby Regional Park will provide additional access to nature and the outdoors, enhance quality of life, and further protect natural resources including over a half mile of shoreline.

## **Funding**

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

Dakota County will provide a local match of \$121,137.

## **Known Support / Opposition**

The Board of Dakota County approved the purchase of this property (Exhibit 5) on July 20, 2021, and executed the purchase agreement (Exhibit 6) on September 16, 2021. There is no known opposition associated with this acquisition or grant.

## **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

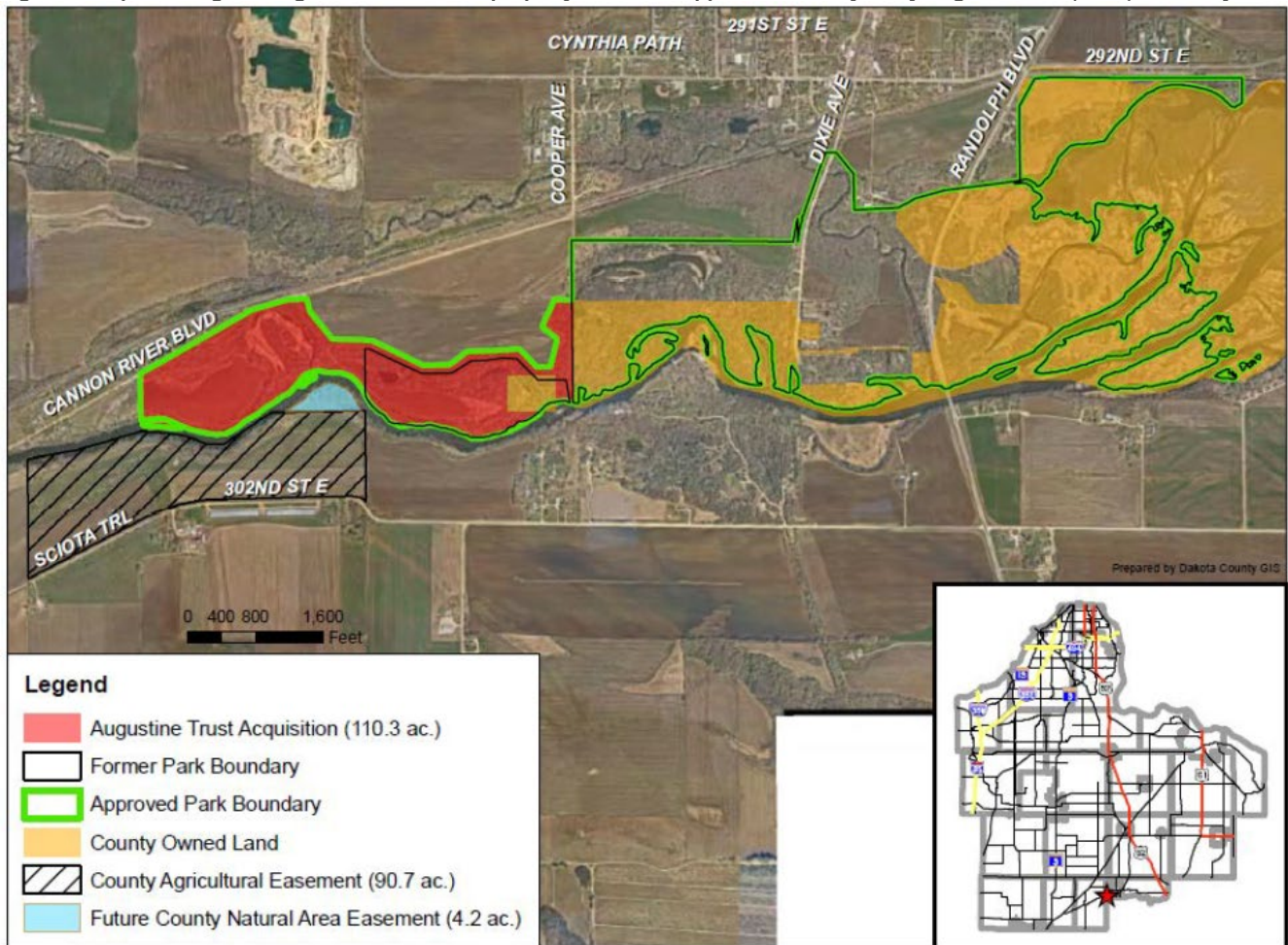


Exhibit 1 – Images

Figure 1. Map of Lake Byllesby Regional Park West and East, and Goodhue County Byllesby Park



Figure 2. Map showing the Augustine/Schluesner property within the approved Lake Byllesby Regional Park (West) boundary



**Exhibit 2: Grant request letter**



December 18, 2021

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

**Physical Development Division**

Dakota County  
Western Service Center  
14955 Galaxie Avenue  
Apple Valley, MN 5 5124

952-891-7000  
Fax 952-891-7031  
[www.dakotacounty.us](http://www.dakotacounty.us)

**Environmental Resources**

Land Conservation  
Groundwater Protection  
Surface Water  
Waste Regulation  
Environmental Initiatives

**Office of Planning**

**Operations Management**

Facilities Management  
Fleet Management  
Parks

**Transportation Department**

Highways  
Surveyor's Office  
Transit Office

Dear Jessica:

Dakota County requests Metropolitan Council consideration authorizing a Parks Acquisition Opportunity Fund (PAOF) grant for the purchase of the Rose Augustine Revocable Trust/Jacqueline Schluesner (Trust) property as an addition to Lake Byllesby Regional Park (LBRP).

The LBRP Master Plan was updated and approved by the Dakota County Board of Commissioners on January 23, 2018. The Master Plan included previously identified Trust property as a park in-holding, but also included additional Trust property to protect natural resources, 0.58 miles of the Cannon River and inclusion of an agricultural use buffer to provide recreational and management access to protected land.

The County completed, reviewed and accepted an independent appraisal to substantiate the \$446,400 purchase price. A very small portion of the property has been impacted by materials from a long-closed township dump which was documented by a Phase I and Phase II environmental assessment. The County subsequently received a "No Association Letter" from the Minnesota Pollution Control Agency but would be required to mitigate the small affected area if the existing soil cover is disturbed during potential grading and developing recreational improvements.

The Dakota County Board of Commissioners authorized acquisition of the Trust property and submission of an AOF grant request at its July 20, 2021, meeting. The County executed the purchase agreement with the property owners on October 8, 2021.

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

<b>Expense Item</b>	<b>Amount</b>
Purchase Price	\$446,400.00
Estimated Closing Costs and Title Insurance	\$1,756.00
Phase I Environmental Assessment	\$3,800.00
Phase II Environmental Assessment	\$10,167.77
Landowner Legal Fees	\$14,747.00
MPCA Fees	\$1,875.00
Appraisal	\$3,500.00
PILT (1.8 x \$129.00 of Randolph Township Property Tax)	\$232.20
PILT (1.8 x \$458.63 of Sciota Township Property Tax)	\$825.54
Pro-rated Property Tax	\$812.46
<b>Total</b>	<b>\$484,115.97</b>
75 percent of total	\$363,086.98
25 percent of total	\$121,028.99

Thank you for considering this request.

Sincerely,



Nicki 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

**15205 - 2021 Park Acquisition Opportunity Fund Program - Final Application**

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17057 - Acquisition of Rose Augustine Revocable Trust/Jacqueline Schluessner (Trust) Property for Lake Byllesby Regional Park in Dakota County  
Parks Grants Acquisition

Status: Under Review

Submitted Date: 12/21/2021 12:54 PM

**Applicant Information**

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**Primary Contact:**

Name:\* Mr. Jeffrey J Bransford  
Pronouns First Name Middle Name Last Name  
Title:\* Senior Parks Management Specialist  
Department: Parks  
Email:\* jeff.bransford@co.dakota.mn.us  
Address:\* 14950 Galaxie Ave

\* Apple Valley Minnesota 55124  
City State/Province Postal Code/Zip  
Phone:\* 952-891-7168  
Phone Ext.

Fax:  
What Grant Programs are you most interested in?\* Regional Parks Bonding Grants

**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

## Project description

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*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 Lake Byllesby RP-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 Lake Byllesby Regional Park Master Plan 05/23/2018  
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 Fee title

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.*

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** 03/30/2022  
Format: mmddyyyy (Do not enter any punctuation.)

**Type of agreement** Purchase Agreement  
i.e., purchase agreement, offer letter, etc.

**Date agreement expires** 03/30/2022  
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** 01/07/2021

**Appraised value** \$440,600.00

**Amount being offered the seller (net of closing and other costs)** \$446,600.00 101.36%  
% of appraised value

**Who performed the appraisal?** Walker Appraisals

**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**

The property is a combination of cropland, wooded land, and floodplain land. It has about 1 mile of frontage on the Cannon River.

**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** Yes

encumbrances on any part of the property?

If yes, describe

The property is not encumbered by any easements that would negatively affect its value. There are road and utility easements that are typical for the area.

**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 ENRTF / Council match  
Select as many as apply

Funding source comments, if desired

**Structures currently on the property**

Does the property contain ANY structures? No

If yes, are there any habitable structures? No

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

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

If there are habitable structures, could they be relocated? If yes, how? If no, why not?

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

**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.

A Natural Resources Management Plan (NRMP) was completed for Lake Byllesby Regional Park (LBRP) in 2018 to help guide the development of the Master Plan Update. A portion of the Rose Augustine Revocable Trust/Schluesner (Trust) property is included in the Cannon Cascades Management Unit at the far end of LBRP-West. Management goals include promoting the natural succession of former cropland to native prairie and evaluating the cost-benefit of removing or partially removing river embankments to increase floodplain interaction and restore historic hydrology.

**Stewardship and minimal access**

**Describe the stewardship plan.**

See attachment

**How will the stewardship implementation be funded?**

Combination of grant and County funds.

**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**

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**Land Use History**

**Current land uses** Agricultural, Wetland, Woods  
Select as many as apply

**Previous land uses** Agricultural, Dump/landfill, Wetland, Woods  
Select as many as apply

**Adjacent land uses** Agricultural, Park, Wetland, Woods  
Select as many as apply

**Inspection**

**Does the property contain any of the following?** Landfills, Power and/or utility lines  
Select as many as apply

**Sellers and parcels**

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Seller name	Parcel address	PID	Acres (SF for easements)	Date PA signed	Habitable structures?	MN House district	City	County	Met Council district	MPOSC	Latitude	Longitude
Augustine Trust & Schleusner		31-01800-25-010	0	10/08/2021	No	58B	Randolph Township	Dakota		H	44.517175	-93.040002
Augustine Trust & Schleusner		31-00700-07-010	0	10/08/2021	No	58B	Randolph Township	Dakota	16	H	44.517175	-93.040002
Augustine Trust & Schleusner		31-00700-07-011	0	10/08/2021	No	58B	Randolph Township	Dakota	16	H	44.517175	-93.040002
Augustine Trust & Schleusner		35-01200-80-010	0	10/08/2021	No	58B	Randolph Township	Dakota	16	H	44.517175	-93.040002
Augustine Trust & Schleusner		35-01300-03-010	110.3	10/08/2021	No	58B	Randolph Township	Dakota	16	H	44.517175	-93.040002

110.30



## Local match

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### Source of local match

County general fund

## Grant agreement signatories

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

## Acquisition Costs

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Cost Items	Amount	State funds	Metro funds	Match funds
<b>Purchase price</b>				
Negotiated purchase price	\$446,600.00	\$200,970.00	\$133,980.00	\$111,650.00
<b>Appraisal expenses</b>				
Appraisal	\$3,500.00	\$1,575.00	\$1,050.00	\$875.00
Appraisal review	\$0.00	\$0.00	\$0.00	\$0.00
<b>Environmental expenses</b>				
Phase I environmental site assessment	\$3,800.00	\$1710.00	\$1140.00	\$950.00
Phase II environmental site assessment	\$10,168.00	\$4,576.00	\$3050.00	\$2,542.00
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	\$2,102.00	\$946.00	\$631.00	\$525.00
Legal services and closing costs	\$16,503.00	\$7,426.00	\$4,951.00	\$4,126.00
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	\$1,875.00	\$844.00	\$562.00	\$469.00
Totals	\$484,548.00	\$218,047.00	\$145,364.00	\$121,137.00

## Total Estimated Acquisition Costs

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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)	\$484,548.00	\$218,047.00	\$145,364.00	\$121,137.00	\$363,411.00

# WALKER APPRAISALS

April 5, 2021

Mr. Al Singer, Land Conservation Manager  
Dakota County Environmental Resources Department  
14955 Galaxie Ave.  
Apple Valley, MN 55124

Re: Augustine Property  
Randolph Township

Dear Mr. Singer:

As you requested, I have completed an appraisal report on the market value of the above referenced property. The date of valuation is January 7, 2021.

The description of the subject property, comparable sales used, and the analysis that led to my value judgment are described within this report. This appraisal report conforms with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute and the American Society of Farm Managers and Rural Appraisers. This appraisal report is subject to the Critical Assumptions and Limiting Conditions in the Addendum.

On the basis of my examination of the real estate market surrounding the subject property, it is my opinion that the market values of the portions of the subject property that you requested are:

Portion of Subject Property	Acres	\$/Acre	Total Value
Value of larger parcel	138.84	\$4,600	\$638,700
Value of Remainder	39.62	\$5,000	(\$198,100)
Value of proposed acquisition	99.22		\$440,600

I enjoyed preparing this appraisal report and would like to thank you for the opportunity to be of service. Please contact me if you have any questions or comments.

Sincerely,



Wendy Walker, MAI, AI-GRS, ARA, RPRA  
Certified General Appraiser, MN #40698934, expires 8-31-2022

### APPRAISAL SUMMARY

<b>Owners of Record</b>	Rose Augustine Revocable Trust
<b>Property Location</b>	Sec. 7, T. 112 N., R. 18 W., Randolph Twp., Dakota Co. Sec. 12, T. 112 N., R. 19 W., Sciota Twp., Dakota Co.
<b>Size of Parcel</b>	138.840± acres
<b>Purpose of the Appraisal</b>	To estimate the fee simple value of the subject property for potential acquisition.
<b>Property Rights Appraised</b>	Fee simple
<b>Hypothetical Conditions</b>	None
<b>Extraordinary Assumptions</b>	None
<b>Intended Users</b>	Dakota County, the Metropolitan Council
<b>Present Use</b>	Agriculture and recreation
<b>Improvements</b>	No structures
<b>Zoning</b>	Agriculture and recreational
<b>Date of Value</b>	January 7, 2021

*Wendy Walker*

April 5, 2021

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Wendy Walker, MAI, AI-GRS, ARA, RRP  
Certified General Appraiser, MN #40698934 expires 8-31-2022

Date

Applied to the Subject Property

The total ownership includes two larger parcels, separated by the Cannon River. Even though the property is in one ownership, the Cannon River separates it into two separate physical parcels. It is most likely that the land north and south of the river would be sold separately to different buyers. A farmer must currently travel a mile to a bridge to cross the river, which makes the total trip over 2 miles. There is no market advantage to selling the two parcels as a single property. It has a much stronger market appeal as two separate larger parcels. The two parcels are in two different counties and would sell to two different buyers. They would not compete with each other.

In addition, the two parcels have different agricultural appeal. The land north of the river has a highest and best use for agricultural expansion and recreation, with one potential building site. The northern larger parcel has less cropland separated in 4 fields, inferior quality soils, a large percentage in the floodplain, and more wooded land with recreational appeal.

The land south of the river has a current highest and best use for agricultural expansion with a future development potential of four rural residential lots. The southern larger parcel has more cropland in one field, better soils, and more building eligibilities.

The following discussion focuses on the land north of the river that is proposed for acquisition. The southern larger parcel is not appraised in this report.

**Size and Shape**

The larger parcel is irregular in shape, best seen on the following maps. It extends for approximately one mile east-west and ¼ mile (varies) north-south. An in-holding of about 4 acres, owned by Dakota County, is located in the southeastern corner of the land north of the river.

Two surveys of the subject property are included in the Addendum.

	<b>Fee Purchase</b>	<b>Remainder</b>	<b>Total Parcel</b>
Section 7	47.04 acres	33.38 acres	80.42 acres
Section 12	63.27 acres	6.24 acres	69.51 acres
<b>Total</b>	<b>110.31 acres</b>	<b>39.62 acres</b>	<b>149.93 acres</b>
Less submerged land	-11.09 acres	0 acres	-11.09 acres
<b>Net Usable Land</b>	<b>99.22 acres</b>	<b>39.62 acres</b>	<b>138.84 acres</b>

The gross ownership includes several acres of water in the Cannon River. The total submerged acreage is 11.09 acres, which I measured on the Dakota County GIS website for every tax parcel. I do not think that a buyer would pay for the submerged acreage, so the appraisal is based upon the net land acreage of 138.84 acres. The acreage in small ponds and the river oxbows is included in the valuation.



### **3.0 Board Resolution**

**July 20, 2021**

**21-357**

**Authorization To Amend Resolutions No. 17-598 And No. 20-230 To Acquire 110.3 Acres And A 4.2-Acre Easement From Rose Augustine Revocable Trust And Jaqueline R. Schleusner**

WHEREAS, the Rose Augustine Revocable Trust and Jaqueline R. Schleusner (collectively the "Trust") own 140.8 acres in Randolph and Sciota townships; and

WHEREAS, the Trust expressed interest in selling a portion of their property to the County; and

WHEREAS, by Resolution No.17-598 (November 14, 2017), the County Board authorized the expenditure of \$418,000 to acquire 110.3 acres of the Trust property as an addition to Lake Byllesby Regional Park and to expend \$6,800 to acquire 4.2 acres as a new County Park-Conservation Area; and

WHEREAS, the County and Trust worked with an adjacent landowner to acquire property along Cannon River Boulevard, to improve public access to the proposed County park acquisition property, and to ensure private access across public land to the retained Trust property, but the landowner decided to no longer allow the Trust to use their property to access retained Trust property; and

WHEREAS, the Trust required permanent access through a portion of the property being acquired by the County to access retained Trust property, and the adjoining landowner south of the Cannon River was willing to own the 4.2-acre parcel owned by the Trust, with a permanent, County natural area conservation easement (Easement) restricting it; and

WHEREAS, by Resolution No. 20-230 (May 5, 2020), the County Board authorized inclusion of a permanent access easement within the proposed County acquisition to allow access to the retained Trust property and to expend up to \$6,800 to acquire a 4.2-acre Easement along the south shore of the Cannon River; and

WHEREAS, based on new information about the closed, local dump located on property adjacent to the Trust property proposed for acquisition by the County, the County completed a Phase II Environmental Assessment that disclosed contaminants in a small area of the Trust property proposed for County acquisition; and

WHEREAS, the County applied for and received a "No Association Letter" from the Minnesota Pollution Control Agency, which documents that the County, upon taking possession of the property, would not have liability associated with the contamination but that the County would be responsible for necessary mitigation if any sub-surface grading associated with a future access road or trail exposed contaminants; and

WHEREAS, these delays required an appraisal update, and the revised, independent appraisal for 110.3 acres was reviewed and approved by County staff; and

WHEREAS, the Trust is willing to sell the 110.3 acres for the \$440,600 appraised value and to sell the 4.2-acre Easement for \$7,128; and

WHEREAS, the total estimated cost to acquire the Trust property, including an estimated \$5,000 for closing costs and \$10,000 for Trust legal fees, is \$455,600; and

WHEREAS, the 110.3-acre Trust property is eligible for Metropolitan Council (MC) Acquisition Opportunity Fund (AOF) funding; and

WHEREAS, it is expected that the MC AOF program will have additional funds available after July 1, 2021, for 75 percent funding reimbursement; and

WHEREAS, the 2021 Parks Capital Improvement Program (CIP) budget includes adequate fund balance for the 25 percent County match required by the MC AOF program; and

WHEREAS, the 2021 Environmental Resources (ER) CIP includes adequate Minnesota Law 2019 (ML19) state Outdoor Heritage (OH) and County grant-match for acquiring the Easement, and a budget amendment is required; to transfer the funds from the grant to establish a project budget; and

WHEREAS, staff recommend execution of purchase agreements to acquire the 110.3-acre Trust property and the Easement and execution of an easement and Notices of Funding Restriction required for the use of state grant funds together with other standard closing documents to complete the acquisitions; and

WHEREAS, final acquisition costs for the Trust property and the Easement will be determined after the respective 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 amends Resolution No.17-598 (November 14, 2017), and Resolution No. 20-230 (May 5, 2020), and authorizes the expenditure of up to \$455,600, including an estimated \$5,000 in closing costs and \$10,000 for property owner legal fees, to acquire 110.3 acres from the Rose Augustine Revocable Trust and Jaqueline R. Schleusner in Randolph and Sciota townships; and

BE IT FURTHER RESOLVED, That the Dakota County Board of Commissioners hereby authorizes the Physical Development Division to execute the purchase agreement to acquire 110.3 acres in Randolph and Sciota townships from the Rose Augustine Revocable Trust and Jaqueline R. Schleusner, subject to approval by the County Attorney's Office as to form; and

BE IT FURTHER RESOLVED, That the Dakota County Board of Commissioners hereby authorizes submission of an AOF grant request to the MC for acquiring the Rose Augustine Revocable Trust and Jaqueline R. Schleusner property and associated costs; and

BE IT FURTHER RESOLVED, That the Dakota County Board of Commissioners amends Resolution No. 20-230 (May 5, 2020) to expend up to \$8,000 to acquire a 4.2-acre permanent natural area conservation easement from the Rose Augustine Revocable Trust and Jaqueline R. Schleusner; and

BE IT FURTHER RESOLVED, That the Dakota County Board of Commissioners hereby authorizes the Physical Development Director to execute a purchase agreement with the Rose Augustine Revocable Trust and Jaqueline R. Schleusner to acquire a 4.2-acre permanent natural area conservation easement at a cost not to exceed \$7,128, subject to approval by the County Attorney's Office as to form; and

BE IT FURTHER RESOLVED, That the Dakota County Board hereby authorizes the County Board Chair to execute the permanent natural area conservation easement and Notice of Funding Restriction required with State funding, subject to approval by the County Attorney's Office as to form; and

BE IT FURTHER RESOLVED, That the 2021 Environmental Resources Capital Improvement Program budget is hereby amended as follows:

**Expense**

Augustine/Schleusner Acquisition (LC10017)	\$8,000
ML19 OHF Grant (LC00009)	<u>(\$8,000)</u>
<b>Total Expense</b>	<b>\$0</b>

**Revenue**

Augustine/Schleusner Acquisition – Grant funding (LC10017)	\$6,400
Augustine/Schleusner Acquisition – County funds (LC10017)	\$1,600
ML19 OHF Grant funding (LC00009)	<u>(\$6,400)</u>
ML19 OHF County matching funds (LC00009)	<u>(\$1,600)</u>
<b>Total Revenue</b>	<b>\$0</b>

BE IT FURTHER RESOLVED, That following acquisition of the Rose Augustine Revocable Trust and Jaqueline R. Schleusner in property, staff will submit the necessary forms and documentation to the Metropolitan Council to receive approximately \$341,600 in reimbursement funds that will be returned to the 2021 Parks Capital Improvement Program; and

BE IT FURTHER RESOLVED, That following acquisition of the natural area conservation easement on the Trust property, staff will submit the necessary forms and documentation to the Lessard-Sams Outdoor Heritage Council to receive approximately \$6,400 in reimbursement funds that will be returned to the 2021 Environmental Resources Capital Improvement Program budget.

Ayes: 7

Nays: 0

**Exhibit 6: Purchase agreement**

Dakota County Contract # C0031862

**FEE TITLE PURCHASE AGREEMENT - THE ROSE AUGUSTINE REVOCABLE TRUST AND JACQUELINE R. SCHLEUSNER PROPERTY**

This Purchase Agreement (hereinafter called the "Agreement") is made and entered on the Effective Date by and between the Rose Augustine Revocable Trust under Agreement dated November 29, 2012, an undivided half interest, and Jacqueline R. Schleusner, a single person; an undivided half interest; (hereinafter collectively called the "Seller"), and the COUNTY OF DAKOTA, 1590 Highway 55, Hastings, MN 55033, a political subdivision of the State of Minnesota, (hereinafter called the "Buyer").

**WITNESSETH**

**WHEREAS**, Seller is the owner of certain real property situated in Dakota County, Minnesota identified by Parcel Identification Numbers 31-01800-25-010, 31-00700-07-010, 31-00700-07-011, 35-01200-80-010, and 35-01300-03-010; and

**WHEREAS**, Seller agrees to sell, and Buyer agrees to buy fee title to 110.3 acres defined as the "Property" below.

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

**AGREEMENT**

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

- a. "**Access Easement**" shall mean the permanent access easement, legally described in the attached **Exhibit B** and generally depicted in the attached **Exhibit A-1** which will provide access by Seller or its agents to the Retained Property (defined below).
- b. "**Agreement**" shall mean this Purchase Agreement and any addendums between Buyer and Seller as of the Effective Date.
- c. "**Closing**" shall mean the process by which Buyer, Seller and Title Company execute all necessary documents for Seller to sell and Buyer to buy the property, together with any other documents required by the Buyer and the Title Company.
- d. "**Closing Date**" shall mean the date on which the Buyer acquires the Property and the terms of this Agreement are fulfilled. For this Agreement, the date shall be no later than December 31, 2021.
- e. "**Deeds**" shall mean a Trustee's Deed from Rose Augustine Trust and a Warranty Deed from Jacqueline R. Schleusner conveying marketable title to the Property conveying good and marketable title of record to the Property, subject to the following title exceptions:
  - i. Building and zoning laws, ordinance, state and federal regulations;
  - ii. Reservation of any mineral rights to the State of Minnesota;

- iii. Utility, drainage and public road easements of record; and
  - iv. The lien of real property taxes and the lien of special assessments and interest due thereon, if any, payable prior to or in the year of closing by which the terms of this Agreement are to be paid by Seller.
- f. "Due Diligence Deadline" shall mean no less than two weeks prior to closing.
  - 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. "Fixtures" shall mean items that are embedded in the land or attached to the building(s) and cannot be removed without damage to the real property or building(s).
  - j. "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.
  - k. "Parties" shall mean Buyer and Seller, as defined above, collectively.
  - l. "Property" shall mean that certain real estate situated in Dakota County, Minnesota being conveyed from Seller to Buyer, as legally described in **Exhibit A**, and generally depicted in **Exhibit A-1** attached hereto.
  - m. "Retained Property" shall mean that certain real estate situated in Dakota County, Minnesota, adjacent to the Property, excepted from this Agreement, retained by Seller, and generally depicted in **Exhibit A-1**.
  - n. "Purchase Price" shall mean the sum of **Four Hundred Forty Six Thousand Six Hundred Dollars (\$446,600)**.
  - o. "Title Company" shall mean DCA Title Company at 1250 North Frontage Road, Hastings, MN 55033.

2. FEE OWNER. Seller represents that Seller is the fee owner of the Property and hereby agrees to sell the Property to Buyer, free of any liens, exceptions and encumbrances and except as hereinafter identified below:

- a. Building and zoning laws, ordinances, State and Federal regulations;
- b. Utility, drainage, and public road easements of record;



- c. Other utility, drainage and public road easements of record;
- d. The lien of real property taxes and the lien of special assessments and interest due thereon, if any, payable prior to or in the year of closing by which the terms of this Agreement are to be paid by Seller; and

Seller agrees to convey Seller's interest in the Property to Buyer pursuant to the terms herein, including but not limited to the retention of the Access Easement providing ingress and egress to and from Cannon River Boulevard to the Retained Property to be recorded after the Closing Date.

3. FIXTURES AND PERSONAL PROPERTY. None.

4. TITLE EXAMINATION. Within twenty (20) days after the Effective Date, Seller shall deliver to Buyer an abstract of title or registered property certificate for the Property or at Seller's election, a commitment from the Title Company to issue to Buyer an ALTA policy of title insurance for the Property. Buyer shall pay the entire cost for updating the abstract or registered property certificate or the full charge for a 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.

In any event, Seller shall satisfy and discharge all monetary liens and encumbrances (except any statutory liens for non-delinquent real property taxes) affecting the Property and Seller shall furnish whatever documents or evidence will be required by the Title Company in order to delete the "printed form" or standard exceptions to coverage, including, without limitation, rights of Parties in possession, unrecorded easements and mechanics or material men's liens or claims of lien, on or before Closing.

5. PAYMENT TERMS. As consideration for the covenants and agreements made herein, Buyer agrees to pay the Purchase Price to Seller for the Property, less closing costs, including any mortgage pay-off amounts, payable in cash or equivalent upon the execution and delivery of the Deeds conveying the Property from Seller to Buyer and other necessary documents on the Closing.

6. CLOSING COSTS.

- a. Seller shall have no closing costs.
- b. Buyer is responsible for paying the costs for a title commitment and supplements, examination fee, name search, property inspection, updating abstract or Torrens title records, special assessment search, tax and judgment search, title insurance premium, property inspection, any recording fees, and one hundred (100) percent of closing fees charged by the Title Company.

- c. Buyer will reimburse Seller for reasonable attorney fees charged by the Fluegel Law Firm, P.A. associated with the transaction contemplated by this Agreement and the Permanent Natural Area Conservation Easement Purchase Agreement between the Parties of equal date herewith, supported by billing records and in an amount not to exceed \$12,000. The reimbursement of attorney fees does not include any fees associated with a dispute between the Parties related to this Agreement or any claims associated with an alleged breach of this Agreement.

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

- a. The Deeds conveying marketable title to the Property.
- b. A Certificate of Trust and Affidavit of Trustee for the Rose Augustine Revocable Trust under Agreement dated November 29, 2012
- c. Standard Seller's Affidavit regarding Parties in possession.
- d. Seller's Affidavit of no improvements made to the Property within the last 120 days.
- e. An accounting of property taxes owed on the Property up to the Closing and proof of payment or a deduction from the purchase price for such taxes, including any additional property taxes resulting from any "Green Acres" reassessment pursuant to MINNESOTA STATUTES § 273.111.
- f. Well disclosure forms and a completed well disclosure certificate as required by MINNESOTA STATUTES § 103I.235.
- g. Any other document(s) requested by Buyer or Title Company to effectuate the closing and the terms of this Agreement.

8. UTILITIES. All utilities of any nature used in or about the Property shall be read and adjusted as of the date Seller actually vacates the premises and Seller will pay for all such utility charges through the date of Seller's vacation of the premises.

9. TAXES AND SPECIAL ASSESSMENTS. Seller will pay all past due property taxes and any installments of special assessments levied against the Property, and due at the date of closing, unless otherwise agreed in an attached addendum. The property taxes that are due and payable in the current year shall be prorated as of the Closing Date, with Seller obligated to pay taxes through the Closing Date and Buyer responsible for the taxes due after the Closing Date. Seller will pay any additional property taxes resulting from any "Green Acres" reassessment pursuant to MINNESOTA STATUTES § 273.111.

10. SELLER'S WARRANTIES. Seller warrants that:

- a. Seller has full power and authority to enter into this Agreement (and the person signing this Agreement for Seller has full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all right, title and interest in and to the Property.

- b. The execution of this Agreement will not constitute a breach or default under any agreement to which Seller is bound and/or to which the Property is subject.
- c. 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 Seller which could affect Seller's title to the Property or any portion thereof, affect the value of the Property, or any portion thereof, or subject an owner of the Property, or any portion thereof, to liability.
- d. There is no lease, license, permit, option, right of first refusal or other agreement, oral or written, which affects the Property or any portion thereof.
- e. There is a right of access to the Property from a public right of way, or that such right of access shall be provided by Seller to Buyer at the time of conveyance of the Property in a form acceptable to Buyer.
- f. There has been no labor or material furnished to the Property for which payment has not been made.
- g. 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 Seller by any governmental agency notifying Seller of any violations of statute, order, ordinance, rule, requirement or regulation which would affect the Property or any portion thereof.
- h. The Property is not subject to a lien for Medical Assistance or other public assistance.
- i. Except as identified in the No Association Letter from the Minnesota Pollution Control Agency, dated February 4, 2021, obtained by Buyer attached as **Exhibit D**, Seller has no knowledge, nor does Seller have reason to know, of any condition at, on, under or related to the Property 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 hereinafter defined).
- j. Except as identified in the No Association Letter from the Minnesota Pollution Control Agency, dated February 4, 2021 obtained by Buyer attached as **Exhibit D**, Seller has no knowledge, nor does Seller have reason to know, of any production, use, treatment, storage, transportation, or disposal of any Hazardous Substance (as hereinafter defined) on the Property or under the Property, nor has there been any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Property or into or upon ground or surface water at the Property or within the immediate vicinity of the Property.
- k. Seller has no knowledge, nor does Seller have reason to know that any asbestos-containing materials incorporated into the buildings or interior improvements or equipment

that are part of the Property, if any, nor is there any electrical transformer, fluorescent light fixture with ballasts or other PCB-containing item on the Property.

- l. Seller is in compliance with all laws and regulations in connection with any handling, use, storage or disposal of Hazardous Substances including the maintenance of all required permits and approvals.
- m. Seller has disclosed to Buyer in writing the location of any individual sewage treatment systems located on the Property.
- n. Seller has disclosed to Buyer in writing the location of any individual wells located on the Property.
- o. To the best of Seller's knowledge, there is no lead paint used in the construction or maintenance of any building(s) on the Property.
- p. To the best of Seller's knowledge, methamphetamine production has not occurred on the Property.

Each of the above representations is material and is relied upon by Buyer. Except insofar as Seller has advised Buyer in writing to the contrary, each of the above representations shall be deemed to have been made as of the Closing and shall survive the Closing. At the Closing, if Buyer so requests, 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 the Closing.

If, before the Closing, Seller discovers any information or facts that would materially change these warranties and representations, 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, Seller will promptly remedy the problem, at Seller's sole cost and expense, upon receipt of notice by Buyer. If 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 Property 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

11. CONDITIONS PRECEDENT. In addition to the title examination, the purchase of the Property by Buyer is contingent upon:

- a. The completion of due diligence by Buyer on or before the Due Diligence Deadline and Buyer determining in its sole discretion that the condition of the Property is acceptable to it. Seller agrees that Buyer shall have the right to inspect and investigate the Property at reasonable times and to perform any tests it deems necessary, including tests to evaluate the environmental condition of the Property. Buyer shall coordinate any such inspection to accommodate the schedule of Seller, who shall not unreasonably withhold permission to inspect or investigate.

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.

12. ACCESS EASEMENT. The Buyer agrees to grant a 30-foot wide permanent access within Parcel Identification Number 35-01200-80-010, legally described in **Exhibit B** and generally depicted in **Exhibit A-1**, attached hereto, to the Sellers at no cost after Closing to enable Sellers contractors, renters, and successors or assigns to access their retained property for agriculture or other allowable uses.

13. METROPOLITAN COUNCIL FUNDING RESTRICTIONS AND COVENANTS. The Seller and Buyer acknowledge that the Buyer's purchase of this Property 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 Property or any portion thereof, or otherwise convey or grant any easement or allow any other encumbrance to be placed against the Property 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 Property 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 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 Property. 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 Property allowing the Council to construct, install, operate and maintain the Wastewater Facilities over, under and across the Property 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.

13. CLOSING. The Closing shall occur on the Closing Date at the 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.

14. POSSESSION. Seller shall deliver possession of the Property no later than the time set by the Title Company for the Closing in the same condition as it was on the Effective Date, ordinary wear and tear excepted, free and clear of the rights or claims of any other party.

15. RISK OF LOSS. Until the completion of closing and delivery of possession of the Property, all risk of loss is on Seller. If the Property 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 Property and an additional two (2) business days to determine if the damages and 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.

16. REMEDIES UPON DEFAULT. In the event that 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 Seller. Buyer shall have six (6) months to exercise its right of specific performance under this section. In the event that Buyer defaults in the performance of any of its obligations under this Agreement, Seller shall have, as its sole and exclusive remedy, the right to cancel this Agreement as permitted by MINNESOTA STATUTES §§ 559.21 and 559.217.

17. NO BROKER'S COMMISSION. 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 Seller. In the event that Seller has used a broker or any person asserts a claim for a broker's commission or finder's fee related to Seller, that Seller will indemnify and hold Buyer harmless from and against the claim and this indemnification shall survive Closing or any earlier termination of this Agreement.

18. WAIVER OF DISCLOSURE. Unless otherwise required herein, Buyer waives the written disclosures required under MINNESOTA STATUTES §§ 513.52 to 513.60.

19. 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:

As to an undivided one-half interest:

Jacqueline R. Schleusner  
4120 Kindred Way  
Lake Elmo, MN 55042  
As to an undivided one-half interest:

Rose Augustine, Amy Reents, David Augustine and John Augustine, as Trustees  
of the Rose Augustine Revocable Trust under Agreement dated November 29,  
2012:

Rose Augustine  
c/o Amy Reents  
15221 68th Street South  
Hastings, MN 55033

Amy Reents  
15221 68th Street South  
Hastings, MN 55033

David Augustine  
3143 Edgewater View  
Woodbury, MN 55042

John Augustine  
465 Neal Avenue North  
Stillwater, MN 55082

With respect to the Seller's Legal Representative

Donald J. Fluegel  
Fluegel Law Firm, P.A.  
999 Westview Drive, Suite 1  
Hastings MN 55033

- 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. Seller understands that Buyer and the County Attorney's Office do not represent Seller in this matter. Seller has had an opportunity to review the terms of this Agreement with Seller's own legal counsel at the Fluegel Law Firm, P.A.. 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.
20. TAX IMPLICATIONS. Seller shall consult with an attorney or tax consultant to discuss the tax implications that may result from the sale of the Property. The Buyer does not offer tax advice and encourages Seller to seek its own independent review of tax implications.

**-This Space Intentionally Left Blank-**



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

**SELLER**

  
Jacqueline R. Schleusner


Date of Signature 10-1-21

Signature of Trustee Rose Augustine unnecessary according to paragraphs 4.4 and 4.5 of Trust document authorizing one Trustee's signature will bind the Trust.

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Rose Augustine, as Trustee of the Rose Augustine Revocable Trust under agreement dated November 29, 2012


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

  
Amy Reents, as Trustee of the Rose Augustine Revocable Trust under agreement dated November 29, 2012

Date of Signature 10/4/21

  
David Augustine, as Trustee of the Rose Augustine Revocable Trust under agreement dated November 29, 2012

Date of Signature 10/8/21

  
John Augustine, as Trustee of the Rose Augustine Revocable Trust under agreement dated November 29, 2012

Date of Signature 10-5-2021

**BUYER**

DocuSigned by:  
  
2F374ADAEDF34E4

Steve Mielke, Director  
Physical Development Division

Date of Signature 09/16/2021 | 10:32 AM CDT

Approved as to form:

/s/ Thomas R. Donely  
Assistant Dakota County Attorney

Date of Signature: September 15, 2021

KS-2019-343

Contract No. C0031862

Approved by Dakota County Board  
Resolution No. 17-598, No. 20-230 and No. 21-357

EXHIBIT A

## Dakota County Parks

### Legal Description of the Rose Augustine Revocable Trust and Jacqueline R. Schluesner Property being Acquired by the County of Dakota

#### Tract No. 164

The following described premises in Dakota County, said real estate lying and being in the Southeast Quarter of Section 12, Township 112, Range 19 and more particularly described as follows, to-wit: Commencing at the Southeast corner of said Section 12 and running thence West along the South line of said Section to the West line of the Southeast Quarter of Section 12, thence North along the West line of said quarter section to the center of the Highway called the Northfield and Cannon Falls Road, thence along the center of the Highway in an easterly direction to the East line of said Section 12, thence South on said Section line to the place of beginning EXCEPTING therefrom any part of said lands which might lay in the Northeast Quarter of the Southeast Quarter of said Section 12. AND ALSO EXCEPTING that part of the Southeast Quarter of the Southeast Quarter of said Section 12, Township 112 North, Range 19 West, lying southerly of the southerly bank of the Cannon River.

AND ALSO EXCEPTING from the Southeast Quarter of the Southeast Quarter, of said Section 12, Township 112 North, Range 19 West, Dakota County, Minnesota, that part described as follows: Beginning at the northeast corner of said Southeast Quarter of the Southeast Quarter; thence South 00 degrees 28 minutes 01 seconds East, assumed bearing, along the east line of said Southeast Quarter of the Southeast Quarter a distance of 496.92 feet; thence North 88 degrees 17 minutes 07 seconds West a distance of 381.39 feet; thence North 39 degrees 02 minutes 10 seconds West a distance of 425.14 feet; thence North 13 degrees 49 minutes 42 seconds West a distance of 150.46 feet to the north line of said Southeast Quarter of the Southeast Quarter; thence North 89 degrees 13 minutes 43 seconds East, along said north line of the Southeast Quarter of the Southeast Quarter, a distance of 680.95 feet to the point of beginning.

AND

All that part of the Northeast Quarter of Section 13, Township 112, Range 19 which lies North of the Cannon River, Dakota County, Minnesota.

AND

The North 893 feet of the South Half (S ½) of the Southwest Quarter (SW ¼) of Section 7, Township 112, Range 18, Dakota County, Minnesota, EXCEPTING therefrom the South 100 feet of the West 300 feet of the East 1152 feet of the North 893 feet AND ALSO EXCEPTING from said North 893 feet of the South Half of the Southwest Quarter the following described parcel:

Beginning at the northwest corner of said South Half of the Southwest Quarter; thence South 89 degrees 32 minutes 11 seconds East, assumed bearing, along the north line of said South Half of the Southwest Quarter a distance of 2221.88 feet; thence South 23 degrees 22 minutes 28 seconds West a distance of 348.91 feet; thence South 49 degrees 16 minutes 55 seconds East a distance of 231.42 feet; thence South 13 degrees 27 minutes 31 seconds West a distance of 330.35 feet; thence North 89 degrees 32 minutes 11 seconds West a distance of 158.93 feet; thence North 45 degrees 01 minutes 12 seconds West a distance of 294.36 feet; thence South 87 degrees 19 minutes 11 seconds West a distance of 607.60 feet; thence South 53 degrees 58 minutes 28 seconds West a distance of 263.18 feet; thence South 88 degrees 24 minutes 32 seconds West a distance of 302.87 feet; thence North 64 degrees 12 minutes 14 seconds West a distance of 674.27 feet; thence North 88 degrees 17 minutes 07 seconds West a distance of 81.13 feet to the west line of said South Half of the Southwest Quarter; thence North 00 degrees 28 minutes 01 seconds West, along said west line of the South Half of the Southwest Quarter, a distance of 496.92 feet to the point of beginning.

AND

That part of the South Half (S ½) of the Southwest Quarter (SW ¼) of Section 7, Township 112, Range 18, Dakota County, Minnesota, which lies South of the North 893 feet of said S ½ of SW ¼, and in addition the South 100 feet of the West 300 feet of the East 1152 feet of the North 893 feet, EXCEPTING therefrom that part thereof lying westerly of the East 212.5 feet thereof and lying easterly of the East 772.5 feet of said S ½ of SW ¼.

AND

That part of Section 18, Township 112, Range 18 that lies in Dakota County and that lies North of the Cannon River, Dakota County, Minnesota.

Total Area = 110.3 acres

# Dakota County Parks

## General Depiction of the Rose Augustine Revocable Trust and Jacqueline R. Schluesner Property being Acquired by the County of Dakota

Tract No. 164

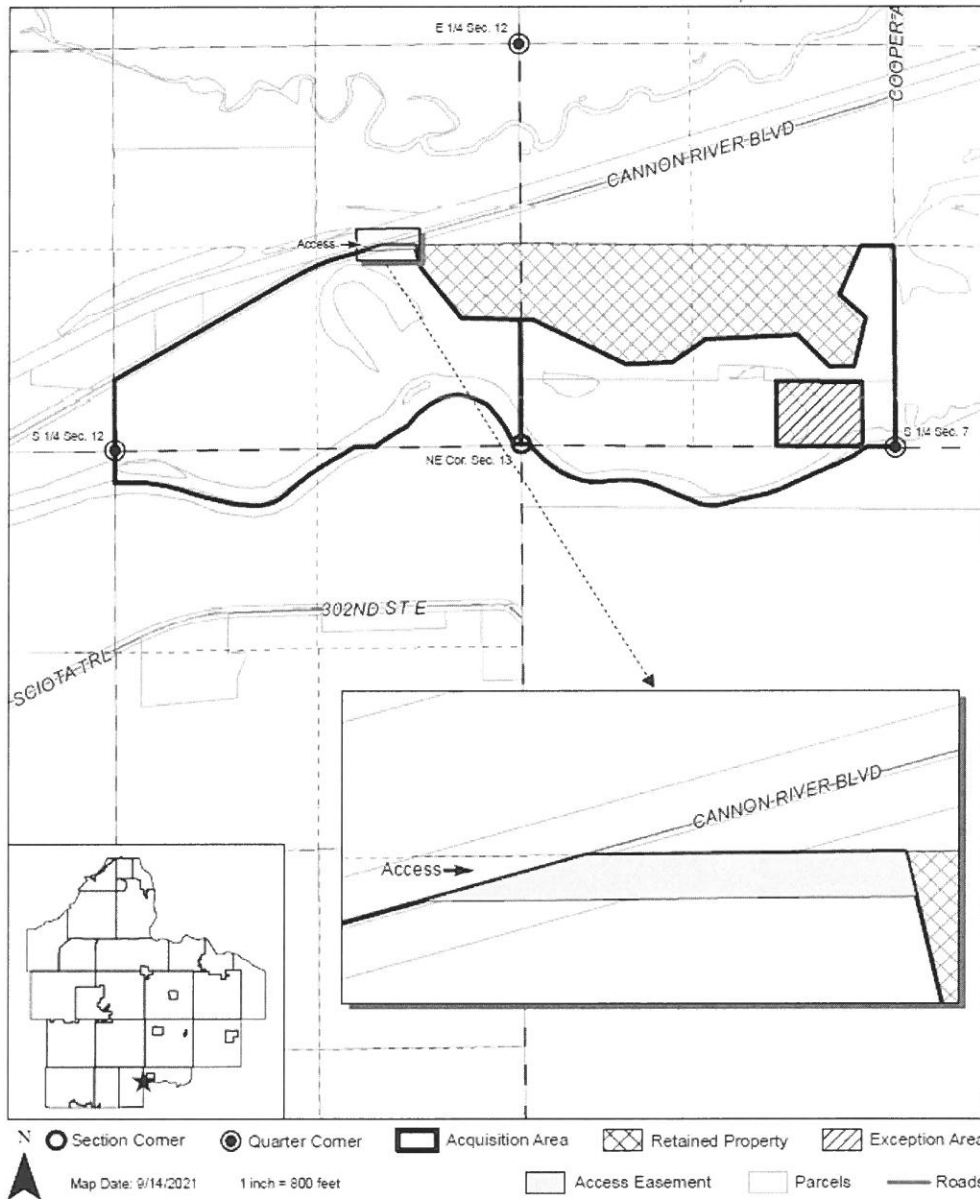


EXHIBIT B

## DAKOTA COUNTY PARKS

**LEGAL DESCRIPTION OF THE ACCESS EASEMENT TO THE RETAINED ROSE  
AUGUSTINE REVOCALBE TRUST AND JACQUELINE R. SCHLEUSENER  
PROPERTY**

A permanent easement for access purposes over and across the north 30.00 feet of the Southeast Quarter of the Southeast Quarter of Section 12, Township 112 North, Range 19 West, Dakota County, Minnesota lying easterly of County Road No. 94 (FKA Northfield and Cannon Falls Road) and westerly of the following described line:

Commencing at the northeast corner said Southeast Quarter of the Southeast Quarter; thence South 89 degrees 13 minutes 43 seconds West, assumed bearing along the north line of said Southeast Quarter of the Southeast Quarter, a distance of 680.95 feet to the point of beginning of the line to be described; thence South 13 degrees 49 minutes 42 seconds East a distance of 150.46 feet and said line there terminating.

**Exhibit C**

**AGREEMENT AND RESTRICTIVE COVENANT**

**THIS AGREEMENT AND RESTRICTIVE COVENANT** is made and entered into this \_\_\_\_\_ day \_\_\_\_\_, 202\_, by and between County of Dakota (the “Grantee”) and the Metropolitan Council, a political subdivision of the State of Minnesota (the “Council”).

**RECITALS**

1. The Grantee has acquired the following described real property, to-wit:  
See attached **Exhibit A**, hereinafter referred to as the “Property.”
2. The Council has contributed funds toward the acquisition of the Property pursuant to its grant program authorized by chapter 563, Laws of Minnesota, 1974.
3. The grant program was established pursuant to the law to provide for the acquisition, preservation, protection, development, and betterment of regional recreational open space for public use.
4. The grant agreement under which the Council contributed funds towards the acquisition of the Property is identified as **SG-\_\_\_\_\_**.

**NOW, THEREFORE**, in consideration of the grant made by the Council to the Grantee and in consideration of the mutual agreements and covenants contained in this Agreement, the parties agree as follows:

1. No sale, lease, mortgage, or other conveyance, nor the creation of any easement, restriction, or other encumbrance against the Property shall be valid for any purpose 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, nor shall the Property be used for any purpose except 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.

2. As a condition to this Grant, and provided that conveyance of such easement or easements is consistent with the Approved Master Plan, the Grantee agrees to convey to the Council, its successors or assigns, a permanent easement or easements, hereinafter referred to as “Wastewater Facilities Easement[s]” for future regional wastewater conveyance corridors on the Property. Upon written request by and at no cost to the Council, Grantee will execute and deliver to the Council the Wastewater Facilities Easement[s] substantially in the form of the Easement attached hereto and incorporated herein for the location or locations described by the Council in its written request to Grantee. The Council may exercise this contractual right to the Wastewater Facilities Easement[s] on one or more occasions.

The Council agrees to work cooperatively with Grantee to locate the Wastewater Facilities Easement[s] and the regional wastewater conveyance facilities on the Property in a manner which minimizes the impact on existing and planned park system facilities on the Property and natural resources. As further consideration for the conveyance of the Wastewater Facilities Easement[s], the Council agrees to waive the Sewer Availability Charge for the Property.

As a further condition for this Grant, the Council may, at any time after execution of this Grant, provide to Grantee written notification of the proposed location of a future regional wastewater conveyance corridor on the Property. Grantee agrees not to place or allow to be placed any restrictions, conditions, or encumbrances on the Property within the proposed future regional wastewater conveyance corridor without the written consent of the Council.

This Agreement and Restrictive Covenant may be enforced by the Council or its successors, as then defined, by appropriate action in the courts of the State of Minnesota.



IN WITNESS WHEREOF, the parties have caused this instrument to be executed in their respective names all as of the date first above written.

**METROPOLITAN COUNCIL**, a public corporation and political subdivision of the State of Minnesota

\_\_\_\_\_  
*Name*, Community Development Director

Date: \_\_\_\_\_

STATE OF MINNESOTA)  
  ) SS.  
COUNTY OF RAMSEY )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_ *Name* \_\_\_\_\_, Community Development Director of the METROPOLITAN COUNCIL, a public corporation and political subdivision of the State of Minnesota, on its behalf.

\_\_\_\_\_  
Notary Public

***COUNTY OF DAKOTA***

\_\_\_\_\_  
*Name, Chair*  
Board of Commissioners

Attested to By:

\_\_\_\_\_  
*Name, Clerk to the Board*

Approved by Dakota County  
Board Resolution No. 2\_ - \_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant County Attorney

Date: \_\_\_\_\_

KS-2\_ - \_\_\_\_\_

Contract No. \_\_\_\_\_

STATE OF MINNESOTA )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 202\_, before me a notary public within and for the County of Dakota, personally appeared \_\_\_\_\_ *Name* \_\_\_\_\_, Chair of the Board of Commissioners and acknowledged that s/he executed said instrument on behalf of the County by authority of its Board.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:  
Peter A. Hanf, Associate General Counsel  
License No. 0268124  
Metropolitan Council 390 Robert Street No  
St. Paul, MN 55101

## EXHIBIT A TO AGREEMENT

### Project Description

Acquisition of 110.3 acres along the Cannon River in Sciota and Waterford Townships  
as an addition to Lake Byllesby Regional Park

---

### Legal Description

Property Identification Numbers: 31-01800-25-010, 31-00700-07-010, 31-00700-07-011,  
35-01200-80-010, and 35-01300-03-010

The following described premises in Dakota County, said real estate lying and being in the Southeast Quarter of Section 12, Township 112, Range 19 and more particularly described as follows, to-wit: Commencing at the Southeast corner of said Section 12 and running thence West along the South line of said Section to the West line of the Southeast Quarter of Section 12, thence North along the West line of said quarter section to the center of the Highway called the Northfield and Cannon Falls Road, thence along the center of the Highway in an easterly direction to the East line of said Section 12, thence South on said Section line to the place of beginning EXCEPTING therefrom any part of said lands which might lay in the Northeast Quarter of the Southeast Quarter of said Section 12. AND ALSO EXCEPTING that part of the Southeast Quarter of the Southeast Quarter of said Section 12, Township 112 North, Range 19 West, lying southerly of the southerly bank of the Cannon River.

AND ALSO EXCEPTING from the Southeast Quarter of the Southeast Quarter, of said Section 12, Township 112 North, Range 19 West, Dakota County, Minnesota, that part described as follows: Beginning at the northeast corner of said Southeast Quarter of the Southeast Quarter; thence South 00 degrees 28 minutes 01 seconds East, assumed bearing, along the east line of said Southeast Quarter of the Southeast Quarter a distance of 496.92 feet; thence North 88 degrees 17 minutes 07 seconds West a distance of 381.39 feet; thence North 39 degrees 02 minutes 10 seconds West a distance of 425.14 feet; thence North 13 degrees 49 minutes 42 seconds West a distance of 150.46 feet to the north line of said Southeast Quarter of the Southeast Quarter; thence North 89 degrees 13 minutes 43 seconds East, along said north line of the Southeast Quarter of the Southeast Quarter, a distance of 680.95 feet to the point of beginning.

AND

All that part of the Northeast Quarter of Section 13, Township 112, Range 19 which lies North of the Cannon River, Dakota County, Minnesota.

AND

The North 893 feet of the South Half (S ½) of the Southwest Quarter (SW ¼) of Section 7, Township 112, Range 18, Dakota County, Minnesota, EXCEPTING therefrom the South 100 feet of the West 300 feet of the East 1152 feet of the North 893 feet AND ALSO EXCEPTING from said North 893 feet of the South Half of the Southwest Quarter the following described parcel:

Beginning at the northwest corner of said South Half of the Southwest Quarter; thence South 89 degrees 32 minutes 11 seconds East, assumed bearing, along the north line of said South Half of the Southwest Quarter a distance of 2221.88 feet; thence South 23 degrees 22 minutes 28 seconds West a distance of 348.91 feet; thence South 49 degrees 16 minutes 55 seconds East a distance of 231.42 feet; thence South 13 degrees 27 minutes 31 seconds West a distance of 330.35 feet; thence North 89 degrees 32 minutes 11 seconds West a distance of 158.93 feet; thence North 45 degrees 01 minutes 12 seconds West a distance of 294.36 feet; thence South 87 degrees 19 minutes 11 seconds West a distance of 607.60 feet; thence South 53 degrees 58 minutes 28 seconds West a distance of 263.18 feet; thence South 88 degrees 24 minutes 32 seconds West a distance of 302.87 feet; thence North 64 degrees 12 minutes 14 seconds West a distance of 674.27 feet; thence North 88 degrees 17 minutes 07 seconds West a distance of 81.13 feet to the west line of said South Half of the Southwest Quarter; thence North 00 degrees 28 minutes 01 seconds West, along said west line of the South Half of the Southwest Quarter, a distance of 496.92 feet to the point of beginning.

AND

That part of the South Half (S ½) of the Southwest Quarter (SW ¼) of Section 7, Township 112, Range 18, Dakota County, Minnesota, which lies South of the North 893 feet of said S ½ of SW ¼, and in addition the South 100 feet of the West 300 feet of the East 1152 feet of the North 893 feet, EXCEPTING therefrom that part thereof lying westerly of the East 212.5 feet thereof and lying easterly of the East 772.5 feet of said S ½ of SW ¼.

AND

That part of Section 18, Township 112, Range 18 that lies in Dakota County and that lies North of the Cannon River, Dakota County, Minnesota.

Total Area = 110.3 acres

**[EXAMPLE]**

**EASEMENT**

THIS INSTRUMENT, MADE THIS \_\_\_\_ day of \_\_\_\_\_, 202\_, by and between the County of Dakota, Grantor, and the Metropolitan Council, a public corporation and political subdivision of the state (successor to the Metropolitan Waste Control Commission), Grantee;

WITNESSETH, that Grantor(s), in consideration of One Dollar and other good and valuable consideration to \_\_\_\_\_ in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey to Grantee, its successors and assigns, the following described easement for sanitary sewer and utility purposes:

*[Insert Legal Description of EASEMENT]*

Said temporary easement to expire on or before \_\_\_\_\_.

The above described easement includes the rights of grantee, its contractors, agents and employees to do whatever is necessary for enjoyment of the rights granted herein including the right to enter the easement for purposes of constructing, operating, maintaining, altering, repairing, replacing, and/or removing said sewers and utilities.

Grantor(s), \_\_\_\_\_ heirs, successors and assigns, will not erect, construct, or create any building, improvement, obstruction or structure of any kind, either above or below the surface, or stockpile soils, construction debris, or construction equipment or change the grade thereof, without the express written permission of the Grantee.

Notwithstanding the aforementioned provision, the following improvements by Grantor(s), heirs, successors, and assigns do not require Grantee's written approval: fences, parking lots, street and/or roadways, landscaping, bushes, shrubs. However, Grantor(s) hereby agree(s) that Grantee will not be responsible for and will not pay for the loss of or any damage to or replace or restore the following items within the easement area: fences, trees, shrubs, bushes or other plantings, other than grass or sod.

Grantor(s) covenant(s) that it is has acquired the above described Easement and has a lawful right and authority to convey and grant the easement described herein.

**-This Space Intentionally Left Blank-**

**IN WITNESS WHEREOF**, the said Grantor(s) has/have caused this Easement to be executed as of the date noted above.

**GRANTOR**

COUNTY OF DAKOTA

\_\_\_\_\_  
*Name*, Chair  
Board of Commissioners

Attested to By:

\_\_\_\_\_  
*Name*, Clerk to the Board

Approved by Dakota County  
Board Resolution No. 2\_ - \_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant County Attorney  
Date: \_\_\_\_\_

KS-21- \_\_\_\_\_  
Contract No. \_\_\_\_\_

STATE OF MINNESOTA)  
  ) SS  
COUNTY OF DAKOTA )

On the \_\_\_\_\_ day of \_\_\_\_\_, 202\_, before me a notary public within and for the County of Dakota, personally appeared \_\_\_\_\_ *Name* \_\_\_\_\_, Chair of the Board of Commissioners and acknowledged that he/she executed said instrument by authority of the Board.

\_\_\_\_\_  
Notary Public



**GRANTEE**

METROPOLITAN COUNCIL, a public corporation and political subdivision of the State of Minnesota

\_\_\_\_\_  
*Name*, Regional Administrator

Date: \_\_\_\_\_

STATE OF MINNESOTA )  
  ) SS.  
COUNTY OF RAMSEY )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_ *Name* \_\_\_\_\_, Regional Administrator of the METROPOLITAN COUNCIL, a public corporation and political subdivision of the State of Minnesota, on its behalf.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Peter A. Hanf  
Associate General Counsel  
License No. 0268124  
Metropolitan Council  
390 Robert Street North  
St. Paul, MN 55101

**No Association Letter Pertaining to the Rose Augustine  
Revocable Trust and Jacqueline R. Schluesner Property  
Being Acquired by the County of Dakota**



520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300  
800-657-3864 | Use your preferred relay service | info@mca.state.mn.us | Equal Opportunity Employer

February 4, 2021

VIA EMAIL

Cathy Undem  
Dakota County  
14955 Galaxie Ave  
Apple Valley MN 55124

RE: No Association Determination  
Augustine Trust, Randolph Township, Randolph Township  
MPCA Site ID: BF0001705  
Billing ID: 245436  
PINs: 310070070010, 310070070011, 310180025010, 350120080010, 350130003010

Dear Cathy Undem:

This letter is in response to the request from Ken Haberman of Landmark Environmental for a determination under Minn. Stat. § 115B.178 that certain actions proposed to be taken by Dakota County at the Augustine Trust site, located near the intersection of Cannon River Boulevard and Cooper Avenue in Randolph Township, Dakota County (the Site) will not constitute conduct associating Dakota County with the release or threatened release of hazardous substances, pollutants, or contaminants at the Site for the purpose of Minn. Stat. § 115B.03, subd. 3(4).

The Minnesota Pollution Control Agency (MPCA) staff in the Voluntary Investigation and Cleanup (VIC) Program has reviewed the documents submitted for the Site. The Site is comprised of approximately 110.3 acres that have been used as agricultural land since at least 1937. The Site includes agricultural land, portions of the Cannon River and its backchannels and bordering wooded land. The Site currently contains no structures. The southern portion of the former Randolph Dump is located in the northeastern corner of the Site along a backchannel of the Cannon River. The Randolph Dump was used by several townships and municipalities from the 1930s until the late 1960s. Waste disposal reportedly included household garbage, demolition wastes, appliances, car bodies, tires, agrichemicals, chemical wastes and septage. The dump was covered with one to two feet of soil in 1972. Dakota County intends to eventually redevelop the Site for recreational use, although no development plans are available at this time.

A limited Phase II Investigation was conducted in the vicinity of the former dump in September 2020. Six push-probe borings were advanced to depths of five to 12 feet below ground surface (bgs) and four hand auger borings were advanced to depths of five feet bgs. Shallow or surficial debris was observed at four boring locations. Debris consisted of slag, ash, tires, metal, glass, roofing tar, pieces of bricks, rubber hose, and cinders. Six shallow soil samples were analyzed for polynuclear aromatic hydrocarbons (PAHs) and diesel range organics (DRO), five soil samples for Resource Conservation and Recovery Act (RCRA) metals, three for volatile organic compounds (VOCs), and one sample for polychlorinated biphenyls (PCBs). Elevated concentrations of PAHs and DRO were detected in one soil sample (LHA-7) that was collected from an interval containing ash and asphalt debris. The concentration of PAHs, expressed as the benzo(a)pyrene equivalent, exceeded the MPCA's industrial soil reference value (SRV). This sample also contained mercury above typical background concentrations, but less than the residential/recreational SRV. No PCBs were detected in the one soil sample submitted for PCB analysis.

One groundwater sample was collected from a depth of 3 to 8 feet and one surface water sample was collected from a backchannel of the Cannon River. The water samples were analyzed for RCRA metals, VOCs, PAHs, DRO, and PCBs. No contaminants were detected in the water samples.

t-rem-vic2-09 - LB 1528 - 5/10/19

Cathy Udem  
Page 2  
February 4, 2021

For the purpose of this letter, the identified release consists of PAHs and mercury in soil (Identified Release). This letter does not address petroleum-related contaminants. Petroleum contamination detected at the Site is under the oversight of the MPCA's Petroleum Brownfield Program.

Based upon a review of the information provided to the MPCA VIC Program, and subject to the conditions set forth in this letter, a determination is hereby made pursuant to Minn. Stat. § 115B.178, subd. 1 that the proposed actions (Proposed Actions) listed below will not associate Dakota County with the Identified Release for the purpose of Minn. Stat. § 115B.03, subd. 3(4). This determination applies only to the following Proposed Actions:

- Purchase of the Site.

This determination is made in accordance with Minn. Stat. § 115B.178, subd. 1, and is subject to the following conditions:

1. The Proposed Actions shall be carried out as described herein.
2. Dakota County shall cooperate with the MPCA, its employees, contractors, and others acting at the MPCA's direction, in the event that the MPCA takes, or directs others to take, response actions at the Site to address the Identified Release or any other as yet unidentified release or threatened release of a hazardous substance, pollutant, or contaminant, including, but not limited to, granting access to the Site so that response actions can be taken.
3. Dakota County shall avoid actions that contribute to the Identified Release or that interfere with response actions required under any MPCA-approved response action plan to address the Identified Release.
4. Prior to changing the current land use, Dakota County shall conduct additional investigation in the vicinity of the former dump and submit a response action plan for MPCA review and approval.
5. Dakota County shall record, at its own expense, in the office of the County Recorder or Registrar of Titles, whichever is appropriate, in and for Dakota County, an affidavit describing the contamination remaining at the Site. A template for the Affidavit Concerning Real Property Contaminated with Hazardous Substances can be found on the MPCA's webpage at <https://www.pca.state.mn.us/waste/cleanup-guidance#guidance-for-brownfield-redevelopment-projects>. A copy of the proposed affidavit language shall be submitted to the MPCA staff for review and approval within sixty (60) days of the date of this letter and Dakota County shall record the affidavit within thirty (30) calendar days after receipt of MPCA approval. Dakota County shall submit a copy of the affidavit as recorded to the MPCA within thirty (30) days after the affidavit is officially recorded.

Pursuant to Minn. Stat. § 115B.178, subd.1, when Dakota County takes the Proposed Actions in accordance with the determination in this letter, subject to the conditions stated herein, the Proposed Actions will not associate Dakota County with the Identified Release for the purpose of Minn. Stat. § 115B.03, subd. 3(4).

The determination made in this letter applies to Dakota County's successors and assigns if the successors and assigns: 1) are not otherwise responsible for the Identified Release at the Site; 2) do not engage in activities with respect to the Identified Release which are substantially different from the activities which Dakota County proposes to take, as described herein; and 3) comply with the conditions set forth in this letter.

Cathy Undem  
Page 3  
February 4, 2021

Please be advised that the determination made in this letter is subject to the disclaimers found in Attachment A and is contingent on compliance with the terms and conditions set forth herein. If you have any questions about the contents of this letter, please contact Rick Jolley, Project Manager, at 651-757-2475 or by email at [rick.jolley@state.mn.us](mailto:rick.jolley@state.mn.us).

Sincerely,

*Amy K. Hadjaris*

This document has been electronically signed.

Amy K. Hadjaris, P.G.  
Supervisor  
Redevelopment Unit  
Remediation Division

AKH/RJM:ah

Enclosure

cc: Ken Haberman, Landmark Environmental LLC (electronic)

Disclaimers

Augustine Trust

MPCA Site ID: BF0001705

1. Reservation of authorities

The Minnesota Pollution Control Agency (MPCA) Commissioner reserves the authority to take any appropriate actions with respect to any release, threatened release, or other conditions at the Site. The MPCA Commissioner also reserves the authority to take such actions if the voluntary party does not proceed in the manner described in this letter or if actions taken or omitted by the voluntary party with respect to the Site contribute to any release or threatened release, or create an imminent and substantial danger to public health and welfare.

2. No MPCA assumption of liability

The MPCA, its Commissioner, and staff do not assume any liability for any release, threatened release or other conditions at the Site or for any actions taken or omitted by the voluntary party with regard to the release, threatened release, or other conditions at the Site, whether the actions taken or omitted are in accordance with this letter or otherwise.

3. Letter based on current information

All statements, conclusions, and representations in this letter are based upon information known to the MPCA Commissioner and staff at the time this letter was issued. The MPCA Commissioner and staff reserve the authority to modify or rescind any such statement, conclusion or representation and to take any appropriate action under his authority if the MPCA Commissioner or staff acquires information after issuance of this letter that provides a basis for such modification or action.

4. Disclaimer regarding use or development of the property

The MPCA, its Commissioner, and staff do not warrant that the Site is suitable or appropriate for any particular use.

5. Disclaimer regarding investigative or response action at the property

Nothing in this letter is intended to authorize any response action under Minn. Stat. § 115B.17, subd. 12.

6. This approval does not supplant any applicable state or local stormwater permits, ordinances, or other regulatory documents.

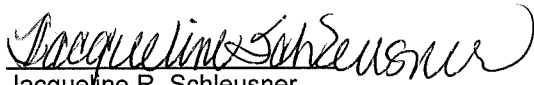
**ADDENDUM TO PURCHASE AGREEMENT**

Addendum to the Purchase Agreement (hereinafter referred to as the "Addendum") between the Rose Augustine Revocable Trust under Agreement dated November 29, 2012, an undivided half interest, and Jacqueline R. Schleusner, a single person, an undivided half interest, (hereinafter collectively called the "Seller"); and the County of Dakota, a political subdivision of the State of Minnesota (hereinafter called the "Buyer"), fully executed on November 8, 2021, pertaining to the purchase and sale of property legally described in the attached **Exhibit A** as pursuant to paragraphs 1.d, and 6.c. of said Purchase Agreement.

In the event of a conflict between this Addendum and any other provision of the Purchase Agreement, the language in this Addendum shall govern.

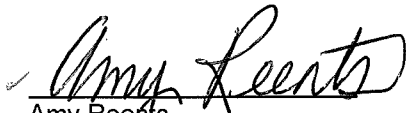
1. Paragraph 1.c. - Closing date shall be on or before March 30, 2022.
2. Paragraph 6.c. – Buyer will reimburse Seller for reasonable attorney fees charged by the Fluegel Law Firm, P.A. associated with the transaction contemplated by this Purchase Agreement and between the Buyer and the Seller, supported by billing records and in an amount not to exceed \$15,000. The reimbursement of attorney fees does not include any fees associated with a dispute between the Buyer and the Seller related to this Amendment or any claims associated with an alleged breach of the Purchase Agreement.
3. This Addendum may be executed by electronic signature and in separate counterparts which, taken together, shall be and comprise one agreement.

**SELLER**

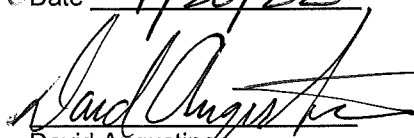
  
Jacqueline R. Schleusner

Date 11/20/2022

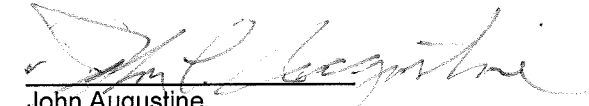
Trustees of the Rose Augustine Revocable Trust under agreement dated November 29, 2012

  
Amy Reents

Date 1/20/22

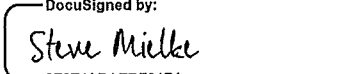
  
David Augustine

Date 1/20/2022

  
John Augustine  
Date 1/20/22

**BUYER**

County of Dakota, a political subdivision of the State of Minnesota

DocuSigned by:  
  
2E374ADAED34E4

Steven Mielke, Physical Development Director

Date of Signature 01/06/2022 | 3:41 PM CST

**APPROVED AS TO FORM:**

/s/ Joseph Marek 1/4/22  
Assistant County Attorney Date  
County Attorney File No: KS-19-343-1

Exhibit A

**Legal Description of the Rose Augustine Revocable Trust and  
Jacqueline R. Schleusner Property being Acquired by Dakota County**

The following described premises in Dakota County, said real estate lying and being in the Southeast Quarter of Section 12, Township 112, Range 19 and more particularly described as follows, to-wit:

Commencing at the Southeast corner of said Section 12 and running thence West along the South line of said Section to the West line of the Southeast Quarter of Section 12, thence North along the West line of said quarter section to the center of the Highway called the Northfield and Cannon Falls Road, thence along the center of the Highway in an easterly direction to the East line of said Section 12, thence South on said Section line to the place of beginning

EXCEPTING therefrom any part of said lands which might lay in the Northeast Quarter of the Southeast Quarter of said Section 12.

AND ALSO EXCEPTING that part of the Southeast Quarter of the Southeast Quarter of said Section 12, Township 112 North, Range 19 West, lying southerly of the southerly bank of the Cannon River.

AND ALSO EXCEPTING from the Southeast Quarter of the Southeast Quarter, of said Section 12, Township 112 North, Range 19 West, Dakota County, Minnesota, that part described as follows:  
Beginning at the northeast corner of said Southeast Quarter of the Southeast Quarter; thence South 00 degrees 28 minutes 01 seconds East, assumed bearing, along the east line of said Southeast Quarter of the Southeast Quarter a distance of 496.92 feet; thence North 88 degrees 17 minutes 07 seconds West a distance of 381.39 feet; thence North 39 degrees 02 minutes 10 seconds West a distance of 425.14 feet; thence North 13 degrees 49 minutes 42 seconds West a distance of 150.46 feet to the north line of said Southeast Quarter of the Southeast Quarter; thence North 89 degrees 13 minutes 43 seconds East, along said north line of the Southeast Quarter of the Southeast Quarter, a distance of 680.95 feet to the point of beginning.

AND

All that part of the Northeast Quarter of Section 13, Township 112, Range 19 which lies North of the Cannon River, Dakota County, Minnesota.

AND

The North 893 feet of the South Half (S ½) of the Southwest Quarter (SW ¼) of Section 7, Township 112, Range 18, Dakota County, Minnesota, EXCEPTING therefrom the South 100 feet of the West 300 feet of the East 1152 feet of the North 893 feet AND ALSO EXCEPTING from said North 893 feet of the South Half of the Southwest Quarter the following described parcel:

Beginning at the northwest corner of said South Half of the Southwest Quarter; thence South 89 degrees 32 minutes 11 seconds East, assumed bearing, along the north line of said South Half of the Southwest Quarter a distance of 2221.88 feet; thence South 23 degrees 22 minutes 28 seconds West a distance of 348.91 feet; thence South 49 degrees 16 minutes 55 seconds East a distance of 231.42 feet; thence South 13 degrees 27 minutes 31 seconds West a distance of 330.35 feet; thence North 89 degrees 32 minutes 11 seconds West a distance of 158.93 feet; thence North 45 degrees 01 minutes 12 seconds



West a distance of 294.36 feet; thence South 87 degrees 19 minutes 11 seconds West a distance of 607.60 feet; thence South 53 degrees 58 minutes 28 seconds West a distance of 263.18 feet; thence South 88 degrees 24 minutes 32 seconds West a distance of 302.87 feet; thence North 64 degrees 12 minutes 14 seconds West a distance of 674.27 feet; thence North 88 degrees 17 minutes 07 seconds West a distance of 81.13 feet to the west line of said South Half of the Southwest Quarter; thence North 00 degrees 28 minutes 01 seconds West, along said west line of the South Half of the Southwest Quarter, a distance of 496.92 feet to the point of beginning.

AND

That part of the South Half (S  $\frac{1}{2}$ ) of the Southwest Quarter (SW  $\frac{1}{4}$ ) of Section 7, Township 112, Range 18, Dakota County, Minnesota, which lies South of the North 893 feet of said S  $\frac{1}{2}$  of SW  $\frac{1}{4}$ , and in addition the South 100 feet of the West 300 feet of the East 1152 feet of the North 893 feet, EXCEPTING therefrom that part thereof lying westerly of the East 212.5 feet thereof and lying easterly of the East 772.5 feet of said S  $\frac{1}{2}$  of SW  $\frac{1}{4}$ .

AND

That part of Section 18, Township 112, Range 18 that lies in Dakota County and that lies North of the Cannon River, Dakota County, Minnesota.

Total Area = 110.3 acres