

Committee Report

Community Development Committee



Community Development Committee Meeting: Dec. 18, 2023

For the Metropolitan Council: Jan. 10, 2024

Business Item: 2023-295

Battle Creek Regional Park, Park Acquisition Opportunity Fund Award (McGuinness), Ramsey County

Proposed Action

That the Metropolitan Council:

1. Approve a grant of up to \$161,728 from the Park Acquisition Opportunity Fund to Ramsey County to acquire a 2.91-acre parcel located at 0 Ogden Avenue in Saint Paul for Battle Creek Regional Park.
2. Authorize the Executive Director of Community Development to execute the grant agreement and restrictive covenant on behalf of the Council.

Summary of Community Development Commission Discussion/Questions

This business item was passed as part of the Community Development Committee's consent agenda on December 18, 2023.



Business Item

Community Development Committee



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| | |
|----------------------------------|--|
| District(s), Member(s): | District G, Anthony Taylor District 13, Chai Lee |
| Policy/Legal Reference: | Minn. Const. art. XI, sec. 15; Minn. Stat. § 473.315; <i>2040 Regional Parks Policy Plan</i> , Chapter 4, Siting and Acquisition Policy- Strategy 1; Chapter 5, Planning Policy- Strategy 1; Chapter 8, Finance Policy- Strategy 7. FM 15-2 Grant/Loan Approval Policy, FM 14-2 Expenditures for the Procurement of Goods and Services Policy. |
| Staff Prepared/Presented: | Jessica Lee, Senior Planner, 651-602-1621 |
| Division/Department: | Community Development/ Regional Planning |

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Summary of Metropolitan Parks and Open Space Commission Discussion/Questions

Jessica Lee presented the staff report to the Metropolitan Parks and Open Space Commission on December 7, 2023. Scott Yonke from Ramsey County was in attendance and helped answer questions.

Commissioner Cecily Harris noted the nearby Mississippi River Bluffs Open Space parcels shown on Figure 5 and asked why this property was being considered for Battle Creek Regional Park when it is located near the open space parcels. Yonke explained that the open space parcels have all been incorporated into Battle Creek Regional Park as of the approval of the Battle Creek Regional Park long-range plan amendment in November.

Chair Tony Yarusso suggested amending the proposed action to include the funding source. This change is reflected above.

The full Commission voted unanimously to pass the proposed action.

Business Item

Metropolitan Parks and Open Space Commission



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Background

Regional Park Implementing Agency and Project Request

Ramsey County requested a Park Acquisition Opportunity Fund (PAOF) grant on November 7, 2023, to fund the acquisition of a 2.91-acre parcel for Battle Creek Regional Park. A copy of the Agency's request is attached to this item as Exhibit 2 with application details in Exhibit 3.

Battle Creek Regional Park is located in the southeast portion of Ramsey County in portions of St. Paul and Maplewood (see Exhibit 1, Figures 1 and 2) and contains nearly 1900 acres. The regional park is known for its Winter Recreation Area, Waterworks Park, dog park, trails, and large playground and play areas. Ramsey County recently amended their long-range plan to add acreage to their boundary, which included the subject parcel (see Exhibit 1, Figures 3, 4, and 5).

Subject Property

The subject 2.91-acre property is within the Council-approved boundary of Battle Creek Regional Park. The property is undeveloped and consists primarily of mixed woods, dominated by oak trees. The property is located along the bluff line of Ogden Avenue and is located within the Mississippi

River Corridor Critical Area, which shares its boundary with the Mississippi National River and Recreation Area. Henry Park, a local wooded park with trails, is adjacent to the west.

Park Acquisition Opportunity Fund (PAOF)

The Council's Park Acquisition Opportunity Fund (PAOF) Program provides funding to purchase property and easements via two state sources: the Parks and Trails Legacy Fund (PTLF) and the Environment and Natural Resources Trust Fund (ENRTF). The Council contributes by matching every \$3 in state funds with \$2 in Council funds. The \$3 to \$2 match is required at the program level, not the individual project level.

State and Council funds contribute up to 75% of the purchase price and eligible costs; the Regional Park Implementing Agency (Agency) contributes the remaining 25% as local match.

Project Budget

The appraised value of the subject property and easement is \$190,000, and the Seller has agreed to that amount. See Exhibit 4 for more information on the appraisal. The total project cost including legal fees, taxes, appraisal, and stewardship is \$215,638, as shown in Table 1 below.

Table 1. Project Budget

| Budget item | Requested amount |
|---|-------------------------|
| Purchase price | \$190,000 |
| Appraisal, legal fees, taxes, closing costs | \$5,638 |
| Stewardship | \$20,000 |
| Total Costs | \$215,638 |

| | |
|------------------------|-----------|
| Grant structure | |
| Grant amount | \$161,728 |
| Local match | \$53,910 |

Acquisition Details

This is a straight-forward fee title acquisition for an undeveloped parcel of land.

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 Environment and Natural Resources Trust Fund
- The *2040 Regional Parks Policy Plan*
 - Planning Policy Strategy 1 requires that before an Agency can receive a grant for acquisition, the proposed project must be consistent with a Council-approved long-range plan. The Council approved the Battle Creek Regional Park long-range plan amendment in November 2023 ([Business Item 2023-261](#)). The proposed acquisition is within the boundaries of the approved long-range 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 undeveloped subject property is necessary to complete the Battle Creek Regional Park, and acquiring this property will help protect the bluffs along the Mississippi River.
 - Finance Strategy 7 authorizes the use of PAOF as the funding mechanism for the



acquisition of Regional Park lands and matching every \$3 in state funds with \$2 in Council bonds.

Thrive Lens Analysis

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

Funding

The Council will fund the 75% share with the Environment and Natural Resources Trust Fund and Council funds. The PAOF program has available funds in the Council's Authorized Capital Program.

Ramsey County will provide a local match of \$53,910.

Exhibit List

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



Exhibit 1 – Images

Figure 1. Map of the Regional Parks System and Battle Creek Regional Park (circled in red).

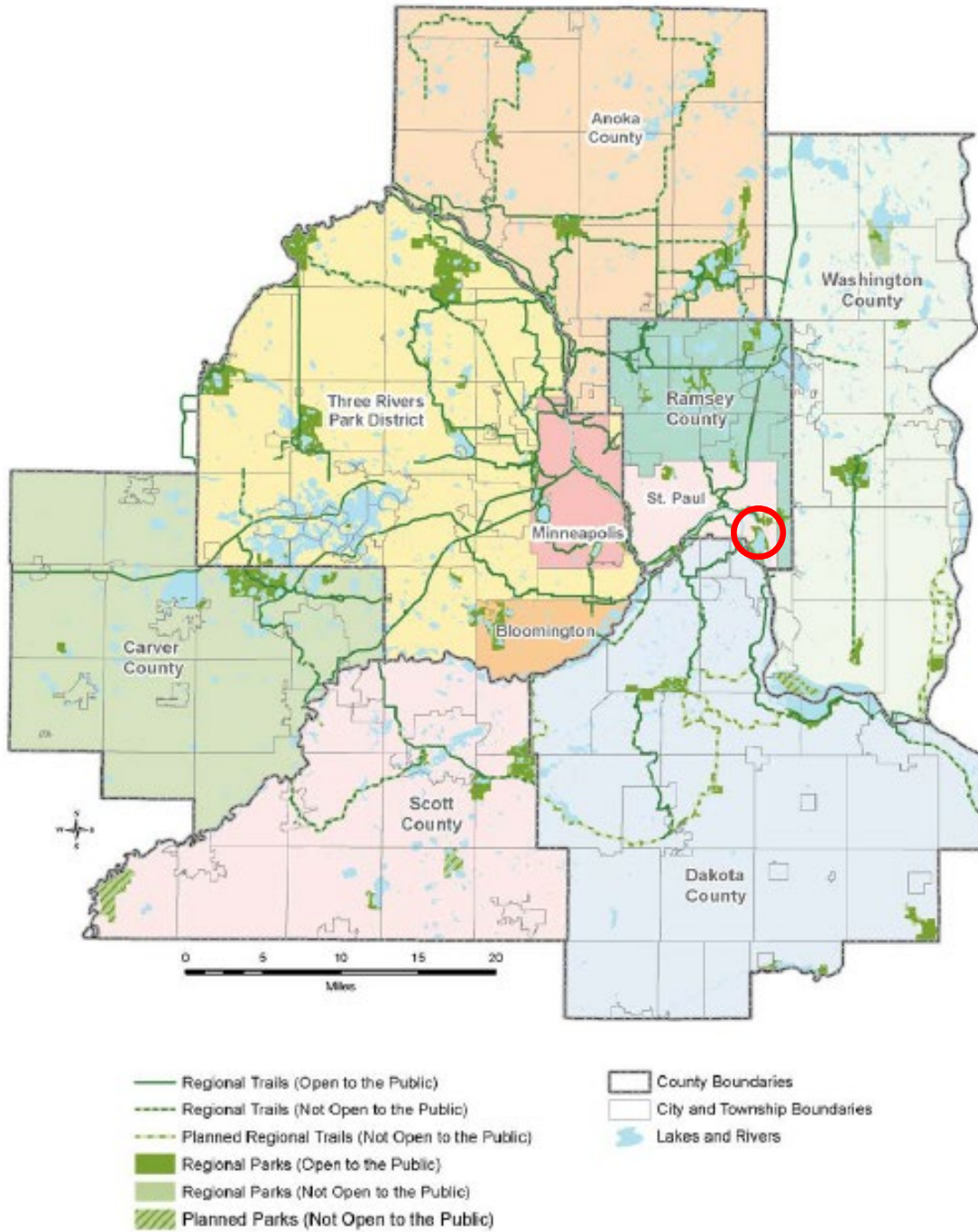
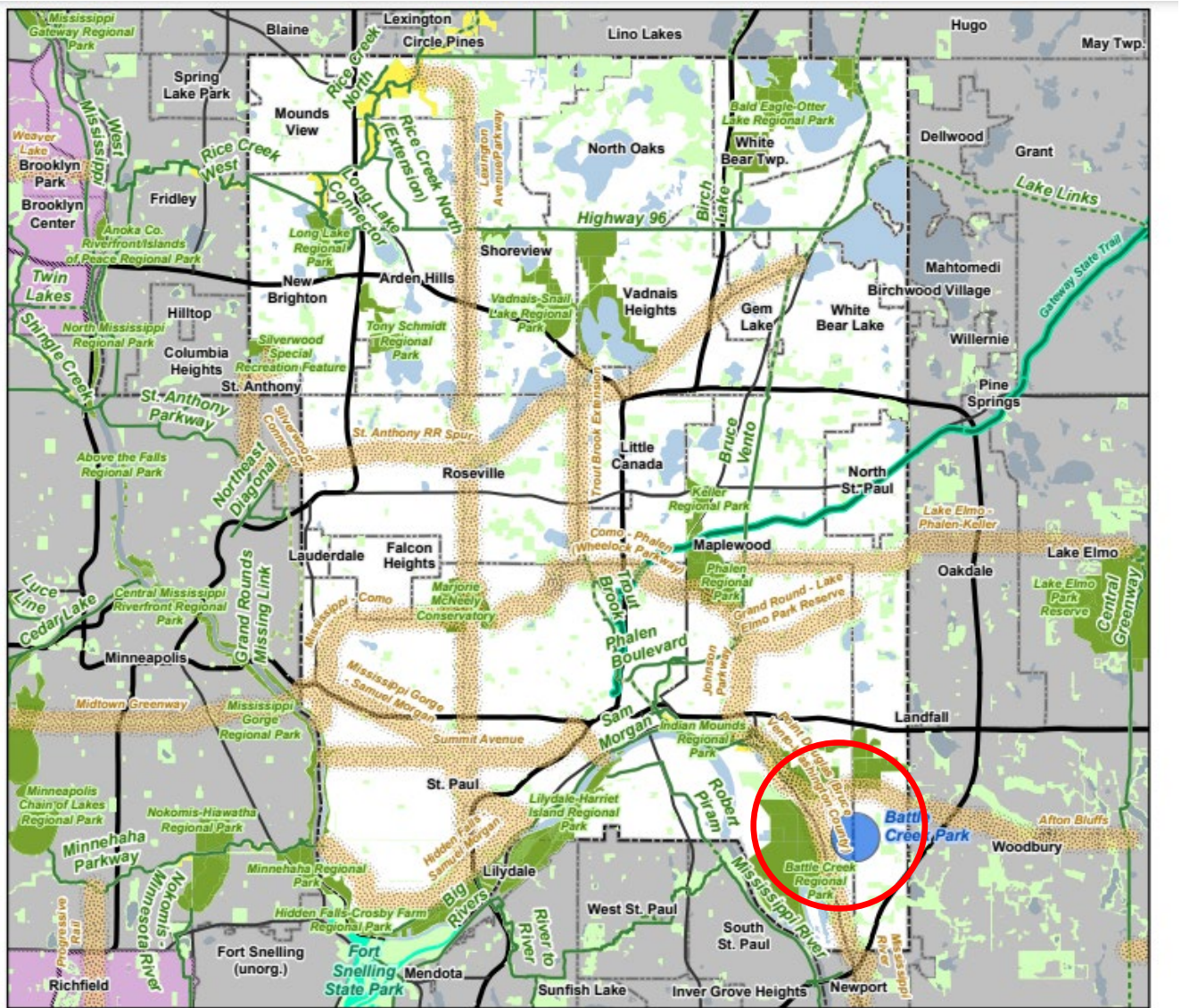


Figure 2. Map of Ramsey County and Battle Creek Regional Park, circled in red.



Regional Parks

- Existing (Open to Public)
- In Master Plan (Not Open to Public)
- Planned Parks and Reserves

Regional Trails

- Existing (Open to Public)
- Existing (Not Open to Public)
- Planned
- Regional Trail Corridor Land

Regional Park Search Areas and Regional Trail Search Corridors

- Boundary Adjustments
- Search Areas
- Regional Trail Search Corridors
- First-Ring City Bridging Facility Search Area

- State Parks
- State Wildlife Management Areas (Publicly Accessible)
- Scientific and Natural Areas (SNA)
- Special State Recreation Features
- Other Parks, Preserves, Refuges and Natural Areas
- Minnesota Valley National Wildlife Refuge
- MN Valley National Wildlife Refuge
- Minnesota Valley State Trail and Recreation Area

Figure 3. Long-range plan excerpt of future acquisitions, with the location of the subject property circled in red.



Metropolitan Council

Figure 4. Close-up of the Mississippi Rivers Bluffs Open Space park area, with the subject parcel in yellow.

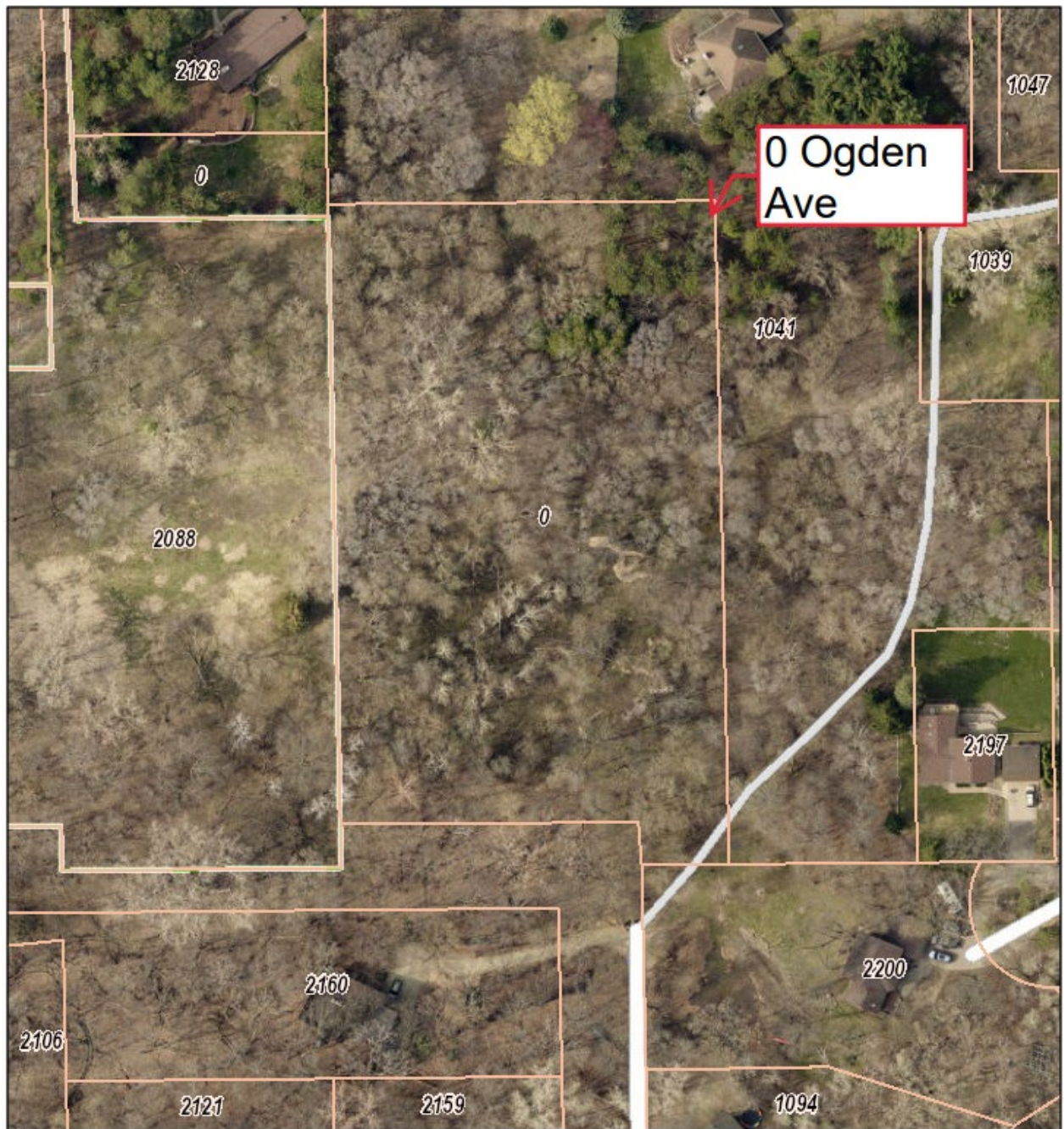


Metropolitan Council

Figure 5. Close-up image of the subject parcel.



Figure 6. Aerial photo of the subject property.



September 26, 2023

Metropolitan Council
Regional Parks and Natural Resource Unit
Attn: Emmett Mullen
390 North Robert Street
St. Paul, MN 55101

RE: Park Acquisition Opportunity Grant Request for 0 Ogden Avenue, Battle Creek Regional Park

Dear Mr. Mullen:

Ramsey County is submitting a Park Acquisition Opportunity Grant Request for the acquisition of a residential property at 0 Ogden Avenue, Saint Paul that is associated with Battle Creek Regional Park.

Acquisition Grant Request

Daniel and Nancy McGuinness own approximately 2.91-acres of land at 0 Ogden Ave, Saint Paul, Mn. The property is directly adjacent to the Henry Park and close proximity to the Mississippi River Bluff Projection Open Space. Ramsey County and the owners have executed a Purchase Agreement contingent on available Park Acquisition funds.

Ramsey County is requesting the Metropolitan Council's consideration of an acquisition opportunity grant in the amount of \$161,728 that would fund 75% of the acquisition and associated costs, with \$53,910 (25% local match) coming from Ramsey County funds.

This acquisition of this property is critical for securing remaining inholdings along the bluff line for Battle Creek Regional Park between Lower Afton Road and Carver Road. This property was identified within the Battle Creek Regional Park Long-range Plan for inclusion into the Mississippi River Bluff Protection Open Space. As you are aware, Ramsey County submitted a boundary expansion application for Battle Creek Regional Park in 2020 to expand the regional park boundary to include Suburban Pond Open Space, Mississippi River Bluff Projection Open Space, and Fish Creek (both Ramsey and Maplewood sections). The Battle Creek Regional Park Long-Range Plan has been submitted to the Metropolitan Council for review and approval. The anticipated date from approval by the Council is November 8, 2023.

Summary of Property Acquisition

In 2022, the property owners contacted Ramsey County for interest in pursuing acquisition of their property. Ramsey County completed a certified land appraisal for the property in September 2022, and proceeded to move forward with acquisition discussion with the property owners. A purchase agreement has been prepared and was approved by the Ramsey County Board of Commissioners on October 24, 2023.

Stewardship Plan

Following acquisition with the property owners, Ramsey County will begin land stewardship activities.

Ramsey County is requesting this acquisition grant request move forward for approval. If you have any questions or require additional information, please do not hesitate to call me at 651-266-0370 or email me at scott.yonke@ramseycounty.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Yonke". The signature is fluid and cursive, with the first name "Scott" and last name "Yonke" clearly legible.

Scott Yonke | Director of Planning and Development
Ramsey County
Parks and Recreation Department
2015 North Van Dyke Street
Maplewood, MN 55109-3796
DD: 651-266-0370
www.co.ramsey.mn.us

Exhibit 3: Grant application



Application

18956 - FY2024 Park Acquisition Opportunity Fund Program

19973 - Battle Creek Regional Park - 0 Ogden Avenue Property Acquisition

Parks Grants Acquisition

Status: Under Review
Submitted Date: 11/07/2023 7:52 AM

Primary Contact

Name:* Mr. Scott Yonke
Pronouns First Name Middle Name Last Name

Title: Director of Planning and Development

Department: Parks and Recreation

Email: scott.yonke@co.ramsey.mn.us

Address: 2015 Van Dyke St.

***:** Maplewood Minnesota 55109
City State/Province Postal Code/Zip

Phone:* 651-266-0370
Phone Ext.

Fax:

What Grant Programs are you most interested in? Parks Legacy Fund

Organization Information

Name: RAMSEY COUNTY

Jurisdictional Agency (if different):

Organization Type: County Government
Organization Website: PARKS AND RECREATION
Address: PARKS AND RECREATION
 2015 N VAN DYKE ST

 * MAPLEWOOD Minnesota 55109
City State/Province Postal Code/Zip
County: Ramsey
Phone:* 651-748-2500
Ext.
Fax:
PeopleSoft Vendor Number 0000023983A2

Project description

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

Park or trail name Battle Creek RP-Ramsey 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 Battle Creek Regional Park
 Long-Range Plan 11/08/2023
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? Yes

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**.*

This is a regular acquisition purchase for the property located at 0 Ogden Ave, Saint Paul. After the county closes on the property, the county will begin stewardship tasks.

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 01/12/2024

Format: mmddyyyy (Do not enter any punctuation.)

Type of agreement Purchase Agreement

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

Date agreement expires

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 11/17/2023

Appraised value \$190,000.00

Amount being offered the seller (net of closing and other costs) \$190,000.00 100.0%
% of appraised value

Who performed the appraisal? Valbridge Property Advisors

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

Survey

Was a survey done? No

Quality of natural resources - is the property...

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

Describe the existing natural resources it contains

The existing undeveloped single family residential property is 2.91 acres and has no buildings or habital structures. The property is located along the bluff line on Ogden Ave and is all located within the Mississippi River Corridor Critical Area (MRCCA) which, shares its boundary with the Mississippi National River and Recreation Area. Existing property habitat consists of primarily of mixed woods, dominated by oak trees.

Known opposition

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

If yes, explain:

Encumbrances

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

If yes, describe.

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

If yes, describe

Clear title

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

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

Suggested funding source

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

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?

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.

The property owner originally reached out to the city of Saint Paul to inquire about acquisition of 0 Ogden Avenue. The city did not have this property in their plans for acquisition and did not have funds to move forward. The city referred the property owner to Ramsey County, late 2022. Since late 2022, the property owner and county have been working together on the acquisition.

Stewardship and minimal access

Describe the stewardship plan.

The stewardship plan for the property will move forward in two phases. Phase 1 (short-term) improvements will be stewardship tasks consisting of removal of invasive vegetation, initial natural resource restoration, and vegetation management for a period of 3 years . Phase 2 (long-term) improvements will consist of implementing the landcover changes to the property that is consistent with the 2019 Ramsey County Parks and Recreation System Plan, and Battle Creek Regional Park Long-Range Plan.

How will the stewardship implementation be funded?

Initial stewardship tasks are anticipated to be funded through the ENRTF grant and local match. Long-term improvements are anticipated to be completed through natural resouce grant oppurtunities.

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

If yes, how will those funds be used?

Site Description

Land Use History

Current land uses Residential

Select as many as apply

Previous land uses Residential

Select as many as apply

Adjacent land uses Park, Residential

Select as many as apply

Inspection

Does the property contain any of the following?

Select as many as apply

Sellers and parcels

| Seller name | Parcel addresses | PID | Acres (SF for easements) | Date PA signed | Habitable structures? | MN House district | City | County | Met Council district | MPOSC | Latitude | Longitude | |
|----------------------------|-------------------------|--------------|--------------------------|----------------|-----------------------|-------------------|----------|--------|----------------------|-------|----------|-----------|--|
| Daniel and Nancy McGuiness | 0 Ogden Ave, Saint Paul | 142822410007 | 2.91 | 10/24/2023 | No | 67B | St. Paul | Ramsey | 13, 14 | G | 44.909 | -93.008 | |
| | | | 3 | | | | | | | | | | |

Local match

Source of local match

The source for local match funds will be provided through Ramsey County.

Grant agreement signatories

| Full name | Title | If this is an attorney, is the signature 'for form only'? |
|------------------|----------------------------------|---|
| Ryan T. O'Connor | County Manager | No |
| Mark McCabe | Director of Parks and Recreation | No |
| Jada Lewis | Assistant County Attorney | Yes |

Acquisition Costs

| Cost Items | Amount | State funds | Metro funds | Match funds |
|-------------------------------|--------------|-------------|-------------|-------------|
| Purchase price | | | | |
| Negotiated purchase price | \$190,000.00 | \$85,500.00 | \$57,000.00 | \$47,500.00 |
| Appraisal expenses | | | | |
| Appraisal | \$3,050.00 | \$1,372.00 | \$915.00 | \$763.00 |
| Appraisal review | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Environmental expenses | | | | |

| | | | | |
|---|---------------------|--------------------|--------------------|--------------------|
| Phase I environmental site assessment | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Phase II environmental site assessment | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Environmental contamination remediation | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Holding expenses | | | | |
| Interest | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Land stewardship | \$20,000.00 | \$9,000.00 | \$6,000.00 | \$5,000.00 |
| Land development | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Pro-rated share of all property taxes/assessments | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Legal services and closing costs | \$652.00 | \$294.00 | \$195.00 | \$163.00 |
| 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 | \$651.00 | \$293.00 | \$195.00 | \$162.75 |
| Title insurance | \$1,285.00 | \$578.00 | \$386.00 | \$321.25 |
| Well disclosure statement | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Other holding | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Other expenses | | | | |
| Other expenses | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Totals | \$215,638.00 | \$97,037.00 | \$64,691.00 | \$53,910.00 |

Total Estimated Acquisition Costs

| Totals | Total acquisition cost | Total paid with state funds | Total paid with metro funds | Total paid by agency | Total grant amount |
|---|-------------------------------|------------------------------------|------------------------------------|-----------------------------|---------------------------|
| Total Estimated Acquisition Cost (calculated after costs above are entered) | \$215,638.00 | \$97,037.00 | \$64,691.00 | \$53,910.00 | \$161,728.00 |



Summary of Salient Facts

Basic Information

| | |
|----------------------------|---|
| Common Property Name: | Wooded Residential Lot |
| Address: | 0 Ogden Avenue |
| City: | St. Paul |
| State: | MN |
| Zip Code: | 55119 |
| County: | Ramsey |
| Property Ownership Entity: | Nancy & Daniel McGuiness |
| Report Type: | Appraisal |
| Property Rights Appraised: | Fee Simple |
| Date of Property Tour: | 9/9/2022 |
| Date of Report: | 11/20/2023 |
| Date of Value: | 11/17/2023 |
| Legal Description: | SECTION 14 TOWN 28 RANGE 22 THE S 470 FT OF E 278 FT OF W 478 FT /4 SUBJ TO AVE IN SEC 14 TN 28 RN 22 |

Site Information

| | |
|----------------------|---|
| Land Area SF: | 126,760 |
| Land Area Acres: | 2.91 |
| Excess/Surplus Land? | No |
| Flood Zone: | Zone X |
| Flood Map Number: | 27123C0117G |
| Flood Map Date: | 6/4/2010 |
| Site Utility: | Average |
| Site Topography: | Rolling |
| Site Shape: | Rectangular |
| Lot Location: | Interior |
| Frontage: | Below Average |
| Access: | Below Average |
| Visibility: | Average |
| Utilities Available: | Electricity, gas, and sewer available at site; public water is available at the corner of Douglynn Lane and Winthrop Street |

Municipal Information

| | |
|---|--|
| Assessing Authority: | Ramsey County |
| Assessor's Parcel ID Number: | 14-28-22-41-0007 |
| Current Taxes Payable Year: | 2023 |
| Current Assessor's Estimated Market Value | \$163,000 |
| Current Tax Liability (Payable 2023): | |
| | Base Tax: \$2,652.00 |
| | Special Assessments: \$0.00 |
| | <u>Service Charges: \$0.00</u> |
| | Total: \$2,652.00 |
| Current Tax Rate (base tax only): | 1.63% |
| Taxes Per SF of NRA (base tax only): | \$0.18 |
| Special Assessment Summary: | Based on readily available county records, there do not appear to be any special assessments associated with the subject property. |
| Are Taxes Current? | Yes |
| Is a grievance underway? | Not to our knowledge |
| Subject's assessment is: | Below market levels |
| Zoning Authority: | City of St. Paul |
| Current Zoning Designation: | RL: One-Family Large lot |
| Land Use Plan Designation: | Semi-Rural |
| Is current use permitted? | Yes |
| Zoning Change Pending? | No |
| Zoning Variance Applied for? | No |

Highest and Best Use Summary

As Though Vacant: Immediate single family residential development

Value Conclusions

| Type of Value: | Market Value "As-Is" |
|-------------------------|-------------------------|
| Date of Value: | 11/17/2023 |
| Real Property Interest: | Fee Simple |

Land Value:

| | |
|---------------------------------|-----------|
| Indicated Land Value (Rounded): | \$190,000 |
| Per Square Foot: | \$1.50 |
| Per Acre: | \$65,292 |

FINAL VALUE CONCLUSION:

| | |
|-------------------------|------------------|
| Concluded Value: | \$190,000 |
| Exposure Period: | 12 months |
| Marketing Period: | 12 months |

Exhibit 5: Board approval to purchase property



Board of Commissioners Resolution B2023-183

15 West Kellogg Blvd.
Saint Paul, MN 55102
651-266-9200

Sponsor: Parks & Recreation

Meeting Date: 10/24/2023

Title: Property Acquisition for 0 Ogden Avenue, Saint Paul, Minnesota, 55109

File Number: 2023-456

Background and Rationale:

The property is an undeveloped single-family residential lot with no dwellings or structures and is approximately 2.91 acres in size. This property is located directly east and adjacent to Henry Park in Saint Paul and falls within the Mississippi River Bluff Open Protection corridor and Battle Creek Regional Park boundary expansion area. This property was previously identified for potential acquisition as part of a 2020 Metropolitan Council process for regional park and trail system additions in 2020 and the 2023 Battle Creek Regional Park Long-Range Plan. This land acquisition will create additional park access opportunities in addition to providing natural resource protection of the bluff line along Highway 61. In addition, this property falls within the Mississippi River Corridor Critical Area (MRCCA). This section of park is subject to MRCCA regulations (State statutes under Minnesota Rule 6106) which is in place to protect the unique natural and cultural resources and values within this corridor. This property acquisition is consistent with the 2023 Battle Creek Regional Park Long-Range Plan.

A Purchase Agreement has been negotiated for the property at 0 Ogden Avenue, Saint Paul, MN at the purchase price of \$190,000 (The purchase price includes all moving and relocation costs). The purchase price of this property was established by an independent appraisal and the property tax estimated market values. The purchase agreement obligates the county to pay closing costs estimated at \$2,588. Other acquisition costs associated with the property acquisition is listed below.

Acquisition Costs

| | | |
|---------------------------|-----------|----------|
| Purchase Price | \$190,000 | |
| Closing Costs (Estimated) | | \$2,588 |
| Property Appraisal | | \$2,800 |
| Site Restoration | | \$20,000 |
| Total | \$215,388 | |

The Parks department has prepared an application for submission to the Metropolitan Council to request Environmental & Natural Resources Trust Funds. Ramsey County meets the Metropolitan Council criteria for a Regional Park and Trail implementing agency and can request these funds to cover 75% of the total cost of the property and other reimbursable expenses. Environmental & Natural Resources Trust Fund Environmental & Natural Resources Trust Funds are distributed to regional park and trail implementing agencies on a biannual basis by the State Legislature through the Metropolitan Council on a first come, first serve basis for land acquisitions that do not contain habitable structures or buildings on the property. A timely submission of the grant application will make the likelihood of securing the funds high. After submission of the grant application, it is anticipated the awarding of grant funds will be prior to January 31, 2024, and will be available after a grant agreement is fully executed.

The Environmental & Natural Resources Trust Fund will reimburse Ramsey County 75% of the total acquisition costs, up to \$161,541 and the remaining 25% of acquisition costs \$53,847 is to be

funded from the proposed 2024 Parks & Recreation operating budget for the total acquisition cost of \$215,388. The Parks department is requesting a temporary cash loan from the General Fund to cover 75% of the total acquisition costs and will be reimbursed with potential Environmental & Natural Resources Trust Fund grants. The remaining 25% of total acquisition cost is considered the match to the grant funds and will not be reimbursed.

As a requirement of the grant application submission, an approved purchase agreement will need to be included with the application submission. The acquisition of this property will be dependent on receipt of Environmental & Natural Resources Trust Funds. Without receipt of these funds, the county will not act on purchasing nor be bound to purchasing the property, and the purchase agreement will not go forward unless additional non-county funds would become available for the purchase of the property and other site related costs.

If funds are awarded to Ramsey County, a grant agreement will be required to receive the funds. A condition of the grant agreement will require an Agreement and Restrictive Covenant be recorded against the property to provide protection of the land as parkland. As a second condition of the grant, the county will convey a Sanitary Sewer Easement to the Metropolitan Council for future regional wastewater conveyance. The Grant Agreement, Agreement and Restrictive Covenant, and Sewer Easement will be prepared in consultation with department staff, and the County Attorney's Office.

Recommendation:

The Ramsey County Board of Commissioners resolved to:

1. Approve the acquisition and agreement for the purchase of 0 Ogden Avenue, Saint Paul, in the amount of \$190,000.
2. Authorize submission of the Environmental & Natural Resources Trust Fund grant application to the Metropolitan Council for reimbursable grant expenses at an estimated amount of \$161,541 and upon which the purchase agreement is contingent.
3. Approve payment for reasonable closing costs including legal fees, appraisal, real estate taxes, closing, and title commitments and insurance.
4. Authorize an estimated payment of up to \$53,847 from the Parks 2024 operating budget to finance Ramsey County's share of the cost of acquisition.
5. Authorize the County Manager to approve and execute the purchase agreement and closing documents, grant contracts and contract amendments associated with the cost of acquisition for the property located at 0 Ogden Avenue, Saint Paul, in a form approved by the County Attorney's Office.
6. Authorize the County Manager to make a temporary cash loan of \$161,541 from the General Fund for acquisition costs of 0 Ogden Avenue, Saint Paul until land acquisition funds are received, with repayment of funds in the amount of \$161,541 to be made when grant funds are available.
7. Authorize the County Manager to accept the grant funds, if awarded.
8. Authorize the County Manager to make a temporary cash loan up to \$53,847 from the Parks 2024 Operating Budget for acquisition costs of 0 Ogden Avenue, Saint Paul, with repayment of funds in the amount of \$53,847 to be made when 2024 operating budget funds are available.
9. Authorize the County Manager to approve and execute a future Metropolitan Council Agreement, Restrictive Covenant as well as a future Metropolitan Sanitary Sewer Easement, contingent on the award of grant funds, in a form approved by the County Attorney's Office.

A motion to approve was made by Commissioner Ortega, seconded by Commissioner Reinhardt.
Motion passed.

Aye: - 6: Frethem, Martinson, Moran, Ortega, Reinhardt, and Xiong

Absent: - 1: McGuire

By: 

Mee Cheng, Chief Clerk - County Board

Exhibit 6: Purchase agreement

PURCHASE AGREEMENT

EFFECTIVE DATE: October 31, 2023 (See §12.2)

BETWEEN:

COUNTY OF RAMSEY,
a political subdivision of the State of Minnesota (“**Buyer**”)

AND: DANIEL WILLIAM MCGUINESS AND NANCY CAYE MCGUINESS,
husband and wife (“**Seller**”)

FOR VALUABLE CONSIDERATION, Seller and Buyer agree, subject to the terms and conditions of this Purchase Agreement (“**Agreement**”), Seller will sell and convey to Buyer, and Buyer will purchase and accept from Seller, the parcel of real property, improvements, fixtures, personal property defined in this Agreement.

**ARTICLE 1
PROPERTY**

Section 1.1 Description of Property. That parcel located on Ogden Avenue, St. Paul, Minnesota, identified as Tax Parcel No. 142822410007 and legally described on **Exhibit A** (the “**Property**”). The Property shall also include all of Seller’s right, title, and interest in and to:

- A. All adjacent streets or alleys or rights of way;
- B. All insurance proceeds payable because of any damage to or destruction of all or any portion of the Property;
- C. All warranties and guaranties inuring to the benefit of Seller in connection with any of the Property;
- D. All plans, specifications, drawings, and other architectural and engineering data relating to the Property to the extent the same are in the possession or control of Seller or any of its agents, employees, or representatives; and
- E. All rights, privileges, easements, licenses, appurtenances, and hereditaments relating to the Property.

**ARTICLE 2
PURCHASE PRICE**

Section 2.1 Payment of Purchase Price. The purchase price (the “**Purchase Price**”) for the Property will be **ONE HUNDRED NINETY THOUSAND AND NO/100 Dollars (\$190,000.00)**.

Section 2.1 Method of Payment. All cash payments by Buyer will be in U.S. Dollars and in the form of wire transfer, certified check, or other immediately available funds.

ARTICLE 3 TITLE

Section 3.1 Title Commitment. Within twenty (20) days after the Effective Date, Buyer shall obtain a commitment for an owner's policy of title insurance (ALTA Form 06/17/06 Revised 8/1/16) covering the Property (the "Commitment"), issued by a title company, as determined by Buyer, as agent for such title insurer as determined by the Buyer (the "Title Company"), with standard exceptions for mechanics' liens, survey and parties in possession deleted, with searches for special assessments, and with an amount of coverage equal to the Purchase Price, and subject only to those matters not objected to and/or waived by Buyer pursuant to Sections 3.3 or 3.4 (collectively, the "Permitted Exceptions"). The Commitment will include a copy of each instrument listed as an exception to title or referred to in that Commitment.

Section 3.2 Survey. Buyer, if desired by Buyer and at Buyer's sole cost, may have prepared a new or updated survey of the Property made by a registered land surveyor (the "Survey").

Section 3.3 Examination of Title. Buyer will be allowed thirty (30) days after receipt of the Commitment and Survey (the "Due Diligence Period") for examination of title to the Property and making of objections. Any matters Buyer does not object to within such thirty (30) day period shall be deemed Permitted Exceptions.

Section 3.4 Corrections to Title. If any objections to title to the Property are made as provided in Section 3.3, Seller will be allowed ten (10) business days after receipt of Buyer's notice of such objections to notify Buyer in writing regarding which objections to title Seller, in the exercise of its sole discretion, agrees to cure and, if Seller does not agree to cure all of Buyer's objections, Buyer may elect to either (i) terminate this Agreement by written notice to Seller, in which case the parties will have no further rights, duties or obligations under this Agreement, except those obligations that expressly survive termination, (ii) if the objection can be cured after closing, Buyer may elect to escrow sufficient funds necessary to cure the objection from the Purchase Price which will only be released from escrow to reimburse actual third party costs related to curing the objection which are submitted within one year, and all remaining funds in escrow returned to Seller, and all uncured objections shall be deemed to have become Permitted Exceptions, (iii) accept title to the Property subject to the objections Seller has elected not to cure, without reduction in the amount of the Purchase Price, in which case such objections to title will be deemed to have become Permitted Exceptions. On or before the Closing, Seller will cure the objections to title which Seller has notified Seller in writing that Seller will cure, if any.

ARTICLE 4 REVIEW OF THE PROPERTY

Section 4.1 Documents. Within ten (10) days after the Effective Date, Seller, at Seller's sole cost, will provide to Buyer:

- A. Any abstract of title in Seller's possession or which Seller has access;
- B. Seller's most recent title insurance policy for the Property, and copies of all exceptions

- documents shown on such policy that are in Seller's possession or control;
- C. Seller's most recent survey(s) pertaining to the Property;
 - D. All development approvals and permits that have been issued by any governmental authorities and/or private utility companies with respect to the Property that are in Seller's possession or control, if any (and with respect to any development approvals or permits that have been applied for but not yet issued, a copy of the application materials and all correspondence relating to such approvals or permits), including without limitation, any development orders, plat approvals, site plan approvals, permits for installation of water and sewer facilities, and also any conditions, restrictions, obligations, covenants, declarations or agreements that may have been submitted, received by, entered into or accepted by Seller pertaining to the development of the Property;
 - E. All permits, reports, surveys, and other documents that are in Seller's possession or control that evidence the location, capacity, and/or availability of utilities to the Property;
 - F. All environmental assessment reports, remediation plans, soil tests, wetland delineation reports, endangered species reports and other engineering reports and materials pertaining to the physical condition, suitability and desirability of the Property that are in the possession of Seller or control of Seller; and
 - G. All agreements to which Seller is a party that affect the Property, including, but not limited to, documents creating reciprocal easements and leases

Paragraphs 4.1.A – G are, collectively, the "Documents".

Section 4.2 Due Diligence. Buyer will be allowed the Due Diligence Period to review the Documents, inspect the Property, perform such inventories, observations, tests, and investigations as Buyer may reasonably deem appropriate, and otherwise satisfy itself regarding the condition, suitability, and desirability of the Property. If Buyer in its sole discretion is not satisfied with the Property, Buyer may on or before the expiration of the Due Diligence Period terminate this Agreement by giving written notice to Seller. Upon such termination neither party will have any further obligations under this Agreement except for those obligations that expressly survive such termination.

Section 4.3 Environmental Inspection. Buyer may provide its environmental consultant with a copy of any other environmental reports included in the Documents made available by Seller and, pursuant to Section 4.4, may at its cost conduct additional investigations of the environmental condition of the Property.

Section 4.4 Inspection. During the period from the Effective Date to Closing, Buyer and its representatives may, upon 24 hours prior notice, enter the Property to inspect the Property and perform such inventories, observations, tests, and investigations as Buyer may reasonably deem appropriate and upon reasonable advance notice. Buyer will at Buyer's cost repair any resulting damage to the Property and will indemnify and hold harmless Seller from any injury or damage to persons or property. Notwithstanding anything in this Agreement to the contrary, this obligation and indemnity survive termination of this Agreement. Before making any invasive inspections, Buyer shall provide Seller with evidence of adequate insurance. Seller shall have the right during any invasive inspections of the Property to accompany Buyer, and Buyer shall provide Seller with copies of the results. Buyer will not suffer or permit any mechanics' liens to attach to

or be filed against or upon the Property or any part of this Agreement by reason of any of the foregoing inspections, tests, reviews, or audits.

ARTICLE 5 CONDITIONS TO CLOSING

Section 5.1 Buyer Conditions. The obligation of Buyer to perform and to purchase the Property under this Agreement is subject to the following contingencies which must be met to the sole satisfaction and discretion of Buyer, within the time provided for in this Agreement:

- A. Buyer successfully obtains adequate funding for the acquisition;
- B. Approval and ratification of the terms of this Purchase Agreement by Board of Commissioners of County of Ramsey.
- C. The representations and warranties of Seller contained in Section 8.1 are true and correct in all material respects as of Closing;
- D. Seller has in all material respects performed and observed all covenants, agreements and conditions of this Agreement to be performed or observed by it on or before the times for such performance set forth in this Agreement, including without limitation the obligations set out in Sections 9.1, 9.2 and 9.3;
- E. Buyer has received a certificate or certificates dated the day of Closing and signed by a responsible official of Seller certifying as to the matters set forth in Paragraph 5.1.A. of this Section;
- F. No action or proceeding has been instituted or threatened by any third party unaffiliated with Buyer to enjoin or delay purchase or obtain material damages from Buyer with respect to the purchase which Buyer in good faith believes presents a significant risk of succeeding;
- G. As of Closing, the Title Company shall have committed to issue an ALTA fee owner's policy of title insurance issued by the Title Company in the amount of the Purchase Price with the premium paid by Buyer and subject only to those exceptions approved by Buyer pursuant to Sections 3.3 and 3.4; and
- H. Seller has delivered to Buyer all of the items required to be delivered to Buyer pursuant to Section 6.4.

Section 5.2 Seller's Conditions. The obligation of Seller to perform and to convey the Property under this Agreement is subject to the following contingencies which must be met to the sole satisfaction and discretion of Seller, within the time provided for in this Agreement:

- A. The representations and warranties of Buyer contained in Section 8.2 are true and correct in all material respects as of Closing;
- B. Buyer has in all material respects performed and observed all covenants, agreements, and conditions of this Agreement to be performed or observed by it on or before the times for such performance set forth in this Agreement; and
- C. Buyer has delivered to Seller all of the items required to be delivered to Seller pursuant to Section 6.3.

Section 5.3 Unsatisfied Conditions. If any condition set out in Section 5.1 or 5.2 is unsatisfied on the date scheduled for Closing, the party for whose benefit the condition is made may at its option:

- A. Waive the condition and proceed with Closing;
- B. Delay Closing for up to 60 days to allow the condition to be satisfied; or
- C. Declare default, at which time the parties shall have the remedies available in Article 12.

ARTICLE 6 CLOSING

Section 6.1 Closing. The closing of the sale and purchase of the Property (“Closing”) will occur on a date mutually agreed upon by the parties after Buyer obtains and allocates adequate funding for the acquisition, but not sooner than October 1, 2023, at 10:00 a.m. local time at the offices of the Ramsey County Attorney, 4500 Metro Square, 121 East 7th Place, St. Paul, MN 55101, or other time and location designated by the Ramsey County Attorney, and provided to Seller at least seven days in advance. Buyer and Seller may mutually agree to change the time or location of the closing. Buyer and Seller are not required to attend Closing and may submit the documents required of it by electronic document signature (if authorized), courier, mail, or overnight delivery service.

Section 6.2 Closing Company. The closing shall be conducted by such third party designated by the Ramsey County Attorney.

Section 6.3 Buyer Closing Documents. Buyer will deliver to Seller at Closing:

- A. The Purchase Price specified in Section 2.1;
- B. A resolution of Buyer authorizing and approving the transaction contemplated by this Agreement, certified as true and correct by an authorized representative of Buyer;
- C. A certificate or certificates dated the day of Closing certifying as to the matters set forth Section 5.2.A;
- D. A closing statement duly executed by Buyer; and
- E. Any other items required by this Agreement.

Section 6.4 Seller Closing Documents. Seller will deliver to Buyer at Closing:

- A. A warranty deed duly executed by Seller conveying the Property to Buyer, subject to the Permitted Exceptions;
- B. A well disclosure statement as required under Minnesota Statutes section 103I.235;
- C. An affidavit reasonably satisfactory to Buyer and Title Company that at Closing there are no outstanding, unsatisfied judgments, tax liens, or bankruptcies against Seller, no labor, services, materials, or machinery furnished to the Property for which mechanics’ liens could be filed, and no unrecorded interests in the Property which have not been fully disclosed to Buyer;
- D. A certificate or certificates dated the day of Closing certifying as to the matters set forth Section 5.1.A;

- E. A certificate of non-foreign status pursuant to Section 1445 of the U.S. Internal Revenue Code and the regulations under this Agreement;
- F. A closing statement, duly executed by Seller; and
- G. Any other items required by this Agreement and such other documents as may be reasonably and customarily required in connection with the transaction contemplated by this Agreement.

Section 6.5 Delivery of Possession. Seller will deliver possession of the Property to Buyer at Closing in the condition set forth in Article 11 below.

Section 6.6 Further Actions. At Buyer's request from time to time after Closing, Seller will execute and deliver such further documents of conveyance and take such other action as Buyer may reasonably require to convey the Property to Buyer. This section shall survive closing.

ARTICLE 7 CLOSING COSTS AND PRORATIONS

Section 7.1 Closing Costs.

- A. Buyer and Seller will each be responsible for its legal, accounting, and other expenses associated with the transaction contemplated by this Agreement up to and including the date final adjustments are made pursuant to this Agreement.
- B. The service charge for the Commitment required by Section 3.1 will be paid by Buyer.
- C. The premium for any title insurance policy issued at the request of Buyer and pursuant to such Commitment will be paid by Buyer.
- D. Buyer will be responsible for any fees or taxes relating to the deed, or the correction of title, required in connection with the transaction; including without limitation, document recording fees, conservation fees, document preparation fees, state deed tax, or environmental response fund tax.
- E. Buyer will pay all other document recording fees, document preparation fees, mortgage registry taxes, and any sales or use taxes required in connection with the transaction.
- F. Buyer will pay the closing fee and any escrow fees imposed by the Closing Company in connection with this transaction.

Section 7.2 Taxes and Assessments.

- A. Real estate taxes with respect to the Property due and payable in the year in which Closing occurs will be prorated, on a per diem basis using a calendar year, to Closing, provided Seller will be responsible for any penalties and interest on such taxes.
- B. Seller will pay all such taxes, and any penalties and interest on such taxes, due and payable in years prior to the year in which Closing occurs.
- C. Seller will pay all special assessments assessed, levied, pending, or constituting a lien against the Property as of Closing, including special assessments certified for payment with the current year's real estate taxes. Seller will also pay any other deferred real estate taxes

and assessments now or hereafter due by virtue of the sale of the Property or otherwise accruing for the period prior to Closing.

ARTICLE 8 WARRANTIES AND REPRESENTATIONS

Section 8.1 Seller Warranties. Seller warrants and represents to Buyer that:

- A. Seller is the fee owner of the Property and such title will be marketable as of Closing and subject only to the Permitted Exceptions;
- B. Seller has not received any notice of a violation of any building codes, fire codes, health codes, zoning codes, environmental laws, or other laws and regulations affecting the Property or the use of this Agreement;
- C. Seller has not received any notice of a condemnation, environmental, zoning or other regulation or proceeding being instituted or planned which would detrimentally affect the use and operation of the Property;
- D. Seller has not received any notice of hearing of a public improvement project from any governmental assessing authority, the costs of which may be assessed against the Property;
- E. Seller does not know of any sealed or unsealed wells on the Property (this statement being made pursuant to the disclosure requirements of Minnesota Statutes section 103I.235);
- F. Seller does not know of any individual sewage treatment system on the Property or serving the Property (this statement being made pursuant to the disclosure requirements of Minnesota Statutes section 115.55);
- G. Seller does not know of any underground or aboveground storage tanks currently on the Property, or any underground or aboveground storage tanks formerly on the Property that had a release for which no corrective action was taken (this statement being made pursuant to the disclosure requirements of Minnesota Statutes section 116.48);
- H. To Seller's knowledge, no methamphetamine production has occurred on the Property;
- I. This Agreement and the documents entered into pursuant to this Agreement have been duly authorized, executed, and delivered on behalf of Seller and constitute the valid and binding agreements of Seller, enforceable in accordance with their terms;
- J. The execution, delivery and performance by Seller of this Agreement, and the documents entered into pursuant to this Agreement, will not result in a breach or violation by Seller or constitute a default by Seller under any agreement, instrument or order to which Seller is a party or by which Seller is bound;
- K. Except as disclosed to Buyer by Seller in the Documents and in this Agreement, Seller and the Property are not subject to any commitment, obligation, or agreement, including, but not limited to, any lease, purchase agreement, contract for deed, right of first refusal, option to purchase, or easement with a third party, which prevents the consummation of the transaction contemplated in this Agreement or which might bind Buyer subsequent to consummation of this Agreement.
- L. Except as provided in the Permitted Exceptions, as of Closing, there will be no obligations or liabilities of any kind or nature whatsoever, including but not limited to, any tax liabilities, contract liabilities, or tort liabilities for which or to which Buyer or the Property

will be liable or subject, except for non-delinquent real estate tax obligations as provided for in this Agreement;

- M. The Property will be free of any tenancies as of Closing and no party shall be in possession of the Property.
- N. The Documents delivered to Buyer are true and correct copies, have not been amended or modified (except as noted when provided to Buyer or as noted in this Agreement), and if currently in full force and effect are free from default or notice of default;
- O. Except as may be disclosed in the Existing Environmental Reports, to Seller's knowledge, no toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents and such products, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601-9657, as amended) have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Property, nor has any activity been undertaken on the Property that would cause or contribute to (i) the Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq., or any similar state law or local ordinance, (ii) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Property within the ambit of, CERCLA, or any similar state law or local ordinance, or (iii) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq., or the Clean Air Act, U.S.C. Section 7401 et seq., or any similar state law or local ordinance. To Seller's knowledge, no substances or conditions exist in or on the Property that may support a claim or cause of action under RCRA, CERCLA or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements, including without limitation, the Minnesota Environmental Response and Liability Act, Minn. Stat. Section 115B ("MERLA") and the Minnesota Petroleum Tank Release Cleanup Act, Minn. Stat. Section 115C;
- P. Seller is not aware of any action, proceeding, or investigation pending or threatened which might materially adversely affect the Property or the ability of Seller to perform its obligations under this Agreement, and the documents entered into pursuant to this Agreement; and
- Q. Seller is not aware of any non-operational fixtures or any major repairs necessary on the property. Seller makes no warranty as to the functionality or operation of any buildings or fixtures, mechanical or otherwise, located on the Property.

Section 8.2 Buyer Warranties. Buyer warrants and represents to Seller that:

- A. Buyer is a political subdivision of the state of Minnesota and has all requisite power and authority to carry on its business as conducted, to execute and deliver this Agreement, and the documents entered into pursuant to this Agreement, and to carry out its obligations

under this Agreement and such documents, subject to the approval of the Board of Commissioners required in this Agreement;

- B. The execution, delivery and performance by Buyer of this Agreement, and the documents entered into pursuant to this Agreement, will not result in a breach or violation by Buyer or constitute a default by Buyer under any agreement, instrument or order to which Buyer is a party or by which Buyer is bound; and
- C. Buyer is not aware of any action, proceeding or investigation pending or threatened which might materially adversely affect the ability of Buyer to perform its obligations under this Agreement, and the documents entered into pursuant to this Agreement.

ARTICLE 9 MAINTENANCE AND OPERATIONS PRIOR TO CLOSING

Section 9.1 Operation. During the period from the Effective Date to Closing, Seller will cause the Property to be maintained and operated in substantially the manner in which it has been maintained and operated prior to the Effective Date and in accordance with applicable law. Seller will not without Buyer's prior written consent amend, modify, terminate, surrender, or waive any of Seller's easements or rights or grant or convey any new easement, lease, license, permit or other legal or beneficial interest in or encumbrance on the Property, or any other agreement that will survive Closing. Seller will keep and comply with all requirements of the encumbrances and will pay or cause to be paid, as and when due, all maintenance costs and other costs payable under such encumbrances.

Section 9.2 Removal of Debris. At least two days prior to Closing and as of Closing, Seller shall remove from the Property any and all debris on the Property.

Section 9.3 Risk of Loss. Risk of loss to the Property shall be borne by Seller until title has been conveyed to Buyer or Buyer's designee at Closing.

ARTICLE 10 CASUALTY AND CONDEMNATION

Section 10.1 Notice of Damage or Taking. Seller will give Buyer prompt notice of any fire or other casualty occurring between the Effective Date and Closing which involves damage to the Property and of any actual or threatened taking in condemnation affecting the Property of which Seller has knowledge.

Section 10.2 Effect on Closing. If prior to closing, the Property suffers any form of casualty or condemnation, of any kind, this Agreement and the obligations of Seller and Buyer under this Agreement will remain in full force and effect except that:

- A. Buyer will accept the Property with such damage or condemnation; and
- B. Seller will at Closing, pay over to Buyer any insurance proceeds and condemnation awards received prior to Closing which have not been applied to repairs and restoration, and assign to Buyer Seller's interest in all unpaid insurance proceeds, rights of recovery, and condemnation awards.

**ARTICLE 11
REMEDIES**

Section 11.1 Default by Buyer. If Buyer defaults under this Agreement, Seller shall have the right as its sole and exclusive remedy to terminate this Agreement by giving written notice to Buyer. Upon such termination, and provided Seller is not in default of this Agreement, Buyer and Seller will have no further rights or obligations under this Agreement. This is the sole remedy available to Seller for such default by Buyer, and Buyer will not be liable for damages or specific performance.

Section 11.2 Default by Seller. If Seller defaults under this Agreement, Buyer may elect to: (i) enforce the specific performance of this Agreement, or (ii) terminate this Agreement and be relieved of its obligations under this Agreement, in which event Buyer shall be entitled to the reimbursement by Seller of Buyer's actually incurred out-of-pocket expenses, including without limitation, reasonable attorney's fees and other consultant fees incurred by Buyer in connection with this Agreement or the Closing contemplated in this Agreement, obtaining funding commitments, investigating the Property, seeking governmental approvals, and other similar and reasonable out-of-pocket costs and expenses, in an amount not to exceed \$25,000.00.

Section 11.3 Survival. This Article 11 shall survive Closing and/or the expiration or termination of this Agreement.

**ARTICLE 12
GENERAL**

Section 12.1 Notices. Any notice, demand, or document which either party is required or either party desires to give or deliver to or make upon any other party shall, in the case of a notice or demand, be in writing, and may be personally delivered, delivered by a nationally recognized courier service guaranteeing overnight delivery, or given or made by United States registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

| | |
|--|---|
| <i>If to Buyer:</i> County of Ramsey Parks & Recreation Department 2015 Van Dyke St. Maplewood, MN 55109 ATTN: Scott Yonke (scott.yonke@co.ramsey.mn.us) | <i>If to Seller:</i> Daniel and Nancy McGuinness 2160 Ogden Avenue St. Paul, MN 55119 (dan@dmcguinness.com) |
|--|---|

Either party may designate a different address for itself by notice similarly given. Any such notice, demand or document so given, delivered or made by registered or certified mail as aforesaid, shall be deemed to be given, delivered or made (a) upon receipt of the same by the party or parties to whom the same is to be given, delivered or made, if delivered personally, (b) upon deposit with a

nationally recognized courier service guaranteeing overnight delivery, (c) upon deposit in the United States mail, certified or registered mail, postage prepaid, or (d) upon delivery by email.

Section 12.2 Effective Date. The effective date of this Agreement will be the date first set forth above.

Section 12.3 Broker Commissions. Buyer and Seller each represents that no salesperson, broker, or agent has been retained by it in connection with this transaction. Either party shall be responsible for paying any applicable commission to any agent retained. Except as so specified, Buyer and Seller each indemnifies the other from any real estate or other sales commissions arising out of any claim of any salesperson, broker or agent acting or claiming to have acted on behalf of the indemnifying party in connection with this transaction.

Section 12.4 Entire Agreement. This Agreement and the Exhibits referenced in this Agreement embodies the entire agreement and understanding between Buyer and Seller relating to the transaction contemplated by this Agreement and may not be amended, waived, or discharged except by an instrument in writing executed by the party against whom enforcement of such amendment, waiver or discharge is sought. No warranties or representations have been given by either party to the other which are not fully embodied in this Agreement. If any term or provision of this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected and will remain in full force and effect.

Section 12.5 Survival. Except as may otherwise be expressly provided in this Agreement, all covenants, agreements, obligations, and undertakings made by Seller and Buyer in or pursuant to this Agreement will survive Closing, for a period of one (1) year after Closing, whether or not so expressed in the immediate context of any such covenant, agreement, obligation or undertaking.

Section 12.6 Construction. This Agreement will be construed and enforced in accordance with the laws of the State of Minnesota without regard to or application of its conflicts of law rules or principles. If more than one person executes this Agreement as Buyer, each of them is jointly and severally liable for Buyer's obligations under this Agreement. Time is of the essence of this Agreement.

Section 12.7 No Assignment. Buyer may not assign its interest in this Agreement without the prior written consent of Seller, which consent will not be unreasonably withheld. Seller's consent to any transfer or assignment of Buyer's rights or obligations under this Agreement shall not be construed as a consent to any other transfer or assignment of Buyer's rights or obligations under this Agreement. No transfer or assignment in violation of the provisions of this Agreement shall be valid or enforceable.

Section 12.8 Binding Agreement. This Agreement will be binding upon and inure to the benefit of Buyer and Seller and their respective heirs, representatives, successors and assigns.

Section 12.9 Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the contract of the parties.

Section 12.10 Section Headings. The section headings of this Agreement are for purposes of identification only and shall not be considered in construing this Agreement.

Section 12.11 Waiver. Except as expressly provided in this Agreement, no waiver by a party of any breach of this Agreement or of any warranty or representation under this Agreement by another party shall be deemed to be a waiver of any other breach of any kind or nature (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a party after any such breach by another party shall be deemed to be a waiver of any further breach of this Agreement or of any representation or warranty under this Agreement by such other party whether or not the first party knows of such a breach at the time it accepts such payment or performance. No failure on the part of a party to exercise any right it may have by the terms under this Agreement or by law upon the default of another party, and no delay in the exercise of this Agreement by the first party at any time when such other party may continue to be so in default, shall operate as a waiver of any default, or as a modification in any respect of the provisions of this Agreement.

Section 12.12 Time Computations. In computing a period of days for performance or payment as provided under this Agreement, the first day shall be excluded and the last day shall be included. If the last day of any such period is a Saturday, Sunday or legal holiday, the period shall extend to include the next day which is not a Saturday, Sunday, or legal holiday. Any performance or payment which must be taken or made under this Agreement must be taken or made prior to 5:00 p.m. of the last day of the applicable period provided under this Agreement for such action, unless another time is expressly specified. All references to time shall be Minneapolis, Minnesota time.

Section 12.13 Execution and Delivery. Seller and Buyer acknowledge that each of them and their counsel have had the opportunity to review this Agreement, and that this Agreement will not be construed against Buyer merely because Buyer's counsel has prepared it. This Agreement will be effective only upon execution and delivery by both parties.

Section 12.14 Incorporation of Exhibit. The Exhibit attached to this Agreement is true and correct and is incorporated into this Agreement.

[Signature page to follows]

IN WITNESS OF this Agreement, the undersigned has duly executed it as of the Effective Date.

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| <p>BUYER:</p> <p>COUNTY OF RAMSEY, a political subdivision of the State of Minnesota</p> <p> Ryan T. O'Connor County Manager</p> <p>Date: <u>October 31</u>, 2023</p> <p><i>Approval Recommended:</i></p> <p> Mark McCabe, Director Ramsey County Parks & Recreation</p> <p><i>Approved as to form:</i></p> <p> Assistant Ramsey County Attorney</p> | <p>SELLER:</p> <p>DANIEL AND NANCY MCGUINESS, married to each other</p> <p> Daniel Willaim McGuiness</p> <p>Date: <u>October 26</u>, 2023</p> <p> Nancy C. McGuiness Nancy C. McGuiness</p> <p>Date: <u>Oct. 26</u>, 2023</p> |
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EXHIBIT A

Legal Description of Property

Parcel 1:

The South 470 feet of the East 278 feet of the West 478 feet of the Northeast 1/4 of the Southeast 1/4 of Section 14, Township 28, Range 22, except that part taken for plat of Lewiston Heights Second Addition.

Parcel 2:

That part of Ogden Avenue in Lewiston Heights Second Addition overlying the following described property: The South 470 feet of the East 278 feet of the West 478 feet of the Northeast 1/4 of the Southeast 1/4 of Section 14, Township 28, Range 22.