

Metropolitan Parks and Open Space Commission

Meeting date: August 9, 2016

For the Community Development Committee meeting of August 15, 2016

For the Metropolitan Council meeting of August 24, 2016

Subject: Park Acquisition Opportunity Fund Grant for Nine Mile Creek Regional Trail (Edina Manor), Three Rivers Park District

MPOSC District: C – William Weber

Policy/Legal Reference: MN Statutes 85.53 Subd. 3(4) and MN Statutes 473.315

Staff Prepared/Presented: Deb Streets Jensen, Senior Parks Finance Planner 651-602-1554

Division/Department: Community Development Division / Regional Parks & Natural Resources

Proposed Action

That the Metropolitan Council:

1. Approve a grant of up to \$176,734 to reimburse Three Rivers Park District for their acquisition via condemnation of a permanent 4,919-square foot easement at 5400 70th Street West for the Nine Mile Creek Regional Trail; and
2. Authorize the Community Development Director to execute the grant agreement and restrictive covenant on behalf of the Council.

Background

Regional Park Implementing Agency. Three Rivers Park District (Park District) requested this grant for the Nine Mile Creek Regional Trail on June 3, 2016 to pay for easements necessary to build the Edina segment of the trail. A copy of the Park District's request is attached to this item as Exhibit 1. Nine Mile Creek Regional Trail will run from eastern Bloomington to Hopkins. The subject parcel is located in Edina in Hennepin County.

Policy. Strategy Two of the Siting and Acquisition policy from the *2040 Regional Parks Policy Plan* states that "*priorities for land acquisition are set by regional park implementing agencies in Council-approved master plans.*"

Funding sources. The Park District received a \$6.16 million federal transportation grant to construct the east segment of the Nine Mile Creek Regional Trail in the City of Edina. The grant required that all property rights be secured and paid for, or be in the process of being condemned, no later than June 15, 2015. This has been accomplished.

The Council's Park Acquisition Opportunity Fund (PAOF) provides resources to purchase property and easements via two state sources: the Parks and Trails Fund and the Environment and Natural Resources Trust Fund. The Council contributes further by matching every \$3 in state funds with \$2 in Council bonds proceeds. Between them, state and Council funds contribute 75% of the purchase price and eligible costs; the Regional Park Implementing Agency (Agency) contributes the remaining 25% as local match. This grant would be funded through the Park and Trails Fund and Council bonds. The Park District is not requesting consideration for future reimbursement for any part of its local match.

Subject property. The subject property is located within the Council-approved boundaries of the regional trail on the north side of 70th Street, one-half mile west of Highway 100 in Edina. The property holds a 26-unit apartment building, the revenue potential of which will remain unaffected by the trail, according to the appraisal. There is a 7-stall detached garage and parking at the rear of the building and railroad tracks adjacent the property. The trail will run along the east side of the apartment building and detached garages. Nine Mile Creek runs through the property's north portion. An existing 50-foot-wide easement owned by Xcel Energy runs along the east property line; the Xcel easement does not prohibit the Park District's use of the property for regional trail purposes.

The acquisition consists of 4,919-square feet of permanent easement for drainage, utility, trail and bikeway purposes.

Acquisition details. This acquisition utilized eminent domain to meet the acquisition deadline of the federal grant. Use of eminent domain is allowed by the *2040 Regional Parks Policy Plan (Plan)* under [applicable provisions of Minn. Stat., ch. 117](#). The Plan says the regional parks implementing agencies should notify the Council of their intention to begin condemnation prior to filing a petition in the eminent domain proceeding and that it will be requesting a PAOF grant when the final award is determined ([see page 127](#)). The Park District followed these guidelines.

On December 18, 2014, the Park District's Board authorized its staff to negotiate the easement purchase, and a copy of the authorization is attached as Exhibit 4. The appraisal valued the permanent easement at \$64,000; excerpts from the appraisal are attached as Exhibit 6. An appraisal review was also conducted; a copy is attached as Exhibit 7. The Park District made an initial offer of \$64,000 and a final offer to the seller of \$75,000, both of which were rejected. The Park District's appraisal did not anticipate a loss of potential revenue to the apartment building; the property owners conducted an appraisal that took loss of potential revenue into account and was significantly higher at approximately \$335,000. The final settlement amount was \$218,000.

The Park District's notification of its intentions to initiate condemnation proceedings on March 6, 2015 is attached as Exhibit 5. A copy of the final settlement statement, court file 27-CV-15-2291, dated February 5, 2016, is attached as Exhibit 8.

Council review. Staff from the Council's Regional Parks and Natural Resources work unit:

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

Rationale

This acquisition is consistent with:

- The *2040 Regional Parks Policy Plan*;
- Appropriation requirements;
- The Nine Mile Creek Regional Trail master plan, approved by the Council on December 11, 2013; and
- All requirements of the Park and Trails Fund.

Funding

Project budget.

Budget item	Requested amount
Purchase price	\$185,725
Due diligence (appraisal, Phase I environmental site assessment, etc.)	7,000
Legal services and closing costs	42,920
Total costs	\$235,645
Grant structure	
Parks and Trails Fund	\$106,040
Council bonds	70,693
Grant amount not to exceed	\$176,733
Local match	\$58,912

Fund balance.

As of July 28, 2016, the combined balance available for Parks and Trails Fund and Council match was \$598,202. Please note there is a concurrent request for a second Parks and Trails Fund acquisition for Big Marine Park Reserve also being presented for action in August 2016. That request, if approved along with this one, would reduce the available balance to \$183,576.

Known Support / Opposition

There is no known opposition.

Exhibit List

- Exhibit 1: Grant request letter
- Exhibit 2: Images
- Exhibit 3: Grant application
- Exhibit 4: Board approval to request grant
- Exhibit 5: Notice of 'condemnation and intent to request a PAOF grant at a future date'
- Exhibit 6: Appraisal excerpt
- Exhibit 7: Appraisal review excerpt
- Exhibit 8: Condemnation documents

June 3, 2016

Three Rivers
Park District
Board of
Commissioners

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

Penny Steele
District 1

RE: Park Acquisition Opportunity Grant Fund Request
Nine Mile Creek Regional Trail: Reimbursement Request No. 4

Jennifer DeJournett
District 2

Dear Emmett,

Three Rivers Park District respectfully requests a Park Acquisition Opportunity Grant for Nine Mile Creek Regional Trail in the amount of \$176,733 for acquisition of one easement located in Edina and acquired through condemnation. Please process this request and forward to the Metropolitan Parks Open Space Commission, Community Development Committee, and Metropolitan Council for consideration and approval.

Daniel Freeman,
Vice Chair
District 3

Reimbursement Request Reference Number

For communication and tracking purposes, this request is designated as Nine Mile Creek Regional Trail Reimbursement Request No. 4. Previous and subsequent grant requests follow this precedence.

John Gunyou,
Chair
District 4

Background

The Park District received a federal transportation grant in the amount of \$6.16 million to construct the east segment of Nine Mile Creek Regional Trail in the City of Edina. This funding source required that all property rights be secured and paid for, or in the process of being condemned, no later than June 1, 2015.

John Gibbs
District 5

Due to preliminary unsuccessful negotiations, and as required by the federal grant, the Park District commenced condemnation in spring 2015 on four public trailway easements including Parcel 11. The Metropolitan Council was notified of the Park District's intent to utilize condemnation and seek an Acquisition Opportunity Fund Grant at a later date on March 6, 2015.

Larry Blackstad
Appointed
At Large

We recently completed all of the condemnation proceedings for Parcel 11 and are requesting reimbursement for associated costs.

Steve Antolak
Appointed
At Large

Easement Payment

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

Cris Gears
Superintendent

Previously Submitted Documentation

The following documentation was previously conveyed to the Metropolitan Council:

- Notification of intent to pursue condemnation (March 2015)
- Condemnation update (May 2015)
- Park District authorization to file condemnation petition
- Notice of Intention to Take Title and Possession of Property
- Petition and Motion for An Order Authorizing Transfer of Title
- Appraisals

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

Thank you for your continued assistance through this process.

A handwritten signature in blue ink that reads "Heather Kuikka". The signature is written in a cursive, flowing style.

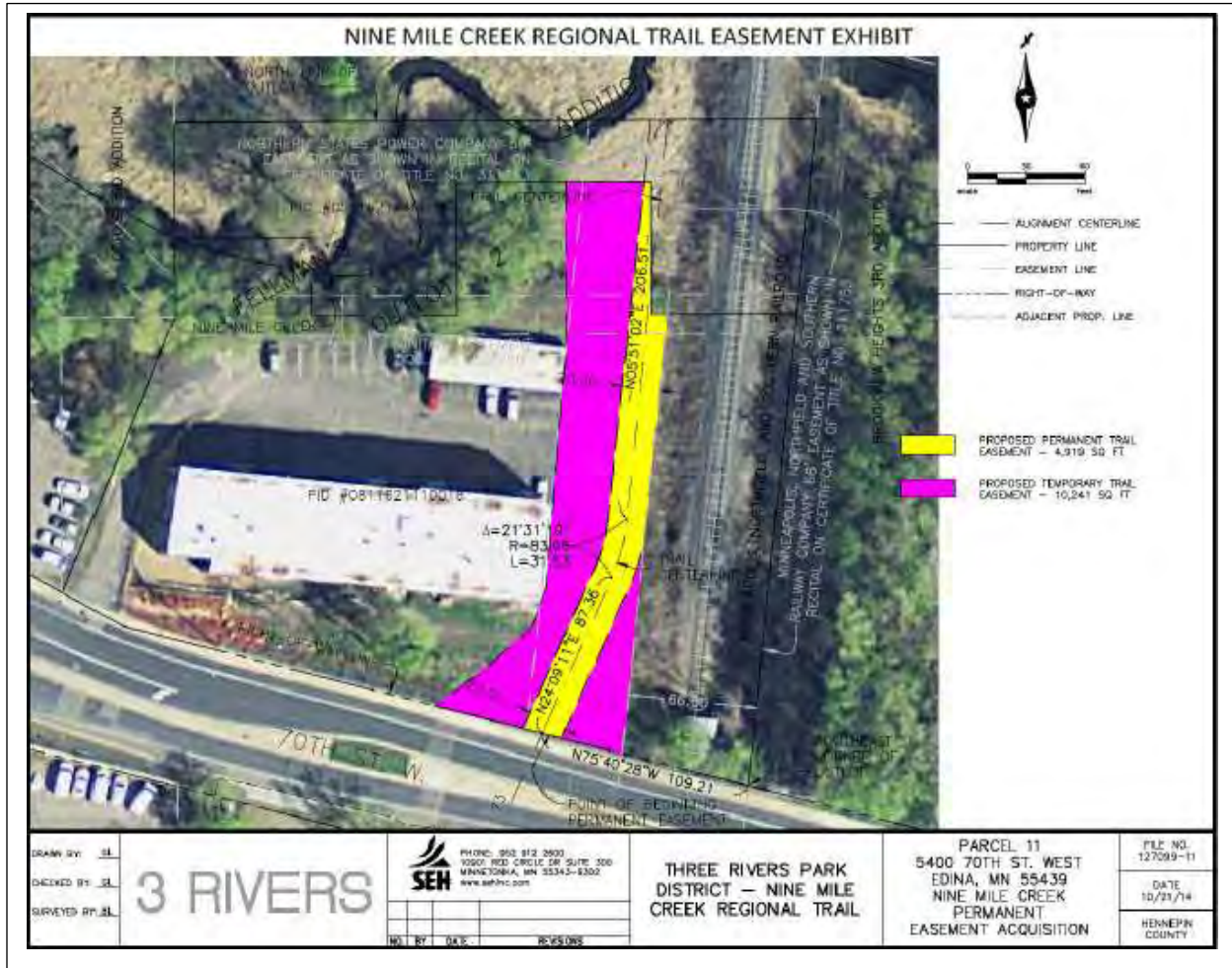
Heather Kuikka
Planning Administrative Specialist

Enclosures

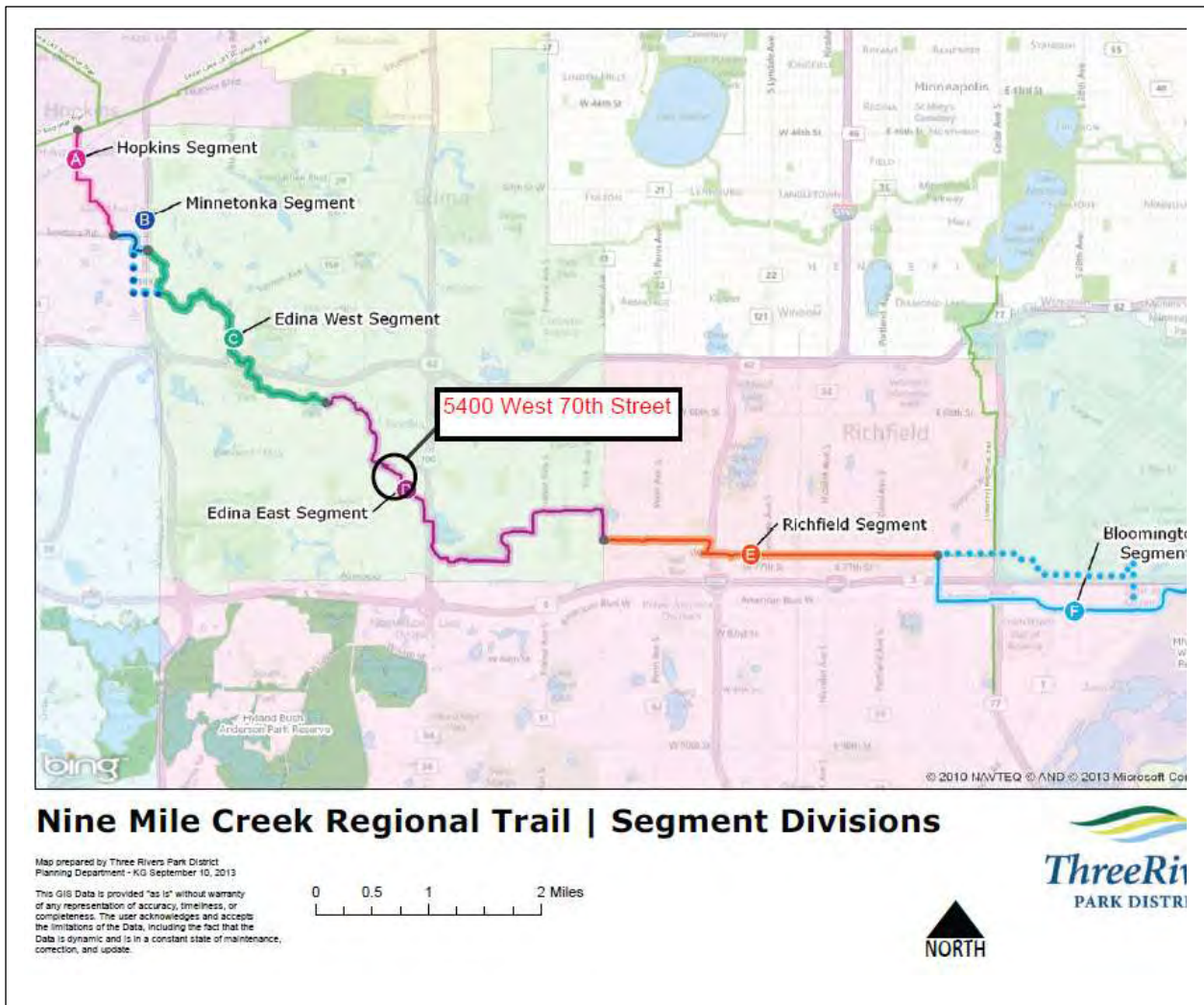
C: Jonathan Vlaming, Associate Superintendent
Kelly Grissman, Director of Planning

Exhibit 2 - Images

Temporary (highlighted in pink) and permanent trail easement (highlighted in yellow)



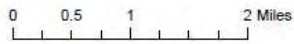
Nine Mile Creek Regional Trail route, showing Edina segment



Nine Mile Creek Regional Trail | Segment Divisions

Map prepared by Three Rivers Park District
 Planning Department - KG September 10, 2013

This GIS Data is provided "as is" without warranty of any representation of accuracy, timeliness, or completeness. The user acknowledges and accepts the limitations of the Data, including the fact that the Data is dynamic and is in a constant state of maintenance, correction, and update.



Photographs of easement area



Looking south at acquisition area from northeast portion of site.



Looking northwesterly at acquisition area from east central location.



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Application Details

Print to PDF | Review | Funding Opportunity | Annotations(0)

04280 - 2016 Parks Acquisition Grants

**04797 - Nine Mile Creek Regional Trail Reimbursement Request No. 4
Parks Grants Acquisition**

Applicant Information

Primary Contact:

Name:* Ms. Heather Kuikka
Salutation First Name Middle Name Last Name
 Title:* Administrative Specialist - Planning
 Department:
 Email:* Heather.Kuikka@threeriversparks.org
 Address:* 3000 Xenium Lane N

* Plymouth Minnesota 55441
City State/Province Postal Code/Zip
 Phone:* 763-559-9000
Phone Ext.

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

Organization Information

Name:* THREE RIVERS PARK DISTRICT
 Jurisdictional Agency (if different):
 Organization Type:
 Organization Website:
 Address:* RESERVATIONS
 3000 XENIUM LN N

* PLYMOUTH Minnesota 55441-2661
City State/Province Postal Code/Zip
 County:* Hennepin
 Phone:* 763-559-6700
Ext.

Fax:
 PeopleSoft Vendor Number 0000057347A1

Project description

Please limit acquisition requests to a single park or trail

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

Master plan

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

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

If yes, name of master plan and date of Council approval

Name of master plan Council approval date - Format: mmddyyyy (Do not enter any punctuation.)

Acquisition method

Acquisition method **Condemnation**

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

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

The Park District received a federal transportation grant in the amount of \$6.16 million to construct the east segment of Nine Mile Creek Regional Trail in the City of Edina. This funding source required that all property rights be secured and paid for, or in the process of being condemned, no later than June 1, 2015.

Due to preliminary unsuccessful negotiations, and as required by the federal grant, the Park District commenced condemnation in spring 2015 on four public trailway easements, including Parcel 11. The Metropolitan Council was notified of the Park District's intent to utilize condemnation and seek an Acquisition Opportunity Fund Grant at a later date on March 6, 2015.

We recently completed all of the condemnation proceedings for Parcel 11 and are requesting reimbursement for associated costs.

Is any portion of the property currently in the public domain? **Yes**

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.

Condemnation is complete and we now currently own the easement.

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

If condemnation is involved, date the petition was/will be filed. **05/18/2015**

If condemnation is involved, expected settlement date **02/11/2016**

Are there easements or other encumbrances on any part of the property? **Yes**

If yes, describe

There is a 50-foot-wide Northern States Power easement on the property along the east property line. This does not prohibit the Park District's use of the property for regional trail purposes.

Closing date

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

Estimated closing date Format: mmddyyyy (Do not enter any punctuation.)

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

Appraisal information

Appraised value **\$64,000.00**

Amount being offered the seller (net of closing and other costs) **\$185,725.00** **34.46%**
% of appraised value

Appraisal date **09/16/2014**

Who performed the appraisal? **Evergreen Land Services Company**

Who contracted for the appraisal (i.e., was it done at arms' length)? **Short Elliott Hendrickson, Inc.**

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

This is a developed parcel with a small amount of open space which includes Nine Mile Creek frontage, steep wooded slopes, wetland, and flood plain.

Suggested funding source

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

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

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

For ENRTF funding only

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

Does the property contain habitable structures? **Yes**

If yes, what is the plan for the structure(s)? **The apartment complex will stay as-is.**

Does the property currently contain any revenue-generating businesses? **Yes**

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

The subject property is a 1.42-acre multi-family site located on the north side of 70th Street. The property is improved iwth an apartment building and garages. The anticipated trail will run along the complex and no buildings will be affected. There will be no negative affect to the revenue generating potential of the property.

Stewardship and minimal access

Describe the stewardship plan.

Acquiring easement only.

How will the stewardship implementation be funded?

Not applicable.

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?

Local match

Source of local match

Three Rivers Park District General Obligation Bond Fund or Land Acquisition Development and Betterment Fund.

Will you be requesting consideration for future reimbursement of any part of your local match? **No**

If yes, how much? **\$0.00**

Sellers and parcels

Seller name	Parcel address	PID	Acres	Date PA signed	Habitable structures?	MN House district	City	County	MPOSC	Latitude	Longitude
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Edina Manor, LLC - Halverson & Blaisser Group LTD 7800 Metro Parkway, #300, Bloomington, MN 55425 08-116-21-11-0018 0 Yes 49B Edina Hennepin District C 44.889687 -93.349949

Grant agreement signatories

Full name	Title	If this is an attorney, is the signature 'for form only'?
Boe R. Carlson	Superintendent	No

Acquisition Costs

Cost Items	Amount
Purchase price	
Negotiated purchase price	\$185,725.00
Appraisal expenses	
Appraisal	\$7,000.00
Appraisal review	\$0.00
Environmental expenses	
Phase I environmental site assessment	\$0.00
Phase II environmental site assessment	\$0.00
Environmental contamination remediation	\$0.00
Holding expenses	
Interest	\$0.00
Land stewardship	\$0.00
Land development	\$0.00
Pro-rated share of all property taxes/assessments	\$0.00
Legal services and closing costs	\$42,920.00
Property tax equivalency payment	\$0.00
Relocation costs to seller	\$0.00
State deed tax/conservation fee	\$0.00
Title insurance	\$0.00
Well disclosure statement	\$0.00
Other holding	\$0.00
Other expenses	
Other expenses	\$0.00
Totals	\$235,645.00

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)	\$235,645.00	\$106,040.25	\$70,693.50	\$58,911.25	\$0.00

Required Attachments

Attachment	Description	File Name	Type	File Size
Section 1 - REQUIRED FOR ALL REQUESTS				
Grant request letter	Grant request letter	2016-05-06--Letter to Met Council.docx	docx	112 KB
Master plan documentation (please compress to 5 Mb max)	Master Plan excerpts.	NMCRT No 4 - Master Plan Excerpts_Reduced.pdf	pdf	874 KB
Aerial photo showing parcel boundary (please compress to 5 Mb max)	Aerial image	Aerial image2.pdf	pdf	321 KB
Parcel map showing park/trail master plan boundary (please compress to 5 Mb max)	Master Plan map boundary.	NMCRT No 4 -Map for Staff Report.pdf	pdf	9.0 MB

Governing Board action authorizing grant request	Board Action regarding counter offer.	2015-12-17 Board Action.pdf	pdf	25 KB
Section 2 - FEE TITLE REQUIREMENTS				
Signed purchase agreement	n/a	Not applicable.docx	docx	12 KB
Property appraisal report (please compress to 5 Mb max)	Appraisal	20141031--Edina Manor--appraisal.pdf	pdf	4.4 MB
Appraisal invoice	Appraisal Fee	appraisal fee invoice.pdf	pdf	270 KB
Phase 1 environmental site assessment report	n/a	Not applicable.docx	docx	12 KB
Phase 1 environmental assessment invoices	n/a	Not applicable.docx	docx	12 KB
State deed tax or conservation fee invoice	n/a	Not applicable.docx	docx	12 KB
Property tax statement with pro-rated share of tax due	n/a	Not applicable.docx	docx	12 KB
Tax equivalency payment	N/A	Not applicable.docx	docx	12 KB
Title insurance invoice	n/a	Not applicable.docx	docx	12 KB
Itemized estimate of closing costs	n/a	Not applicable.docx	docx	12 KB
Minimal access development estimated costs	n/a	Not applicable.docx	docx	12 KB
Land stewardship plan	n/a	Not applicable.docx	docx	12 KB
Land stewardship estimated costs				
Legal description of the property	Legal Description	Legal Description 5400 70th St.docx	docx	14 KB
Section 3 - CONDITIONALLY REQUIRED ATTACHMENTS				
Appraisal review report	Appraisal Review	Appraisal Review_Edina Manor.pdf	pdf	506 KB
Appraisal review invoice	Appraisal review invoice	Not applicable.docx	docx	12 KB
Phase II environmental assessment report				
Phase II environmental assessment invoices				
REQUIRED FOR TRAILS Parcel map showing trail route				
Other acquisition costs report				
Required if this grant will serve as partial or full match to another grant Copy of federal or other grant				
Relocation description and estimated costs				
SECTION 4 - CONDEMNATIONS				
Condemnation settlement	Settlement	20160217--Edina Manor--signed settlement.pdf	pdf	428 KB
Documentation of notice to Council prior to initiating condemnation procedures				
Administrative settlement	Administrative Settlement	Signed Settlement_Edina Manor.pdf	pdf	427 KB
Section 5 - EASEMENT REQUIREMENTS				
Signed easement	Judge granting easement	2015-05-18 Order Approving Petition.pdf	pdf	486 KB

Additional attachments

File Name	Description	File Size
20141218_Item 6A. Authorization to Acquire Easements for Nine Mile Creek Regional Trail-FINAL.pdf (123 KB)	Initial request to authorize acquisition of easements.	123 KB
2015-05-18 Order Approving Petition.pdf (486 KB)	Approved petition by judge	486 KB
20160217--Edina Manor--signed settlement.pdf (428 KB)	Settlement	428 KB

5400 W 70th Street_Aerial.pdf (255 KB)	Street aerial image.	255 KB
All Attorney Invoices.pdf (5.3 MB)	Attorney fees	5.3 MB
Legal Description 5400 70th St.docx (14 KB)	Legal Description	14 KB

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Metropolitan Council

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RESOLUTION NO. 15-02

A RESOLUTION APPROVING AND AUTHORIZING THE USE OF EMINENT DOMAIN FOR EIGHT PARCELS LOCATED IN THE EAST SEGMENT OF NINE MILE CREEK REGIONAL TRAIL IN THE CITY OF EDINA

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

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

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

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

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

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

WHEREAS, at this time it is necessary to acquire eight (8) public trailway easements from a total of seven (7) private property owners for the east segment of the Trail in order to provide a continuous and contiguous Trail corridor; and

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

Public Trailway Easements

Parcel	Location	Description
Parcel 11	5400 70 th Street West, Edina, MN 55439 PID 08-116-21-11-0018	4,919 square feet of permanent easement and 10,241 square feet of temporary easement
Parcel 16	4900 77 th Street West, Edina, MN 55435 PID 31-028-24-33-0009	7,228 square feet of permanent easement and 11,873 square feet of temporary easement
Parcel 22	5309 70 th Street West, Edina, MN 55439 PID 08-116-21-11-0029	7,052 square feet of permanent easement and 3,678 square feet of temporary easement
Parcel 24	7101 Ohms Lane, Edina, MN 55439 PID 09-116-21-22-0025	10,489 square feet of permanent easement and 3,795 square feet of temporary easement
Parcel 26	7117 Ohms Lane, Edina, MN 55439 PID 09-116-21-22-0027	10,088 square feet of permanent easement and 385 square feet of temporary easement

Parcel 27	7125 Ohms Lane, Edina, MN 55439 PID 09-116-21-22-0028	2,305 square feet of permanent easement and 90 square feet of temporary easement
Parcel 28	7171 Ohms Lane, Edina, MN 55439 PID 09-116-21-23-0021	4,922 square feet of permanent easement and 283 square feet of temporary easement
Parcel 33	4948 Poppy Lane, Edina, MN 55435 PID 31-028-24-32-0047	798 square feet of temporary easement

WHEREAS, failure to secure property rights for the aforementioned property jeopardizes the availability of a \$6.16 Million Federal Surface Transportation Program Grant and ultimately the ability of the Park District to construct the Trail; and

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

WHEREAS, the appraisals have been prepared and provided to the owners of each property; and

WHEREAS, the appraisal value of each property is as follows:

Parcel 11: \$64,000
Parcel 16: \$314,000
Parcel 22: \$54,900
Parcels 24 and 26:..... \$114,700
Parcel 27..... \$19,400
Parcel 28..... \$75,800
Parcel 33..... \$6,300

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

Adopted this 5th day of February 2015.

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

Dated: 02/05/15

By: [Signature]
Its Chair – Board of Commissioners

Dated: 02/05/15

By: [Signature]
Its Superintendent
and Secretary to the Board



March 6, 2015

Three Rivers
Park District
Board of
Commissioners

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

Penny Steele
District 1

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

Jennifer DeJournett
District 2

Dear Jan,

Daniel Freeman,
Vice Chair
District 3

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

John Gunyou,
Chair
District 4

Immediate Request

Please review this request and, at your earliest convenience, confirm receipt and inform me of any concerns. In addition, please review with your legal counsel the Park District's request to potentially seek a retroactive grant if willing seller settlement agreements are reached prior to the completion of the condemnation proceedings and notify me of his/her recommendation.

John Gibbs
District 5

Condemnation Need and Affected Properties

The associated \$6.16 million Federal Surface Transportation Grant requires that all right-of-way is secured and paid for by June 1, 2015. If this requirement is not met, the Park District is at risk of losing the grant and ultimately not being able to fund construction of the Nine Mile Creek Regional Trail: Edina East Segment. As such the Park District has commenced condemnation for regional trail easements across the properties listed on the following page.

Larry Blackstad
Appointed
At Large

Steve Antolak
Appointed
At Large

Cris Gears
Superintendent

Administrative Center, 3000 Xenium Lane North, Plymouth, MN 55441-1299

Information 763.559.9000 • TTY 763.559.6719 • Fax 763.559.3287 • www.ThreeRiversParks.org

Parcel	Location	Description
Parcel 11	5400 70th Street West, Edina, MN 55439 PID 08-116-21-11-0018	4,919 square feet of permanent easement
Parcel 16	4900 77th Street West, Edina, MN 55435 PID 31-028-24-33-0009	7,228 square feet of permanent easement
Parcel 22	5309 70th Street West, Edina, MN 55439 PID 08-116-21-11-0029	7,052 square feet of permanent easement
Parcel 27	7125 Ohms Lane, Edina, MN 55439 PID 09-116-21-22-0028	2,305 square feet of permanent easement

Park Acquisition Opportunity Fund Grant Requirements

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

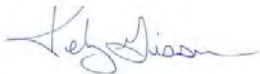
- 1) Agency's authorization to file condemnation petition
- 2) Condemnation petition and intent to file condemnation
- 3) Associated appraisals, appraisal reviews, and offer letters

Settlement Prior to Condemnation Completion

The Park District is still actively negotiating with property owners to reach settlement agreements on a willing seller basis. As such, it is possible that the Park District will reach settlement agreements before the completion of the condemnation. If this happens, the Park District may not be able to reasonably obtain Metropolitan Council approval prior to purchasing the regional trail easement due to the federal grant which requires payment for the easement no later than June 1, 2015. The Park District will keep the Metropolitan Council apprised of any successful negotiation efforts and respectfully requests an opportunity to submit a retroactive grant request should this situation arise.

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

Sincerely,



Kelly Grissman
Director of Planning

Enclosures

- C: Boe Carlson, Superintendent
Jonathan Vlaming, Associate Superintendent
Eric Nelson, Senior Manager of Engineering

Evergreen Land Services Company
4131 Old Sibley Memorial Highway, Suite 201
Eagan, MN 55122

Tel: (651) 882-0200
Fax: (651) 882-6564



February 3, 2015

Mr. Richard Curtin
6310 Mcintyre Pt.
Edina, MN 55439

**RE: Nine Mile Creek Regional Trail Project
Permanent and Temporary Easement Acquisition
5400 70th Street West
Edina, MN 55439**

Dear Mr. Curtin:

Three Rivers Park District is partnering with the City of Edina to develop the Nine Mile Creek Regional Trail. When complete, the trail will span the communities of Hopkins, Minnetonka, Edina, Richfield, and Bloomington. In order to acquire the necessary land rights for this project, Three Rivers Park District must follow a specific procedure. One of these procedural steps is a written offer to purchase the necessary land rights from the property owner. This letter represents the written offer.

The Nine Mile Creek Regional Trail project requires the following acquisition on your property:

4,919 sq ft of Permanent Easement
10,241 sq ft of Temporary Easement

OFFER

Three Rivers Park District hereby offers all parties who may have an interest in the property to be acquired the sum of **\$75,000.00**. This represents an \$11,000.00 increase from the offer on an appraisal by Evergreen Land Services Company dated September 16th, 2014.

You will have a reasonable length of time to consider the offer. To aid in your decision you may wish to secure your own appraisal. Minnesota law provides for reimbursement to the property owner in an amount not to exceed \$1,500 for single family and two family residential property appraisals (and minimum damage acquisitions of under \$10,000), and up to \$5,000.00 for appraisals of other type of properties. Based upon the value of the land rights being acquired, you would qualify for reimbursement of appraisal expenses up to \$5,000.00.

Minnesota law also provides that the owner will be reimbursed for certain incidental costs (if any) incurred by the property owner in transferring the necessary land rights to Three Rivers Park District.

In order to stay on schedule for the project, Three Rivers Park District will be commencing condemnation proceedings. Please understand that the condemnation filing is not intended to signal an end to negotiations. To the contrary, this offer will remain open and we hope to continue to work with you toward an agreement.

Sincerely,



Matthew S. Storm SRWA
Evergreen Land Services
Acquisition Consultant for Three Rivers Park District.

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

PROJECT DESCRIPTION:	Three Rivers Park District is partnering with the City of Edina to develop the Nine Mile Creek Regional Trail (NMCRT). When complete, the trail will span the communities of Hopkins, Minnetonka, Edina, Richfield, and Bloomington. The proposed route will generally traverse through the City of Edina from the northwest corner to the southeast corner.
SITE DESCRIPTION:	The subject property is a 1.42 acre multi-family site located on the north side of 70 th Street, ½ mile west of Highway 100, in the City of Edina. The property is improved with an apartment building and garages.
FEE OWNERS:	Edina Manor, LLC
PROPERTY LOCATION:	5400 - 70th Street West, Edina, MN 55439
DATE OF INSPECTION:	September 16, 2014
DATE OF APPRAISAL:	September 16, 2014 (Effective Date of Appraisal)
PROPERTY APPRAISED:	Real Property (Land Only)
RIGHTS APPRAISED:	Fee simple title of before and after situations.
TYPE AND SIZE OF ACQUISITION:	4,919 sf of permanent easement 10,241 sf of temporary easement for 1.5014 years to begin April 1, 2015 and expire September 30, 2016
FLOOD ZONE:	Zones X & AE (Map #27053C0363E, 09-02-2004)
ZONING:	PRD-3, Planned Resident District-3
HIGHEST AND BEST USE (AS VACANT):	
	Before Taking: Medium-Density Residential
	After Taking: Medium-Density Residential

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

SITE AREA:

Before Taking:	62,064 sf of land (or 1.42 acres of land) 15,915 sf of existing railroad right of way <u>26,617</u> sf of existing road right of way 104,596 sf total (or 2.40 acres of land)
After Taking:	57,145 sf of land (1.30 acres of land) 15,915 sf of existing railroad right of way 26,617 sf of existing road right of way <u>4,919</u> sf of new permanent easement for trail/bikeway 104,596 sf total (or 2.40 acres of land)
	10,241 sf of above property encumbered in a temporary easement for 1.5014 years

VALUE CONCLUSIONS (Land Only):

Market Value Before the Taking	\$ 496,600
Market Value After the Taking	<u>\$ 457,200</u>
Indicated Damages	\$ 39,400
 Plus: Compensation for Temporary Easement	 \$ 11,500
 Plus: Compensation for Remnant	 \$ 13,100
 Total Recommended Compensation Due the Land Owner	 \$ 64,000

SUMMARY OF COMPENSATION		
Compensation for Permanent Easement for Trail Purposes: 4,919 sf @ \$ 8.00 per sf X 100% fee value	=	\$ 39,352
Compensation for Temporary Construction Easement: 9,431 sf @ \$ 8.00 per sf X 8% X 1.5014 years = \$9,062.21 <u>810 sf @ \$ 8.00 per sf X 25% X 1.5014 years = \$2,432.27</u> 10,241 sf	=	\$ 11,494
Compensation for Remnant: 1,633 @ \$ 8.00 per sf X 100% fee value	=	\$ 13,064
Severance Damage to Remainder: None	=	\$ 0
Compensation for Improvements within Acquisition: None	=	\$ 0
Total Damages (rounded)	=	\$ 64,000
Compensation For The 6-Month Optional Temporary Easement: (rounded) 9,431 sf @ \$ 8.00 per sf X 8% X 0.50 years = \$3,017.92 <u>810 sf @ \$ 8.00 per sf X 25% X 0.50 years = \$ 810.00</u> 10,241 sf	=	\$ 3,900

BEFORE & AFTER REVIEW ANALYSIS PARCEL: 11
PROJECT: THREE RIVERS PARK DISTRICT,
NINE MILE CREEK REGIONAL TRAIL, S.P. 091-090-078
PERMANENT & TEMPORARY EASEMENTS
OWNER: EDINA MANOR, LLC, ADDRESS: 5400-70TH Street West, Edina, MN.

APPRaisal BY: Ms. Patricia J. Nolan
DATE OF APPRAISAL: September 16, 2014

VALUE BEFORE TAKING:

Land Value: 62,064 SF x \$ 8.00 SF =	® \$496,600.00
15,915 SF Existing Railroad Easement =	-0-
26,617 SF Existing Road R/W=	-0-
Apartment Building Improvements:	Not Valued
<hr/>	
TOTAL	® \$496,600.00

VALUE AFTER TAKING:

Land Value: 57,145 SF x \$ 8.00 SF =	® \$457,200.00
Less Value of Temporary Construction Easements:	
9,431 SF @ \$ 8.00 SF x 8% x 1.5014 years in duration: @ minus-----	(\$ 9,062.00)
810 SF @ \$8.00 SF x 25% x 1.5014 years in duration: @ minus-----	(\$ 2,432.00)
Less Compensation for Remnant:	
1,633 SF @ \$8.00 SF x 100% fee value: @ minus-----	(\$ 13,064.00)
Less Severance Damages to Remainder:	None
<hr/>	
TOTAL	® \$432,600.00

TOTAL	® \$ 64,000.00
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ALTERNATE COMPUTATION

Compensation for Permanent Easement for Trail Purposes:	
4,919 SF @ \$ 8.00 SF x 100% fee value-----	\$ 39,352.00
Compensation for Temporary Construction Easement:	
9,431 SF @ \$8.00 SF x 8% x 1.5014 years in duration-----	\$ 9,062.00
810 SF @ \$8.00 SF x 25% x 1.5014 years in duration-----	\$ 2,432.00
Compensation for Remnant:	
1,633 SF @ \$8.00 SF x 100% fee value-----	\$ 13,064.00
Severance Damage to Remainder:	None
<hr/>	
TOTAL	® \$ 64,000.00

On the basis of an analysis of the appraisal submitted together with an exterior inspection of the subject property, the recommended total damage estimate as of the date of this appraisal on 09/16/2014, is @ ® \$ 64,000.00. No severance damages were estimated to the remainder.

George M. Eckenroth
Total damage estimate certified by: George M. Eckenroth, SRPA, SR/WA,
Review Appraiser, Dated: November 3, 2014 PARCEL: 11

Review Appraisers Certification

I certify that, to the best of my knowledge and belief:

- The facts and data reported by the reviewer and used in the review process are true and correct.
- The analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
- I have no bias with respect to the property that is the subject of the work under review or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- The reported analysis, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The reported analysis, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standard of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- I have made an exterior inspection of the subject property and of the comparable land sales submitted on November 3, 2014.
- No one provided significant appraisal, appraisal review, or appraisal consulting assistance to the person signing this certification.
- As of the date of this appraisal review, I have completed the continuing education program of the Appraisal Institute.

This appraisal review is based upon the information contained in the before and after appraisal report submitted and reviewed, which included a field examination of the subject property and of the comparable land sales utilized. Thereby, this appraisal reviewer is recommending for certification the appraisal submitted by, Ms. Patricia J. Noland, Evergreen Land Services, Inc. Thereby, the total damage estimate as of the date of the appraisal on September 16, 2014 is @ ® \$ 64,000.00.



George M. Eckenroth, SRPA, SR/WA, Review Appraiser.

Date: November 3, 2014

Exhibit 8a

CASE TYPE: 2
CONDEMNATION

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Three Rivers Park District,

Court File No.: 27-CV-15-2291

Petitioner,

v.

**ORDER ON PETITION AND MOTION
FOR AN ORDER AUTHORIZING
TRANSFER OF TITLE AND
POSSESSION PURSUANT TO MINN.
STAT. § 117.042**

Edina Manor, LLC, 62NDS2 Gateway, LLC, Shapiro Enterprises, LLLP, Northern States Power Co., Minnesota Wanner Company, Harris Trust, City of Edina, and all other parties unknown having any right, title, or interest in the premises herein, together with the unknown heirs or devisees, if any, of the parties that may be deceased, and including unknown spouses, if any,

Respondents.

The above-entitled matter involves the acquisition of permanent and temporary easements for the purposes of constructing and maintaining the Nine Mile Creek Regional Trail. The matter came for hearing before the undersigned Judge of the Hennepin County District Court in Courtroom 1756 of the Hennepin County Government Center on May 5, 2015, upon the Petition and Motion of Three Rivers Park District ("Petitioner"). The Petition and Motion were filed with the Court on February 11, 2015, and were served upon the above-named Respondents by February 19, 2015. Respondents were duly notified of the hearing on the Petition and Motion.

Petitioner appeared by David J. Zoll, Lockridge Grindal Nauen P.L.L.P. Respondent Edina Manor, LLC (Parcel 11) appeared by Marc Manderscheid, Briggs and Morgan P.A..

Respondents 62NDS2 Gateway, LLC and Shapiro Enterprises, LLLP (Parcel 16) appeared by Patrick Whiting, Fredrikson & Byron, P.A. Respondent Minnesota Wanner Company (Parcel 27) appeared by Patrick Steinhoff, Malkerson Gun Martin LLP.

Respondents SFI LTD Partnership 14 (Parcel 28), James Roderick Scattergood (Parcel 33), and Wells Fargo Bank Nebraska National Association (Parcel 28) were previously dismissed from this matter. Petitioner entered an agreement to acquire the easements on Parcel 26 prior to the hearing and Respondent Harris Trust is hereby dismissed from this matter.

Petitioner presented testimony and evidence regarding the public use, public purpose, and the necessity of the proposed acquisitions. No objection was made to the granting of the Petition and Motion, or to the acquisition of the permanent and temporary easements described therein.

Having heard the evidence adduced by the parties and the arguments of counsel, and after due consideration, the Court makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Petitioner is a political subdivision of the State of Minnesota organized and existing under Chapter 393 of the laws of the State of Minnesota.
2. Petitioner proposes to construct the Nine Mile Creek Regional Trail through the cities of Minnetonka, Hopkins, and Edina (the “Project”).
3. Pursuant to Minnesota Statutes, Section 398.09, Petitioner may exercise eminent-domain powers to acquire private property for any purpose authorized by law with the concurrence of the City in which such lands lie.
4. On February 3, 2015, the City of Edina adopted Resolution No. 2015-17 which “approves the direct purchase of the aforementioned properties by the Park District for the Nine

Mile Creek Regional Trail and approves condemnation of property rights described in this resolution if direct purchase is not possible.”

5. Petitioner demonstrated that it is necessary, proper, and convenient, and in the interest of the public health, safety, convenience, and the general welfare that title and possession be transferred in order to construct and implement the Project, and to acquire the real estate interest required therefore.

6. Construction of the Project requires acquisition of permanent easements for trail purposes over property located in the City of Edina, identified as Parcels 11, 16, and 27, as described in Exhibit A to the Petition and Motion. Such easements will be used for the possession, occupation, ownership, and enjoyment of the land by the general public or by public agencies.

7. Petitioner also has demonstrated that it is necessary and for a public purpose to acquire temporary easements for construction purposes (“Temporary Construction Easements”) as described in Exhibit A to the Petition and Motion. Such Temporary Construction Easements are required from June 1, 2015 through November 30, 2016.

8. Petitioner and Respondent Edina Manor, LLC stipulated to a revised legal description of the Permanent Trail Easement and Temporary Construction Easement as described in Petitioner’s Exhibit 008 introduced at the May 5, 2015 hearing on the Petition and Motion.

9. Petitioner requires transfer of possession and title of the Permanent Trail Easements by May 31, 2015 so that it can advertise bids for the construction of the Project so that work may commence in the 2015 construction season.

10. On February 5, 2015, Petitioner, by resolution of its governing body (Resolution No. 15-02), authorized the acquisition of the Permanent Trail Easements and Temporary

Construction Easements by eminent-domain proceedings and has approved an appraisal of the value of each Permanent Trail Easement and Temporary Construction Easement.

11. Petitioner does not seek a fee interest in any property.

12. None of the real estate subject to this action is in actual public use except for existing public easements of record to which this taking is made subject.

CONCLUSIONS OF LAW

13. Petitioner is authorized under law to acquire real estate for public purposes through the use of eminent-domain proceedings when it determines that doing so is reasonably necessary and for a public purpose.

14. The temporary and permanent easements described in the Petition and Motion, and as revised for Parcel 11, will be used for a public use or public purpose pursuant to Minnesota Statutes, Sections 117.012, subd. 2 and 117.025, subd. 11

15. Acquisition of the temporary and permanent easements described in the Petition and Motion, and as revised for Parcel 11, is necessary to achieve a public use or public purpose.

16. The provisions of Minnesota Statutes, Section 272.68 do not apply, and the Petitioner is not required to provide for payment of taxes or special assessments on the property to which this action relates.

ORDER

17. Three Rivers Park District's February 11, 2015 Petition and Motion is GRANTED.

18. Pursuant to Minn. Stat. § 117.042, the Permanent Trail Easements and Temporary Construction Easements upon Parcels 11, 16, and 27 as described in the attached Exhibit A shall

vest in Petitioner Three Rivers Park District as of May 20, 2015, provided that Petitioner has complied with the requirements of said statute.

19. The Temporary Construction Easements shall commence on June 1, 2015 and end on November 30, 2016.

20. This Order does not affect or alter the rights or interests of any mortgagee and is not binding upon any owner not served with the petition and notice required by Minnesota Statutes, Section 117.055 except upon voluntary appearance in this matter.

21. The Court Administrator is authorized to accept deposit in an interest bearing account payments from Petitioner to the Court made pursuant to Minnesota Statutes, Section 117.042.

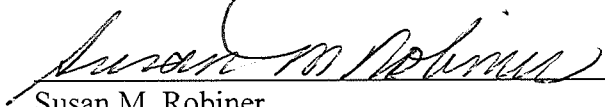
22. Joel Steltz, Richard Black, and Scott Ruppert (with Marilyn Michaels, Michael O'Toole, and Ellen Hermann as alternates) who are disinterested persons and residents of Hennepin County, be appointed commissioners to ascertain and report the amount of damages that will be sustained by the several owners of the lands on account of the taking; that said commissioners hold their first meeting on a date and time and at a location of the commissioners' choosing; that said commissioners shall file their final report with the Court Administrator within 180 days from the date of the first meeting; and that the compensation of each commissioner shall be the sum of \$800.00 for each day (or \$400.00 per half-day) occupied by them in the performance of their duties as such, and reimbursement for mileage actually travelled in their own conveyances, at the rate of 57.5 cents per mile, also disbursements for travel expenses and such meals and lodging as are reasonably necessary in the performance of such duties.

23. Petitioner reserves its right to recover in a separate legal action clean up and testing costs and all other damages arising from the presence of pollutants, contaminants, or

hazardous materials on any of the properties being acquired by Petitioner in this matter. Should tests or evaluations undertaken by or on behalf of Petitioner indicate the presence of pollutants, contaminants, or hazardous materials on the real property described in the Petition and Motion, the awards filed by the commissioners shall be conditioned on the right of the Petitioner to bring a separate legal action to recover any clean up and testing costs and other recoverable damages.

BY THE COURT:

Dated: May 18, 2015



Susan M. Robiner
Judge of District Court

EXHIBIT A

Parcel No. 11: Property I.D. No. 08-116-21-11-0018

Property Address: 5400 70th Street West, Edina, MN 55424

Description of Subject Property:

Outlot 2, FELLMAN'S ADDITION, according to the plat thereof on file and of record in the office of the County Recorder, Hennepin County, Minnesota.

Excepting out the North 100 feet of Outlot 2 as measured at right angles to and parallel with the North line thereof, except the South 40 feet of the North 100 feet of the West 70 feet of Outlot 2, as measured at right angles to and parallel with the North and West lines thereof; also except the South 68 feet of the North 100 feet of the East 100 feet of the West 245 feet of Outlot 2 as measured at right angles to and parallel with the North and West Lines thereof; all in FELLMAN'S ADDITION.

("Parcel No. 11").

Description of Easements to be Taken:

A 20.00 foot wide permanent easement for trail purposes over, under, and across Parcel No. 11. The centerline of said 20.00 foot wide trail easement is described as follows:

Commencing at the Southeast Corner of said Outlot 2; thence North 75 degrees 40 minutes 28 seconds West, assumed bearing, along the south line of said Outlot 2 a distance of 109.21 feet to the beginning of the centerline to be described; thence North 24 degrees 09 minutes 11 seconds East, a distance of 87.36 feet; thence northerly a distance of 31.53 feet along a tangential curve concave to the West having a radius of 83.96 feet and a central angle of 21 degrees 31 minutes 10 seconds; thence North 05 degrees 51 minutes 02 seconds East a distance of 206.51 feet to the north line of said Outlot 2 and said center line there terminating. The side lines of said 20.00 foot wide easement shall be prolonged or shortened to terminate at the southerly and northerly lines of Parcel No. 11.

Together with a temporary easement for construction purposes over, under, and across Parcel No. 11 described as follows:

Commencing at the Southeast Corner of said Outlot 2; thence North 75 degrees 40 minutes 28 seconds West, assumed bearing, along the south line of said Outlot 2 a distance of 66.73 feet to the point of beginning of the land to be described; thence North 05 degrees 51 minutes 02 seconds East along the westerly line of the Minneapolis, Northfield, and Southern Railroad right-of-way a distance of 227.22 feet; thence South 89 degrees 41 minutes 47 seconds West along the southerly line of the above described exception a distance of 8.13 feet; thence North 00 degrees 18 minutes 13 seconds West continuing along the southerly line of the above described exception a distance of 68.00 feet; thence South 89 degrees 41 minutes 47 seconds West continuing along the southerly line of the above described exception a distance of 43.78 feet; thence South 00 degrees 18 minutes 13 seconds East a distance of 84.75 feet; thence South 04 degrees 49 minutes

EXHIBIT A

14 seconds West a distance of 123.48 feet; thence South 19 degrees 17 minutes 53 seconds West a distance of 21.60 feet; thence South 50 degrees 27 minutes 44 seconds West a distance of 64.55 feet to the south line of said Outlot 2; thence South 75 degrees 40 minutes 28 seconds East along the south line of said Outlot 2 a distance of 99.02 feet to the point of beginning, and said line there terminating.

Excepting out the above described 20.00 wide permanent trail easement.

Said temporary easement for trail construction purposes shall not be used on Saturdays, Sundays, or Legal Holidays except with the prior written permission of the property owner. Said temporary easement for trail construction purposes shall commence on June 1, 2015 and terminate on November 30, 2016.

Together with a 16.00 foot wide non-exclusive temporary access easement for trail construction purposes over, under and across Parcel No. 11 described as follows:

The centerline of said 16.00 foot wide non-exclusive temporary access shall commence at the Southeast Corner of said Outlot 2; thence North 75 degrees 40 minutes 28 seconds West, assumed bearing, along the south line of said Outlot 2 a distance of 331.25 feet, thence North 60 degrees 29 minutes 43 seconds West, along the south line of said Outlot 2 a distance of 20.82 feet to the beginning of the 16.00 foot wide centerline to be described; thence North 16 degrees 54 minutes 30 seconds East a distance of 79.34 feet; thence northeasterly a distance of 52.96 feet along a tangential curve concave to the southeast having a radius of 38.00 feet and a central angle of 79 degrees 51 minutes 03 seconds; thence South 83 degrees 14 minutes 26 seconds East a distance of 178.73 feet to the west line of the above described temporary construction easement and said center line there terminating.

Said 16.00 foot wide non-exclusive temporary access easement shall not be used for parking, storage, or other use or activity other than access for trail construction purposes and shall not be used on Saturdays, Sundays, or Legal Holidays except with the prior written permission of the property owner. Three Rivers Park District shall repair, at its expense, any damage caused by its use of the non-exclusive temporary access easement. Said non-exclusive temporary access easement shall commence on June 1, 2015 and terminate on November 30, 2016.

The permanent trail easement encompasses 4,919 SF of PID 08-116-21-11-0018.
The temporary construction easement encompasses 10,241 SF of PID 08-116-21-11-0018.
The temporary access easement encompasses 4,977 SF of PID 08-116-21-11-0018.

CASE TYPE: 2
CONDEMNATION

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Three Rivers Park District,

Court File No.: 27-CV-15-2291

Petitioner,

v.

**STIPULATION OF SETTLEMENT
Parcel 11**

Edina Manor, LLC

Respondent.

THIS STIPULATION is made by and between Petitioner Three Rivers Park District (“Park District”) and Respondent Edina Manor, LLC (“Edina Manor”).

RECITALS

1. The following recitals are a part of the parties’ stipulation.
2. Edina Manor is the fee owner of real property identified as Parcel 11 on *Exhibit A* to the Park District’s Petition in this matter (“the Property”). A copy of the applicable part of *Exhibit A* is attached and incorporated herein.
3. The Park District commenced this condemnation action to acquire a permanent easement, and temporary construction easements over parts of the Property (“Subject Interests”) as described in *Exhibit A*, in order to construct the Nine Mile Creek Regional Trail (“Project”).
4. On or about May 29, 2015, the Park District deposited its approved appraisal value for the damages caused by the taking, \$64,000, with the District Court pursuant to Minn. Stat. § 117.042 (“Deposit”). Pursuant to the Court’s Order dated May 18, 2015, the Subject Interests vested in the Park District on May 29, 2015.

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

AGREEMENT

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

1. Settlement Amount. The Park District and Edina Manor agree to a full and final settlement of all claims of Edina Manor with respect to the Park District’s acquisition of the Subject Interests for the total amount of \$218,000.00 (“Settlement Amount”). The Settlement Amount shall be determined to be the just compensation due and owing by the Park District.

2. Payment. Within 10 business days of the execution of this Agreement, the Park District shall pay the Settlement Amount directly to Edina Manor.

3. Deposit. Upon full payment of the Settlement Amount, Edina Manor assigns to the Park District all right, title and interest in the Deposit. The Park District may apply to the Court at any time thereafter for disbursement to the Park District of the Deposit, together with any interest that has accrued thereon, without further notice to Edina Manor. The Park District and Edina Manor agree to the entry of a Court order directing disbursement to the Park District alone of the \$64,000 Deposit, together with any interest that has accrued thereon.

4. Other Considerations. The parties agree to the following additional terms:
- a. Edina Manor acknowledges that Edina Manor will not have to, and do not intend to, relocate as a result of the Project.
 - b. Edina Manor acknowledges that Edina Manor did obtain its own appraisal in connection with the condemnation action.

5. Full and Final Compromise. Edina Manor and the Park District acknowledge that the terms and conditions of this Stipulation of Settlement constitute a full and final compromise of all matters in dispute with respect to Parcel 11. In consideration of the Settlement Amount and other terms and conditions of this Stipulation of Settlement, Edina Manor waives any and all claims Edina Manor may have against the Park District in connection with this condemnation action, including without limitation, just compensation, statutory remedies, any other damages, interest, relocation benefits, appraisal fees, attorney fees, and costs and disbursements to which Edina Manor may otherwise be entitled. Edina Manor waives any and all rights to further notices, viewings, or hearings regarding this action.

6. Condemnation Action. The Park District shall file this Stipulation of Settlement with the District Court. After payment of the Settlement Amount pursuant to Paragraph 2 of this Agreement, the Park District will file a Final Certificate in this action with respect to Parcel 11. Each of the parties will bear its own costs in connection with this action. The District Court shall retain jurisdiction to enforce the terms of this Stipulation of Settlement.

7. Entire Agreement. The undersigned state and represent that they have fully read this Stipulation of Settlement, and that they each know and understand the consequences and legal effect thereof. The Stipulation of Settlement contains the entire agreement of the parties with regard to the matters set forth herein.

8. Execution. The parties agree that this Stipulation of Settlement may be executed in separate counterparts which, taken together, shall be and comprise one agreement.

9. Authority. The persons signing this Stipulation of Settlement in their representative capacities represent and warrant by signing this Agreement that it is their intent to bind their respective principals to the terms and conditions set forth herein, that the persons

signing in their representative capacity have been authorized to bind their respective principals to such terms, and that it is the respective principals' intent to be so bound.

Dated: 2/05/2016


EDINA MANOR, LLC

By: 

Its: manager

Dated: 2/12/2016

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

By: 

Charles N. Nauen, MN #121216
David J. Zoll, MN #0330681
100 Washington Ave. South, Suite 2200
Minneapolis, MN 55401
Telephone: (612) 339-6900
Fax: (612) 339-0981
cnnauen@locklaw.com
djzoll@locklaw.com

THREE RIVERS PARK DISTRICT
Jeffrey R. Brauchle (#10960)
3000 Xenium Lane North
Plymouth, MN 55441
Telephone: (763) 559-6718
JBrauchle@threeriversparkdistrict.org

ATTORNEYS FOR PETITIONER
THREE RIVERS PARK DISTRICT

EXHIBIT A
PROPERTY TO BE TAKEN

Parcel No. 11: Property I.D. No. 08-116-21-11-0018

Property Address: 5400 70th Street West, Edina, MN 55424

Description of Subject Property:

Outlot 2, FELLMAN'S ADDITION, according to the plat thereof on file and of record in the office of the County Recorder, Hennepin County, Minnesota.

Excepting out the North 100 feet of Outlot 2 as measured at right angles to and parallel with the North line thereof, except the South 40 feet of the North 100 feet of the West 70 feet of Outlot 2, as measured at right angles to and parallel with the North and West lines thereof; also except the South 68 feet of the North 100 feet of the East 100 feet of the West 245 feet of Outlot 2 as measured at right angles to and parallel with the North and West Lines thereof; all in FELLMAN'S ADDITION.

("Parcel No. 11").

Description of Easements to be Taken:

A 20.00 foot wide easement for trail purposes over, under, and across Parcel No. 11. The centerline of said 20.00 foot wide trail easement is described as follows:

Commencing at the Southeast Corner of said Outlot 2; thence North 75 degrees 40 minutes 28 seconds West, assumed bearing, along the south line of said Outlot 2 a distance of 109.21 feet to the beginning of the centerline to be described; thence North 24 degrees 09 minutes 11 seconds East, a distance of 87.36 feet; thence northerly a distance of 31.53 feet along a tangential curve concave to the West having a radius of 83.96 feet and a central angle of 21 degrees 31 minutes 10 seconds; thence North 05 degrees 51 minutes 02 seconds East a distance of 206.51 feet to the north line of said Outlot 2 and said center line there terminating. The side lines of said 20.00 foot wide easement shall be prolonged or shortened to terminate at the southerly and northerly lines of said Outlot 2.

Together with a temporary easement for construction purposes over, under, and across Parcel No. 11 described as follows:

Commencing at the Southeast Corner of said Outlot 2; thence North 75 degrees 40 minutes 28 seconds West, assumed bearing, along the south line of said Outlot 2 a distance of 66.73 feet to the point of beginning of the land to be described; thence North 05 degrees 51 minutes 02 seconds East along the westerly line of the Minneapolis, Northfield, and Southern Railroad right-of-way a distance of 227.22 feet; thence South 89 degrees 41 minutes 47 seconds West along the southerly line of the above described exception a distance of 8.13 feet; thence North 00 degrees 18 minutes 13 seconds West continuing along the southerly line of the above described exception a distance of 68.00 feet; thence South 89 degrees 41 minutes 47 seconds West continuing along the southerly line of the above described exception a distance of 43.78 feet; thence South 00 degrees 18 minutes 13 seconds East a distance of 84.75 feet; thence South 04 degrees 49 minutes

EXHIBIT A
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14 seconds West a distance of 123.48 feet; thence South 19 degrees 17 minutes 53 seconds West a distance of 21.60 feet; thence South 50 degrees 27 minutes 44 seconds West a distance of 64.55 feet to the south line of said Outlot 2, and said line there terminating.

Excepting out the above described 20.00 wide permanent trail easement.

Said temporary easement for trail construction purposes shall not be used on Saturdays, Sundays, or Legal Holidays except with the prior written permission of the property owner.

Together with a 16.00 foot wide non-exclusive temporary access easement for trail construction purposes over, under and across Parcel No. 11 described as follows:

The centerline of said 16.00 foot wide non-exclusive temporary access shall commence at the Southeast Corner of said Outlot 2; thence North 75 degrees 40 minutes 28 seconds West, assumed bearing, along the south line of said Outlot 2 a distance of 333.25 feet, thence North 60 degrees 29 minutes 43 seconds West, along the south line of said Outlot 2 a distance of 20.85 feet to the beginning of the 16.00 foot wide centerline to be described; thence North 16 degrees 54 minutes 30 seconds East a distance of 79.34 feet; thence northeasterly a distance of 52.96 feet along a tangential curve concave to the southeast having a radius of 38.00 feet and a central angle of 79 degrees 51 minutes 03 seconds; thence South 83 degrees 14 minutes 26 seconds East a distance of 178.73 feet to the west line of the above described temporary easement and said center line there terminating.

Said 16.00 foot wide non-exclusive temporary access easement shall not be used for parking, storage, or other use or activity other than access for trail construction purposes and shall not be used on Saturdays, Sundays, or Legal Holidays except with the prior written permission of the property owner.

The permanent trail easement encompasses 4,919 SF of PID 08-116-21-11-0018.

The temporary construction easement encompasses 10,241 SF of PID 08-116-21-11-0018.

The temporary Access Easement Encompasses 4,977 SF of PID 08-116-21-11-0018.

Interests Being Encumbered Within the Taking Areas Described Above:

Name	Nature of Interest
Edina Manor, LLC	Fee Owner
City of Edina	Easement
Northern States Power Company	Easement
All other parties unknown, together with unknown successors, assigns, heirs, devisees and spouses, if any, of any of the named parties	Any right, title, or interest within the acquired portion of Parcel No. 11