

Metropolitan Parks and Open Space Commission

Meeting date: July 11, 2017

For the Community Development Committee meeting of July 17, 2017

For the Metropolitan Council meeting of July 26, 2017

Subject: Parks Acquisition Opportunity Fund Grant for Nine Mile Creek Regional Trail, Three Rivers Park District (Edina Gateway/4900 77th Street West)

MPOSC District: C – Margie Andreason

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 \$178,499 to Three Rivers Park District to acquire an easement on a parcel at 4900 77th Street West in Edina for the Nine Mile Creek Regional Trail;
2. Authorize the Community Development Director to execute the grant agreement and restrictive covenant on behalf of the Council;
3. Consider reimbursing Three Rivers Park District up to \$59,500 for costs associated with acquisition of this easement, from its share of a future Regional Parks Capital Improvement Program parcel; and
4. Inform Three Rivers Park District that the Council does not under any circumstances represent or guarantee that future reimbursement will be granted, and that expenditure of local funds never entitles a park agency to reimbursement.

Background

Regional Park Implementing Agency. This grant was requested by Three Rivers Park District on April 17, 2017. A copy of the Agency's request is attached to this item. The property over which the easement will run 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 Council's Park Acquisition Opportunity Fund (PAOF) provides resources to purchase property via two state sources: the Parks and Trails Legacy Fund (PTLF) and the Environment and Natural Resources Trust Fund (ENRTF). Easements may only be purchased through PTLF. 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 PTLF and Council match.

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

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

Subject property. The subject 0.17-acre easement area is within the Council-approved boundaries of the regional trail.

Acquisition details. The Park District received a federal transportation grant in the amount of \$6.16 million to construct the east segment of the Nine Mile Creek Regional Trail. The funding was contingent upon the Park District securing and paying for the property rights – or being in the process of condemnation – by June 1, 2015. After preliminary negotiations were unsuccessful, the Park District notified the Council on March 6, 2015 of its intent to acquire the easement through condemnation. An administrative settlement has been reached in the condemnation process, and the Park District has paid the settlement amount to the landowner. This grant will reimburse the Park District for part of the funds they have already expended to secure the easement.

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 PTLF.

Thrive Lens Analysis

This request is consistent with Thrive’s Livability outcome because it will facilitate construction of a regional trail that will eventually span the communities of Hopkins, Minnetonka, Edina, Richfield, and Bloomington.

Funding

Project budget. When a Regional Park Implementing Agency acquires an easement through condemnation, an appraisal is used to aid in determining the “damages” that will occur when the owner surrenders rights to a portion of the property. The appraised value of the expected damages was \$314,100. The administrative settlement amount was \$210,000. The grant request also includes the cost of the appraisal, legal services, and closing, all of which are eligible costs according to the *2040 Regional Parks Policy Plan*.

Budget item	Requested amount
Purchase price	\$210,000
Appraisal	8,500
Legal services and closing costs	<u>19,499</u>
Total costs	\$237,999
Grant structure	
State FY 2018 PTLF PAOF	\$107,099
Council bonds	\$71,400
Grant amount not to exceed	\$178,499
Local match	<u>\$59,500</u>
Project total	\$237,999

Fund balance.

As of July 1, 2017, the combined balance available PTLF PAOF and Council match was \$2,764,577. If this grant is awarded by the Council, the balance will be \$2,586,078.

There are two other PTLF grant requests before the Metropolitan Parks and Open Space Commission on July 11, 2017. If all three grants are approved, the balance in the fund will be \$2,302,211.

Future reimbursement consideration. The Park District is also requesting that the Council consider reimbursing the Park District's \$59,500 local match for this acquisition at some point in the future as a part of a regular Capital Improvement Program (CIP). When each Regional Parks Implementing Agency (Agency) prepares its CIP proposals for state bonding cycles, their proposal comprises capital projects that will be accomplished during the grant term; the proposal may also include a request for reimbursement of some of their match dollars from past projects. A request for "future reimbursement consideration" is the mechanism used to obtain the Council's conditional approval to include the match for this easement acquisition in a future CIP cycle. Because the Council issues bonds to cover exactly 40% of CIP costs for a given state bonding cycle, such reimbursements are limited. The Council is under no obligation to reimburse this amount.

Known Support / Opposition

There is no known opposition.

Exhibit List

- Exhibit 1: Three Rivers Park District grant request letter
- Exhibit 2: Images
- Exhibit 3: Grant application
- Exhibit 4: Board approval to request grant
- Exhibit 5: Settlement agreement
- Exhibit 6: Appraisal excerpt
- Exhibit 7: Notice of Condemnation and Intent to Request PAOF



April 3, 2017

**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. 5

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 \$178,499.07 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. 5. 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 16. 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 16 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

Cris Gears
Superintendent

already incurred by the Park District and as allowed by the Park Acquisition Opportunity Grant rules.

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.

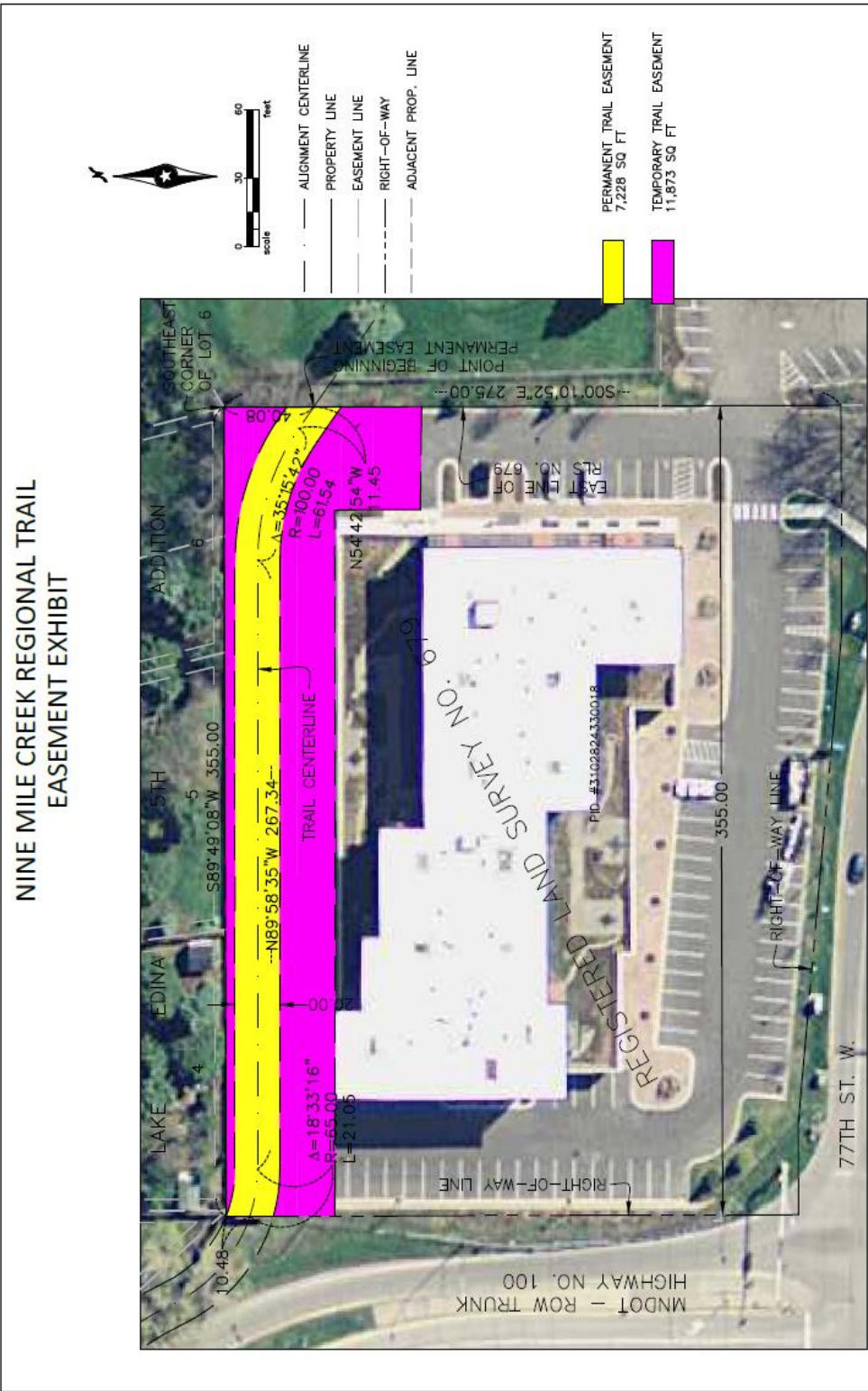
A handwritten signature in blue ink that reads "Heather Kuikka". The signature is written in a cursive, flowing style.

Heather Kuikka
Planning Administrative Specialist

Enclosures

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

DESCRIPTION & EFFECTS OF PROPOSED ACQUISITION



**NINE MILE CREEK REGIONAL TRAIL
 EASEMENT EXHIBIT**

FILE NO. 127099-16
DATE 10/22/14
HENNEPIN COUNTY

PARCEL 16
 4900 77TH ST. W.
 EDINA, MN 55435
 NINE MILE CREEK
 PERMANENT
 EASEMENT ACQUISITION

THREE RIVERS PARK DISTRICT – NINE MILE CREEK REGIONAL TRAIL	
PHONE: 952.912.2600 10901 RED CIRCLE DR SUITE 300 MINNETONKA, MN 55343-9302 www.sehinc.com	NO. BY DATE REVISIONS

3 RIVERS
DRAWN BY: <u>dl</u>
CHECKED BY: <u>dl</u>
SURVEYED BY: <u>BL</u>



Map layers

77th Street West

West Shore Drive

Normandale Road

77th Street

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95%



Application

04280 - 2016 Parks Acquisition Grants

101121660 - Nine Mile Creek RT: Parcel 16 - Edina Gateway

Parks Grants Acquisition

Status: Submitted
 Submitted Date: 04/03/2017 12:40 PM

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

Nine Mile Creek Regional
Trail

Name of master plan

Council approval date - Format: mmddyyyy
(Do not enter any punctuation.)

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

Acquisition method

Acquisition method

Condemnation

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

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

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 16. 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.

The condemnation process is now complete, an administrative settlement reached, and property owner paid. As such, the Park District is now seeking a land acquisition opportunity grant for all associated and eligible acquisition 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.

Since this was acquired via condemnation, the property (easement) is now held by the Park District. The Park District had followed the Metropolitan Council's required notification process to inform the Council of its intent to condemn the required trail easement and seek reimbursement upon completion of the condemnation process.

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. 02/11/2015

If condemnation is involved, expected settlement date 06/15/2016

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

If yes, describe

Closing date

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

Estimated closing date 06/15/2016

Format: mmdyyy (Do not enter any punctuation.)

Date purchase agreement expires

Format: mmdyyy (Do not enter any punctuation.)

Appraisal effective date 10/07/2014

Appraisal information

Appraised value \$274,100.00

Amount being offered the seller (net of closing and other costs) \$274,100.00 100.0%
% of appraised value

Appraisal date 10/07/2014

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.

Was a survey done? Yes

Quality of natural resources - is the property...

...undeveloped? Fully Partially

...wooded? Fully Partially

...shoreline? Fully Partially

Describe the existing natural resources it contains

N/A - this is for acquisition of a regional trail easement on a fully developed parcel. A vegetative screen comprised of birch, evergreen, and other species will be removed to accomodate the regional trail.

Suggested funding source

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

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

Anticipated funding source

PTLF Legacy / Council match

Select as many as apply

Structures currently on the property

Does the property contain ANY structures?

Yes

If yes, are there any habitable structures?

Yes

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

The larger parcel is mixed use with retail/office on the lower level(s) and residential above. These uses (structures) will remain as the regional trail easement is along the property edge and does not affect the long term use of the property. In fact, the proximately to the regional trail could increase the livability of the property and property value.

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

No. The larger parcel is mixed use with retail/office on the lower level(s) and residential above. These uses (structures) will remain as the regional trail easement is along the property edge and does not affect the long term use of the property. In fact, the proximately to the regional trail could increase the livability of the property and property value.

For ENRTF funding only

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

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

Does the property currently contain any revenue-generating businesses?

Yes

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

The larger parcel is mixed use with retail/office on the lower level(s) and residential above. These uses (structures) will remain as the regional trail easement is along the property edge and does not affect the long term use of the property. In fact, the proximately to the regional trail could increase the livability, property value and potential customer base of the existing businesses.



Stewardship and minimal access

Describe the stewardship plan.

N/A. This is for a permanent regional trail easement.

How will the stewardship implementation be funded?

N/A. This is for a permanent regional trail easement.

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

TRPD General Obligation Bond Funds.

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

If yes, how much? \$59,499.69

Sellers and parcels

Seller name	Parcel addresses	PID	Acres	Date PA signed	Habitable structures?	MN House district	City	County	Met Council district	MPOSC	Latitude	Longitude	
62NDS 2 Gateway, LLC & Shapiro Enterprises, LLP	4900 77th Street West, Edina, MN 55435	31-028-24-33-0009	0.17	06/20/2016	Yes	49B	Edina	Hennepin		C	44.865051	-93.347604	

Grant agreement signatories

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

Acquisition Costs

Cost Items	Amount
Purchase price	
Negotiated purchase price	\$210,000.00
Appraisal expenses	
Appraisal	\$8,500.00
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	\$19,498.76
Property tax equivalency payment-473.341	\$0.00
Relocation costs to seller	\$0.00
State deed tax/conservation fee	\$0.00
Title insurance	\$0.00
Well disclosure statement	\$0.00
Other holding	\$0.00
Other expenses	
Other expenses	\$0.00
Totals	\$237,998.76

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)	\$237,998.76	\$107,099.44	\$71,399.63	\$59,499.69	\$178,499.07

REQUEST FOR BOARD ACTION

Meeting Date: 12/18/14 Business Item: Unfinished Item Number: **6A**

Division: Planning, Design & Technology Originating Source: Jonathan Vlaming, Assoc. Supt.

Agenda Item: Authorization to Acquire Easements for Nine Mile Creek Regional Trail

Superintendent's Recommendation:

MOTION TO AUTHORIZE STAFF TO NEGOTIATE PUBLIC TRAILWAY EASEMENT PURCHASE AGREEMENTS WITH PRIVATE PARTIES AS NECESSARY TO COMPLETE THE NINE MILE CREEK REGIONAL TRAIL.

The following information was prepared by Eric Nelson, Senior Manager of Engineering.

Background:

On November 20, 2014, the Board approved the final alignment and preliminary engineering for the Edina segment of the Nine Mile Creek Regional Trail. The Board also authorized the Board Chair and Superintendent to enter into a consultant agreement with Short Elliott Hendrickson, Inc. (SEH) for final engineering services for the entire Edina segment.

The project design and approval process has reached the point where staff can now begin securing permanent and temporary easements from private parties as needed to complete the project. SEH and Park District staff have already made the initial contacts with landowners and have completed the necessary appraisals. A summary of the required easements from private properties is shown below.

East Segment (Tracy Avenue to Xerxes Avenue):

- 9 permanent easements required
- 14 temporary easements required
- Total appraised value of permanent easements: \$622,194
- Total appraised value of temporary easements: \$75,410

West Segment (Trunk Highway 169 to Tracy Avenue):

- 2 permanent easements required
- 7 temporary easements required
- Total appraised value of permanent easements: \$258,180
- Total appraised value of temporary easements: \$41,754

The Board will be asked to consider approval of the easement agreements at their meetings in the winter of 2015. The goal is to have all easements secured by April 1, 2015.

The permanent easements are eligible for partial funding of up to 75 percent of the purchase price and associated costs through the Metropolitan Council Land Acquisition Grant program.

Relationship to the Vision Plan

The Request for Action supports the following element(s) of the Vision Plan:

- Inspire people to recreate
- Create vibrant places
- Collaborate across boundaries

Relationship to the Policy Statement

The Request for Action supports the following element(s) of the Policy Statement:

- Policy VI – System/Master/Project Planning
 - C. Project Plans
- Policy IX – Recreation Use
 - B. General Interest Recreation Activities

CASE TYPE: 2
CONDEMNATION

DISTRICT COURT

STATE OF MINNESOTA

FOURTH JUDICIAL DISTRICT

COUNTY OF HENNEPIN

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

Three Rivers Park District,

Petitioner,

v.

**AMENDED AND RESTATED
STIPULATION OF SETTLEMENT
Parcel 16**

62NDS2 Gateway, LLC and Shapiro
Enterprises, LLLP

Respondents.

THIS AMENDED AND RESTATED STIPULATION OF SETTLEMENT is made by and between Petitioner Three Rivers Park District (“Park District”) and Respondents 62NDS2 Gateway, LLC and Shapiro Enterprises, LLLP (collectively “Owners”) and supersedes the parties’ May 10, 2015 Stipulation of Settlement.

RECITALS

1. The following recitals are a part of the parties’ Amended and Restated Stipulation of Settlement.
2. Owners are the fee owners of real property identified as Parcel 16 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, \$314,000, 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 20, 2015.

5. The Park District and the Owners 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 Owners agree to a full and final settlement of all claims of the Owners with respect to the Park District’s acquisition of the Subject Interests for the total amount of \$250,000.00 (“Settlement Amount”).
2. Parking Easement. This Amended and Restated Stipulation of Settlement is conditioned on the grant of a permanent easement from the City of Edina to Owners for a permanent parking easement in substantially the form included in the attached *Exhibit B* (“Parking Easement”). Owners agree that they are solely responsible for constructing the parking stalls on the Parking Easement. This Amended and Restated Stipulation of Settlement is further conditioned upon Owners receiving the necessary approvals to construct the parking stalls from the City, the watershed district, or any other governmental authority with jurisdiction, provided that Owners apply for such approvals within a commercially reasonable time after the parking easement is provided by the City of Edina. In the event that any required or necessary approval is not provided, then this Amended and Restated Stipulation of Settlement is null and

void. In the event that the agreement is null and void, the parties shall proceed under Minnesota Statutes Chapter 117.

3. Trail Spur. The Park District agrees that it will construct a trail spur to the Owners' property from the parking easement described in Paragraph 2. The Park District also agrees that it will not require designated trail-head parking to be provided at any of the parking stalls in the parking easement.

4. Zoning Letter. The Amended and Restated Stipulation of Settlement is also conditioned on the City of Edina providing written assurance to the Owners that construction and use of the Project and/or the parking area to be constructed on the permanent Parking Easement will not result in a violation of any existing zoning, land use, conditional use permit, planned unit development or other restrictions or requirements that apply to the Property. In the event that the City of Edina does not approve such assurances no later than June 30, 2016, this Amended and Restated Stipulation of Settlement shall be null and void and the Owners shall be entitled to all remedies under Minnesota Statutes Chapter 117.

5. Payment. Within 10 business days of the grant of the Parking Easement described in Paragraph 2, or receipt of the Zoning Letter described in Paragraph 4, whichever is later, the Park District shall pay the Settlement Amount directly to the Owners. This Amended and Restated Stipulation of Settlement shall be null and void if payment is not received by July 10, 2016.

6. Deposit. The Owners assign to the Park District all right, title and interest in the Deposit. The Park District may apply to the Court at any time for disbursement to the Park District of the Deposit, together with any interest that has accrued thereon, without further notice to the Owners. The Park District and Owners agree to the entry of a Court order directing

disbursement to the Park District alone of the \$314,000 Deposit, together with any interest that has accrued thereon.

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

- a. The Owners acknowledge that the Owners will not have to, and do not intend to, relocate as a result of the Project.
- b. The Owners acknowledge that the Owners did not obtain an appraisal.

8. Full and Final Compromise. The Owners and the Park District acknowledge that the terms and conditions of this Amended and Restated of Settlement constitute a full and final compromise of all matters in dispute with respect to Parcel 16. In consideration of the Settlement Amount and other terms and conditions of this Amended and Restated Stipulation of Settlement, the Owners waive any and all claims the Owners 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 the Owners may otherwise be entitled. The Owners waive any and all rights to further notices, viewings, or hearings regarding this action.

9. Condemnation Action. The Park District shall file this Amended and Restated Stipulation of Settlement with the district court. After payment of the Settlement Amount pursuant to Paragraph 1 of this Amended and Restated Stipulation of Settlement, the Park District will file a Final Certificate in this action with respect to Parcel 16. 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 Amended and Restated Stipulation of Settlement.

10. Entire Agreement. The undersigned state and represent that they have fully read this Amended and Restated Stipulation of Settlement, and that they each know and understand

the consequences and legal effect thereof. The Amended and Restated Stipulation of Settlement contains the entire agreement of the parties with regard to the matters set forth herein.

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

12. Authority. The persons signing this Amended and Restated Stipulation of Settlement in their representative capacities represent and warrant by signing this Amended and Restated Stipulation of Settlement 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: 6-28-2016

OWNER: 62NDS2 GATEWAY, LLC
By Sixty Second Street II, LLC its Member

By: Stanley A. Javorski
Stanley A. Javorski
Its: Treasurer and Chief Financial Manager

Dated: _____

OWNER: SHAPIRO ENTERPRISES, LLLP

By: _____

Its: _____

the consequences and legal effect thereof. The Amended and Restated Stipulation of Settlement contains the entire agreement of the parties with regard to the matters set forth herein.

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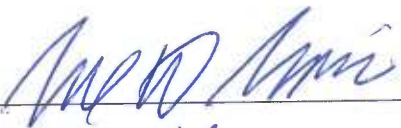
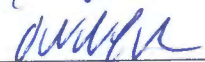
Dated: _____

OWNER: 62NDS2 GATEWAY, LLC
By Sixty Second Street II, LLC its Member

By: _____
Stanley A. Javorski
Its: Treasurer and Chief Financial Manager

Dated: _____

OWNER: SHAPIRO ENTERPRISES, LLLP

By:  _____
Its:  _____

Dated: 7/26/2016

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

ATTORNEYS FOR PETITIONER
THREE RIVERS PARK DISTRICT

November 7, 2014

Mr. Toby Muse, PE
Short Elliott Hendrickson, Inc.
10901 Red Circle Drive, Suite 300
Minnetonka, MN 55343-9302



**RE: Appraisal of Partial Acquisition
4900 - 77th Street West
Edina, MN 55435
Owners: 62NDS2 Gateway, LLC & Shapiro Enterprises, LLLP**

Dear Mr. Muse:

At your request, I have made an appraisal of the above-referenced property for the purpose of estimating the just compensation of the Three Rivers Park District's acquisition. It is my understanding that the intended use of the appraisal is to provide the Park District valuation guidance for the acquisition. Because the acquisition is a partial acquisition the appraisal is prepared in a "before and after" methodology in order to estimate the value damages to the property as a result of the acquisition. The compensation for the acquisition is simply the difference between the value of the property prior to the project (before value) and the value of the remaining property after the acquisition (after value). Although the subject property contains building improvements of a mixed-use building with commercial retail and apartments, the improvements will not be valued since it is the appraiser's judgment that the improvements will not be impacted by the acquisition.

The subject of this report is a 2.17 acre (or 94,675 sf) parcel of land located at 4900 - 77th Street West, City of Edina.

The acquisition consists of 7,228 sf of permanent easement for drainage, utility, trail and bikeway purposes, and 11,873 sf of temporary easement for construction purposes that begins on June 1, 2015 and expires on November 30, 2016 (1.5014 years).

Based upon the inspection of the property and after consideration of the many factors influencing market value, it is my opinion that total damages due to the acquisition over a portion of the subject property are **\$ 314,100** as of October 7, 2014.

This appraisal is intended to comply with the Uniform Standards of Professional Appraisal Practice (USPAP). If you have any questions or comments after reading this appraisal report, please feel free to contact me.

A handwritten signature in blue ink that reads "Patricia J. Nolan".

Patricia J. Nolan
MN Certified General Real Property
Appraiser License No. 20243478
651-882-0200

March 6, 2015

**Three Rivers
Park District
Board of
Commissioners**

Penny Steele
District 1

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

Jennifer DeJournett
District 2

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

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

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