

Metropolitan Parks and Open Space Commission

Meeting date: June 6, 2019

For the Community Development Committee meeting of June 17, 2019

For the Metropolitan Council meeting of June 26, 2019

Subject: Park Acquisition Opportunity Fund Grant for the Minnesota River Bluffs Regional Trail, Carver County – Hennepin County Regional Rail Authority Property

MPOSC District: B – Robert Moeller

Council District, Member: 4 – Deb Barber

Policy/Legal Reference: Minn. Const. art. XI; sec. 15 and Minn. Stat. § 473.315; *2040 Regional Parks Policy Plan* Planning Policy Strategy 1; Siting and Acquisition Policy: Strategies 1 and 2; Environment and Natural Resource Trust Fund, Laws of Minnesota 2017, chapter 96, section 2 subd. 9(a), as amended in 2019

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

Division/Department: Community Development / Regional Planning

Proposed Action

That the Metropolitan Council:

1. Approve a grant of up to \$1,700,000 to Carver County to acquire the 89.81-acre Hennepin County Regional Rail Authority property located in the City of Chanhassen for the Minnesota River Bluffs Regional Trail.
2. Authorize the Community Development Director to execute the grant agreement and restrictive covenant on behalf of the Council.
3. Inform Carver County that an additional appraisal supporting the \$5.1 million value must be completed by March 21, 2020, and the County must close on the property within one year from the appraisal date.

Background

Regional Park Implementing Agency (Agency) and Location

Carver County first requested this grant in 2017. An updated copy of the Agency's request is attached to this item as Exhibit 2. The Minnesota River Bluffs Regional Trail is located along a corridor running from the City of Eden Prairie to the City of Carver. See Figure 1, below, for the location of the area on a map of the Regional Parks System.

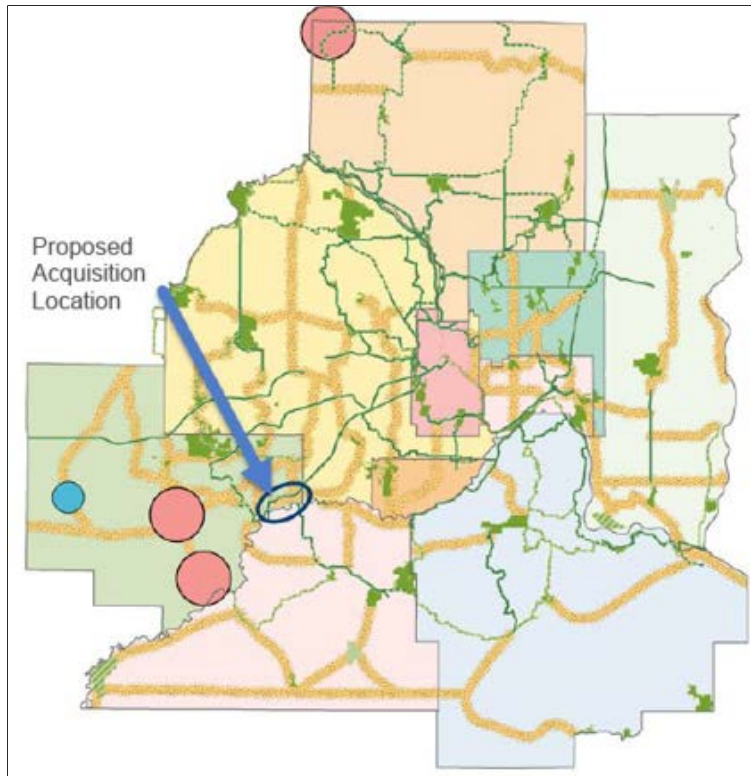


Figure 1: Location of subject property

Funding sources

The Council’s Park Acquisition Opportunity Fund (PAOF) provides resources to purchase property and easements via two state sources: the Parks and Trails Legacy Fund (PTLF) and the Environment and Natural Resources Trust Fund (ENRTF). The Council contributes further by matching every \$3 in state funds with \$2 in Council bonds proceeds. Between them, state and Council funds contribute up to 75% of the purchase price and eligible costs; the Regional Park Implementing Agency (Agency) contributes the remaining 25% as local match. The Council will fund this grant through ENRTF and Council match. Funding for this project was provided by the Minnesota ENRTF as recommended by the Legislative-Citizen Commission on Minnesota Resources (LCCMR). The ENRTF is a permanent fund constitutionally established by the citizens of Minnesota to assist in the protection, conservation, preservation, and enhancement of the state’s air, water, land, fish, wildlife, and other natural resources. Currently 40% of net Minnesota State Lottery proceeds are dedicated to growing the fund and ensuring future benefits for Minnesota’s environment and natural resources.”

Council review

Council staff:

- 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 that the appraisal is reasonable and appropriate; and
- processes requests on a first-come-first-served basis.

Subject property

The subject 89.81-acre property is a narrow inholding that runs for three miles across four parcels. The property is on the bluffs above the Minnesota River adjacent to the Minnesota Department of Natural Resources Seminary Fen Scientific and Natural Area, Raguet Wildlife Management Area, and other

lands of Minnesota River bottoms. The property has high-quality scenic views of the river valley. Figure 2, below, shows the property to be acquired with a dotted blue line.

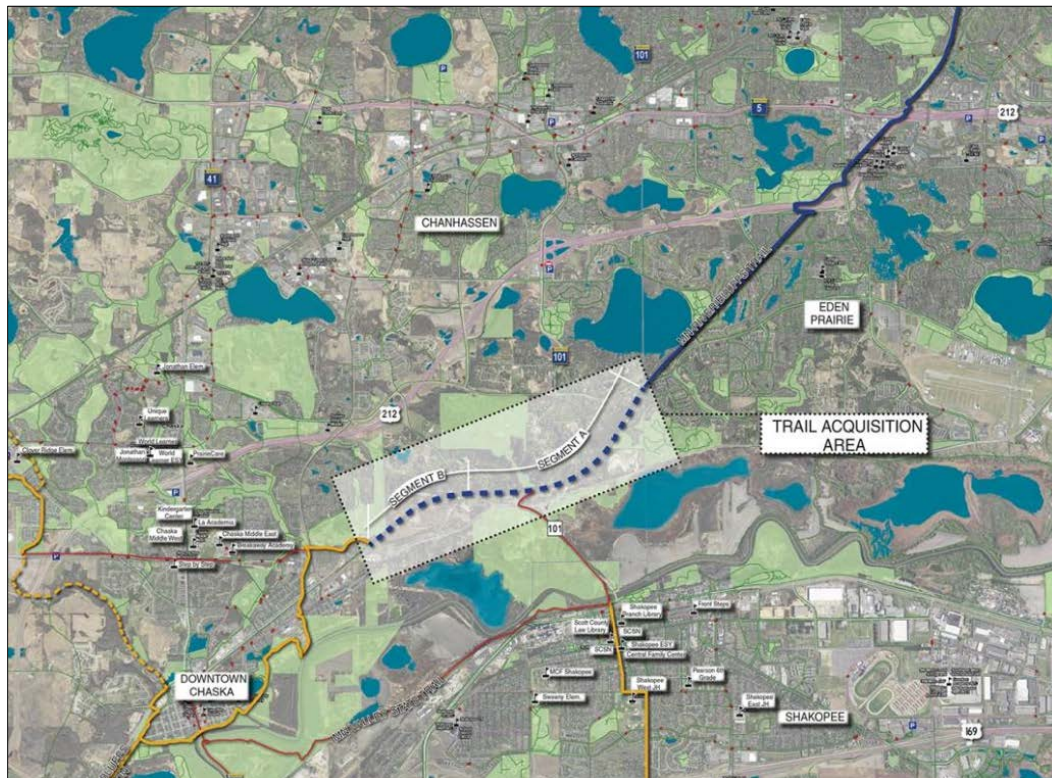


Figure 2: Location of regional trail and subject property

Connections

The trail is recognized as a regional trail in the 2040 Regional Parks Policy Plan and as a Tier 1 alignment of the Regional Bicycle Transportation Network (RBTN) in the *2040 Transportation Policy Plan*.

There are no transit connections within a mile of the subject property (Figure 3).



Figure 3: Transit connections

Acquisition details

This is a non-standard acquisition because of its current ownership, the details of the acquisition, and its funding structure.

Public ownership

The property is owned by the Hennepin County Regional Rail Authority (HCRRA), which bought the entire 12-mile corridor in fee title for approximately \$2.45 million in 1990 to hold for a prospective light rail line. HCRRA conducted the Southwest Transitway Alternatives Analysis (AA) process beginning in 2005; they adopted the AA in 2008. This analysis, conducted with the municipalities along the corridor, considered both mode and alignment for the proposed corridor and investigated eight alternative alignments. That alignment considered termini in Minneapolis and Eden Prairie and had not considered further extension to the west beyond Eden Prairie.

The AA enabled HCRRA and the municipalities along the line to choose a Locally Preferred Alternative (LPA), and the LPA was forwarded to the Metropolitan Council for inclusion in the Transportation Policy Plan 2010 update.

Trail history

In 1994, while the light rail route was being determined, HCRRA awarded permits to Three Rivers Park District (Three Rivers) and the City of Chanhassen to build and operate an unpaved trail across the property. This portion of the trail is entirely within Carver County. The County took over the lease for the City’s section of the trail in 2017 and will do the same for Three Rivers’ portion of the trail after conveyance of the property from HCRRA to the County.

During the lease period, a section of the trail corridor had a significant slope failure, which has closed a good portion of the trail, forcing users to detour six additional miles around the site on roads not well suited for bike and pedestrian use. There has been considerable public pressure to repair the trail. HCRRA has agreed to use the proceeds from the property sale to repair the slope failure. The current cost estimate to repair the trail is approximately \$1.45 million.

Even with the slope failure and its resulting detour, the Minnesota River Bluffs Regional Trail had 240,000 estimated visits in 2018. When they are able to operate the trail as an owner and not just a permit holder, Carver County will pave the trail and expects that trail use will increase as a result. This acquisition will therefore support increased use of the regional parks and trail system, while offering a high-quality viewshed of the river valley in proximity to the superb natural resources of the Seminary Fen Scientific and Natural Area and the Raguet Wildlife Management Area.

Relationship of public ownership to state funding

ENRTF funding has specific requirements when purchasing property already held in the public domain. [Minnesota Statutes, section 116P.18 Subd 2](#) requires that the LCCMR approve the acquisition with an affirmative vote of at least 12 members of the commission. Regional rail authorities acquire land expressly for the purpose of providing for the preservation and improvement of local rail service, including the preservation of abandoned right-of-way for future transportation services. Because the rail authority no longer has a rail purpose need for the property, HCRRA wishes to dispose of this property by making it available for sale. HCRRA does not hold property for general public purposes. The LCCMR is scheduled to consider the Council's request at a hearing on June 5, 2019.

Required local match

To be eligible for funding assistance through its Park Acquisition Opportunity Fund, the Council requires that Regional Parks Implementing Agencies contribute 25% of the cost of each property. This match amount is normally a cash contribution, but Council policy also allows the use of the value of a 'land donation' to be counted as all or part of the Agency match. The value of a land donation is defined as the difference between the appraised value of the property and the amount the owner is willing to accept as the purchase price. This acquisition will use the land donation method to provide the County's match.

LCCMR requires an appraisal that meets the requirements of the Uniform Standards of Professional Appraisal Practice, done within one year prior to closing on the property. Carver County commissioned an appraisal July 2018. Because of the complexities in the purchase agreement, it has taken nearly two years to negotiate the joint powers agreement that supports the purchase agreement, and the original appraisal will not meet the one-year timing requirement. Therefore, in May 2019, the Council prepared another appraisal, which returned a value opinion of \$5.81 million. HCRRA has agreed to accept \$1.7 million as the purchase price. The \$4.1 million difference will be considered Carver County's match. To fund the \$1.7 million grant, the Council will contribute \$680,000 as the regional match, with the balance of \$1,020,000 from ENRTF.

The joint powers agreement between the two parties covers contingencies such as cost overruns; in no case would the Council provide additional funding for this acquisition. The grant agreement will be subject to LCCMR approval and is binding on Carver County and the Council.

Timing

ENRTF funding imposes timing requirements that further complicate this transaction.

- At the time of closing, the appraisal must not be more than a year old. The most recent appraisal is dated March 22, 2019. Because the slope repair cannot be completed within a year of that appraisal date, a new appraisal will need to be completed by March 21, 2020.
- The 2017 ENRTF appropriation expires on June 30, 2020. Grantees then have a year in which to close on property acquired with the appropriation. However, in this case the appraisal date provides a hard limit requiring the closing to be no later than March 20, 2021.

The joint powers agreement stipulates that HCRRA will repair the slope failure and then close on the property. Carver County will remit the \$1.7 million in grant funds to HCRRA to reimburse them for the slope failure. HCRRA cannot bid the construction project until funding has been identified; LCCMR funding approval and the Council's approval of this business item will provide them the funding assurance they need to proceed. To summarize the timeline:

- June 5, 2019 – LCCMR vote to approve the use of funds
- June 2019 – presentation of this item to Metropolitan Parks and Open Space Commission, the Community Development Committee, and the Metropolitan Council for grant approval
- July 2019 – HCRRA begins bidding process for the construction work
- Late winter, 2020 – Construction work begins
- March 21, 2020 – Final appraisal due from Carver County
- March 20, 2021 – deadline for closing on the property

Rationale

This acquisition is consistent with:

- The *2040 Regional Parks Policy Plan*
 - Planning Policy Strategy 1 requires that before an Agency can receive a grant for acquisition, the proposed project must be consistent with a Council-approved master plan. The master plan for this regional park/trail was approved by the Council on November 28, 2018 on [Business Item 2018-301](#).
 - Siting and Acquisition Strategy 1 requires that lands with natural resource features, access to water, and/or restoration potential will be a priority for the Regional Parks System. The property recommended for acquisition is located on the heavily wooded bluffs above the Minnesota River, with excellent views of the river valley.
 - System Protection Strategy 4 requires that a Phase 1 Environmental Site Assessment (ESA) must be completed on land that is suspected to be contaminated or land suspected to have abandoned wells as part of its due diligence process for land acquisition. Carver County completed the ESA on October 17, 2018. The ESA noted three recognized environmental concerns, two of which were on adjacent properties and one on the property that addressed existing railroad ties that may be contaminated with creosote.
 - Finance Strategy 7 authorizes the use of PAOF as the funding mechanism for the acquisition of Regional Park lands and matching every \$3 in state funds with \$2 in Council bonds; and
- Council, Carver County, and HCRRA staff believe the acquisition meets the requirements of ENRTF and the amended 2017 appropriation. The County, HCRRA, and Council staff have worked extensively with the LCCMR to ensure the property qualifies for funding, including a tour of the property in 2018. A vote of the full LCCMR to approve the acquisition is scheduled for June 5, 2019. If the LCCMR does not approve use of ENRTF funds, the Council would fund the acquisition through the acquisition funds set aside in our Parks and Trails Legacy Fund

appropriation. However, not only is there greater pressure on Parks and Trails Legacy Fund funding availability, but this property is very well matched to the emphasis the ENRTF places on acquiring properties with high-quality natural resources. Therefore, staff believes that ENRTF is the appropriate first choice for funding this acquisition.

Thrive Lens Analysis

This request is consistent with Thrive’s Livability outcome because the Council’s investment in the Regional Trail will increase access to nature and outdoor recreation, thereby enhancing the region’s quality of life.

Funding

Project budget

The appraised value is \$5.81 million, and the Agency has offered the seller 29.26% of the appraised amount.

Budget item	Requested amount
Purchase price	\$1,700,000
Due diligence (appraisal, Phase I environmental site assessment, etc.)	0
Holding and closing costs	0
Stewardship	0
<hr/>	
Total costs	\$1,700,000
Grant structure	
State FY 2017 ENRTF PAOF	\$1,020,000
Council bonds	<u>\$680,000</u>
Grant amount not to exceed	\$1,700,000
Local match (value of land donation only)	\$4,110,000

Future reimbursement consideration

This project is not eligible for future reimbursement consideration.

Known Support / Opposition

There is no known opposition.

Exhibit List

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

Exhibit 1 – Images



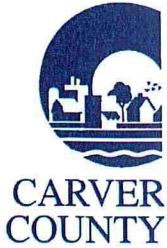
Figure 4: Aerial map of subject properties, outlined in red



Figure 5: Trail views on the open section of trail



Figure 6: Slope failure site - note the people near the top of the bluff to provide perspective for the height of the slope



CARVER COUNTY PARKS

11360 Highway 212 West, Suite 2
Cologne, MN 55322-8017
Phone (952) 466-5250 Fax (952) 466-5223
www.co.carver.mn.us/parks

Division of Public Works

11360 Hwy. 212 West, Suite 1
Cologne, MN 55322-8016
Phone (952) 466-5200
Fax (952) 466-5223

February 27, 2019

Mr. Emmett Mullen
Parks and Natural Resource Manager
Metropolitan Council
390 North Robert Street
St. Paul, MN 55101

Dear Mr. Mullen:

Carver County intends to purchase high natural amenity and recreational property within the boundary of the MN River Bluffs Regional Trail corridor. The parcels are identified as Carver County Parcels 25.9990600, 30.9990310, 25.9990700 and 25.9990500; which contains approximately ninety (90) acres, more or less; which is legally described in the attached Exhibit A, and depicted in Exhibit B. This property has an appraised value of \$5,840,000.

Carver County is requesting \$1.7 million in the form of a Park Acquisition Opportunity Fund (PAOF) grant to pay Hennepin County Regional Railroad Authority (HCRRA) for the property. Further, the grant is to cover eligible land acquisition expenses of, but not limited to, appraisal, appraisal review, Phase I Environmental Site Assessment and closing costs.

HCRRA will apply the balance of the funds from the \$1.7 million grant as payment in full and will use those funds to repair an area of slope failure on the property to be acquired.

HCRRA will donate the land value of \$4.140 million, the difference between the appraised value and the grant request, to Carver County. This land value donation will serve as the County's local match to PAOF.

The below table is provided for additional clarification of the transaction.

Financial Breakdown	Financial Summary
Negotiated Purchase Price Based on Appraisal	\$5,840,000
Land Value Donation Provided by HCRRA	-\$4,140,000
PAOF Request	\$1,700,000
PAOF Grant	
Estimated Eligible Land Acquisition Expenses to Carver County	- \$26,000
Estimated payment to HCRRA	\$1,674,000
Acquisition Total Cost	\$1,700,000

Sincerely,

Martin J. Walsh
Parks Director

EXHIBIT A

(Legal Description of Property)

All that part of a variable width strip of land in Sections 34, 35, 36 and 25, Township 116, Range 23, Carver County, Minnesota, being former railroad right of way as shown on HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY PROPERTY MAP NO.'s 13, 14, 15 and 16, according to the recorded Maps thereof, said Carver County.

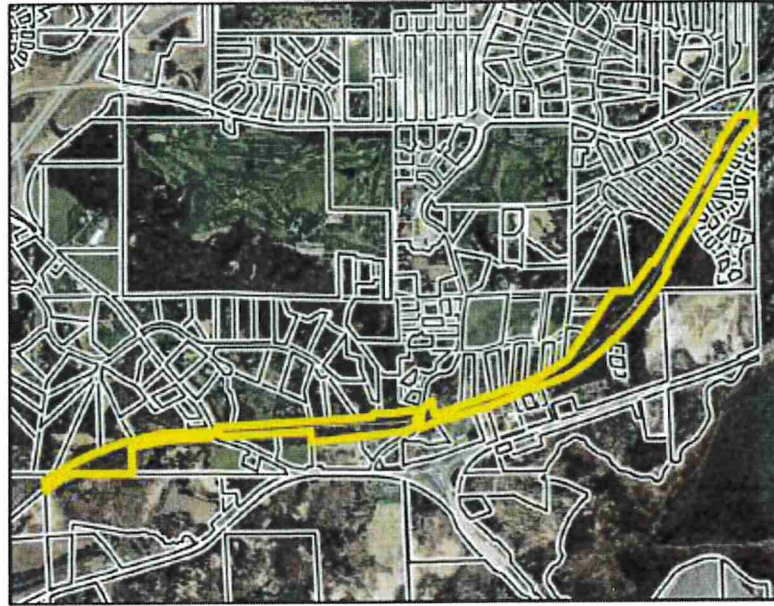
Subject to existing public roads and highways, and easements of record, if any.

Containing approximately 90 acres, more or less.

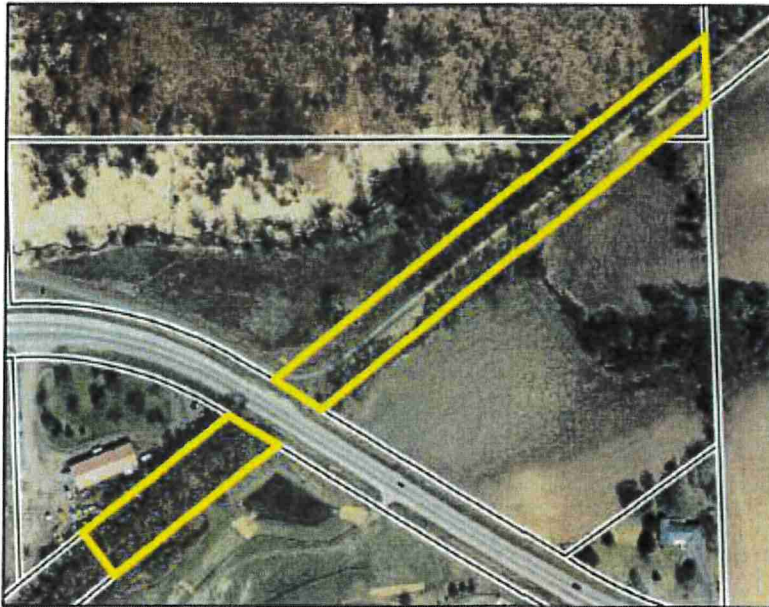
EXHIBIT B

(Property Depictions)

Parcel ID Number 259990600



Parcel ID Number 309990310



Parcel ID Number 259990700



Parcel ID Number 259990500





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Application

Instructions

Print to PDF will convert the application plus any PDF attachments into a single PDF file. **Release for Review** will change the status of the application to Under Review and move it on to the evaluation process. **Negotiation** will allow you to unlock one or more sections of the application and route the application back to the applicant for further editing. **Annotations** allow internal staff to add notes that are visible to internal staff only and possibly also reviewers if they have a special security privilege. The applicant cannot see these notes. **Versions** will display all component versions that were created as a result of the negotiation process. **Feedback** allows staff to enter feedback about the application to the applicant. The feedback text will appear at the bottom of the application and will be visible to anyone who has access to the application. **Withdraw** changes the status of the application to Withdrawn and removes the app from the evaluation process.

[Application Details](#) | [Map](#) | [Print to PDF](#) | [Release for Review](#) | [Negotiation](#) | [Annotations\(0\)](#) | [Versions](#) | [Feedback](#) | [Withdraw](#)

10851 - 2019 Parks Acquisition Opportunity Fund - Final Application

**11404 - PAOF Minnesota River Bluffs RT - HCRRA
Parks Grants Acquisition**

Status: Submitted Submitted Date: 03/01/2019 11:53 AM

Applicant Information

Primary Contact:

Name:*	Ms.	Applications		Parks
	<small>Salutation</small>	<small>First Name</small>	<small>Middle Name</small>	<small>Last Name</small>
Title:*	Sr Parks Finance Planner			
Department:	Regional parks			
Email:*	deb.jensen@metc.state.mn.us			
Address:*	390 N Robert			

*	St. Paul	Minnesota	55101
	<small>City</small>	<small>State/Province</small>	<small>Postal Code/Zip</small>
Phone:*	651-602-1154		Ext.
	<small>Phone</small>		

Fax:

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

Organization Information

Name:* CARVER COUNTY

Jurisdictional Agency (if different):

Organization Type: County Government

Organization Website:

Address:* PARKS
11360 HWY 212 W #2

*	COLOGNE	Minnesota	55322-0300
	<small>City</small>	<small>State/Province</small>	<small>Postal Code/Zip</small>
County:*	Carver		
Phone:*	612-467-4200		Ext.

Fax:

PeopleSoft Vendor Number 0000026790A15

Project description

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

Park or trail name Minnesota River Bluffs RT-Carver County

Master plan

An acquisition request will not be considered complete until the property is included in a Council-approved master plan.

Is the project consistent with a Council-approved master plan? No

If yes, name of master plan and date of Council approval Minnesota River Bluffs LRT Regional Trail MP 06/27/2018

Name of master plan

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

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

Acquisition method

Acquisition method Fee title

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

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

1. Hennepin County Regional Rail Authority (HCRRA) purchased the property to hold in case it was needed for the Southwest Light Rail alignment. This segment has been eliminated from the preferred alignment. HCRRA desires to sell the property.
2. Carver County has leased the subject property from HCRRA for many years. It holds an unpaved segment of the Minnesota River Bluffs Regional Trail (MRBRT).
3. In 2014, the subject property suffered a significant slope failure after a major rain event. The segment has been closed since that time pending repairs, forcing trail users onto a 40-minute detour along busy roads.
4. HCRRA does not have the funds to repair the slope failure.
5. HCRRA no longer needs the property for the Southwest Light Rail line and wishes to dispose of the property.
6. On July 6, 2018 the appraised value of the subject property was determined to be \$5,840,000.
7. HCRRA and Carver County have struck an agreement under which:
 1. HCRRA will accept \$5,840,000 as the purchase price;
 2. HCRRA will donate \$4,140,000 in land value, and Carver County will pay \$1.7 million in cash.
 3. Carver County will use the land value donation as its local match for the PAOF grant.
8. Note that the purchase agreement deliberately does not contain an expiration date, to allow for flexibility in repairing the slope. The transaction will not close until the repair is complete.

Does this acquisition involve eminent domain? No

Eminent domain

If eminent domain is being used:

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

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

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

Date the petition was filed.

Settlement date

Public domain

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

Is any portion of the property currently in the public domain? 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.

This property is owned by the Hennepin County Regional Rail Authority HCRRA, who purchased it to hold in case it was needed for light rail. After the preferred alignment did not include this property, the HCRRA Board decided to divest itself of property held outside Hennepin County. Transfer

of the property from HCRRA to Carver County will allow the County to own and operate the trail in perpetuity.

Closing date

The Council will process all acquisition requests expeditiously, but we do not guarantee that the approval process will be completed to meet your requested closing date. This date will be considered an **estimate** only. However, the acquisition must be completed during the standard one-year grant term unless prior approval is obtained from the Council or the grant term is amended.

Estimated closing date 06/30/2021
Format: mmddyyyy (Do not enter any punctuation.)

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

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

Relocation costs

Payment of relocation costs is required by both state and federal law, unless the seller waives those rights. Please consult with Agency attorneys to determine applicability for this acquisition. If the seller has waived relocation rights, you must upload an executed copy of the waiver.

Does the requested grant amount include relocation costs? No

Appraisal

The appraisal must have an effective date within one year of the date the intended use must include "negotiation and grant reimbursement"; and

Note: this appraisal has been superseded by a newer appraisal completed March 22, 2019, showing \$5.81 million in value

Appraisal effective date 07/06/2018

Appraised value \$5,840,000.00

Amount being offered the seller (net of closing and other costs) \$1,700,000.00 29.11%
% of appraised value

Who performed the appraisal? Pashum Messner Dodd

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

Survey

Was a survey done? No

Quality of natural resources - is the property...

...undeveloped? Yes
Fully Partially

...wooded? Yes
Fully Partially

...shoreline?
Fully Partially

Describe the existing natural resources it contains

The central and east portion of the subject, east of Bluff Creek Drive is mostly within upland area. The improved trail is open and generally sloping downward to the west. Outside of the trail, the corridor is mostly wooded. The east portion of the subject is steeply sloping. Alternatively, the west portion of the subject is gently sloping and adjacent lands transition from upland to low-lying wetland.

Known opposition

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

If yes, explain: n/a

Encumbrances

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

If yes, describe.

n/a

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

If yes, describe

The purchase agreement lists the following leases and permits on the property, all of which are assigned to Carver County:

- Century Link holds easement for an underground fiber optic line; HCRRA assigns this easement from the county line to approximately 1,000 feet east of Highway 101.
- The City of Chanhassen holds a permit for a park trail connection from Pioneer Trail.
- The Pentom Land Company holds permits for outlet pipes and the connector trail.
- Carver County holds a trail permit.

The Minnesota Department of Transportation (MnDOT) holds a rail bank mortgage on the greater length of the rail corridor (agreement number 66279). Carver County and HCRRA have agreed that HCRRA will make a proportional assignment of the mortgage for the length of the subject property, in the amount of \$294,000, to Carver County.

Clear title

To your knowledge, does the current owner have clear title to the property? No

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

Title work done in 1989 concluded the property was owned by Chicago and North Western Railway. Title work in 1991 concluded the property is owned by HCRRA. However, there is a mortgage on the property that HCRRA is working to assign to Carver County.

Suggested funding source

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

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

Anticipated funding source ENRTF / Council match
Select as many as apply

Funding source comments, if desired

This property contains the high-quality natural resources required to be eligible for ENRTF funds. If approvals from LCCMR are obtained, Carver County requests that the acquisition be funded through ENRTF and Council match. If LCCMR does not approve the acquisition, then Carver County requests that the acquisition be funded through PTLF and Council match.

Structures currently on the property

Does the property contain ANY structures? No

If yes, are there any habitable structures? No

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

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

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

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

n/a

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.

These parcels are part of an existing trail.

Stewardship and minimal access

Describe the stewardship plan.

Heavy rains in 2014 caused a slope failure on part of the property. That portion of the trail has been closed since the failure. HCRRA will use the proceeds from the sale to repair the slope failure.

How will the stewardship implementation be funded?

HCRRA will repair the slope failure using the funds from the acquisition.

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? n/a

Site Description

Land Use History

Current land uses Woods, Wetland
Select as many as apply

Previous land uses Woods, Industrial, Wetland
Select as many as apply

Adjacent land uses Residential, Agricultural, Commercial, Woods, Wetland
Select as many as apply

Inspection

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

Sellers and parcels

Seller name	Parcel address	PID	Acres (SF for easements)	Date PA signed	Habitable structures?	MN House district	City	County	Met Council district	MPOSC	Latitude	Longitude
HCRRA	None	259990700	22.71		No	47B	Chaska	Carver	4	B	44.82	-93.52
HCRRA	None	309990310	3.5		No	47B	Chaska	Carver	4	B	44.82	-93.52
HCRRA	None	259990500	0.99		No	47B	Chaska	Carver	4	B	44.82	-93.52
HCRRA	None	259990600	63.8		No	47B	Chaska	Carver	4	B	44.82	-93.52
			91.00									

Local match

Source of local match

The County proposes to use the discounted land value from the HCRRA as its 25% local share.

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

If yes, how much? \$0.00

Grant agreement signatories

Full name	Title	If this is an attorney, is the signature 'for form only'?
Randy P. Maluchnik	Chair, Carver County Board	
Dave Hemze	Carver County Administrator	
Mary E. Shimshak	Assistant Carver County Attorney	Yes

Acquisition Costs

Cost Items	Amount
Purchase price	
Negotiated purchase price	\$1,680,100.00
Appraisal expenses	
Appraisal	\$10,000.00
Appraisal review	\$500.00
Environmental expenses	

Phase I environmental site assessment	\$9,400.00
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	\$0.00
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	\$1,700,000.00

Note, because this grant does not include a local match in cash, the grant management software cannot calculate the grant components automatically. The correct amounts are in red.

Total Estimated Acquisition Costs

Total grant amount
\$1,700,000

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)	\$1,700,000.00	\$765,000.00	\$510,000.00	\$425,000.00	\$1,275,000.00
		\$1,020,000	\$680,000		Local match through land value donation

Required Attachments - Acquisition

Attachment	Description	File Name	Type	File Size
SECTION 1 - All of the following are required to BEGIN review unless otherwise indicated				
1.0 Grant request letter (REQ'D)	Letter	_Grant request letter.pdf	pdf	733 KB
2.0 Master plan documentation (REQ'D)	master plan business item	2018-301 MC CC MN River Bluffs RT.pdf	pdf	855 KB
3.0 RECORDED Governing Board action authorizing grant request (REQ'D)				
4.0 Signed purchase agreement/instrument (REQ'D)	Executed PA	_HCRRA_Executed_PA.pdf	pdf	2.1 MB
5.1 Appraisal report (REQ'D)	Appraisal	HCRRA appraisal.pdf	pdf	9.9 MB
5.2 Appraisal review report (NOT req'd)				
5.3 Client's instructions to appraiser (REQ'D)				
5.4 Title documentation (Req'd before finalization)	1989 & 1991 title work	HCRRA title work.pdf	pdf	788 KB
6.1 Phase 1 ESA (if land may be contaminated or have abandoned wells)	Phase I ESA executive summary	_Phase I ESA exec summary.pdf	pdf	293 KB
6.2 Phase II environmental assessment report (required if indicated in Phase I)				
7.0 Survey report (NOT req'd)				
8.0 Legal description in Microsoft Word that includes PIDs and, if available, address	Legal description	_Legal description.docx	docx	13 KB
9.0 Land stewardship plan				
10.0 Relocation description and estimated costs OR signed waiver of relocation rights				
SECTION 2 - Condemnation only - all required for eminent domain				
11.1 For condemnations, copy of notice to Council advising court filing				

Exhibit 4: Board approval to purchase property

Carver County Board of Commissioners Request for Board Action



Agenda Item:

Print View

Memorandum of Understanding and Purchase Agreement with Hennepin County Regional Rail Authority for Minnesota

Primary Originating Division/Dept: Public Works - Parks
Secondary Originating Division/Dept: Attorney

Meeting Date: 1/15/2019
You have selected a date in the past. Please select a future date.

Contact: Martin Walsh Phone: 5252
Contact Title: Parks and Recreation Direct

Item Type: Regular Session

Amount of Time Requested: 15 minutes

Attachments for the Packet:
 Yes No

Presenter: Martin Walsh Phone: 5252
Presenter Title: Parks and Recreation Director

Attachments for Internal Use:
 Yes No

Contract Name:
Contract #:

Reminder: Contracts for <\$25,000 or renewals do not require an RBA.

Strategic Initiative:

Communities: Create and maintain safe, healthy, and livable communities

BACKGROUND/JUSTIFICATION:

In 2014, a section of the Southwest Light Rail Transit Line (SLRT) /Minnesota River Bluffs Regional Trail (MN RB RT) between Bluff Creek Drive and the east county line was closed due to a slope failure after heavy rains. Hennepin County Regional Rail Authority (HCRRA) owns approximately 3 miles of the SLRT/MN RB RT within the boundary of Carver County, that includes the area with the slope failure.

Carver County has been working with HCRRA to reach agreements for Carver County to acquire the SLRT/ MN RB RT after HCRRA repairs the slope failure.

It is proposed Carver County will apply for a Park Acquisition Opportunity Fund grant from the Metropolitan Council to acquire HCRRA's property within Carver County. This funding source is utilized to acquire land for regional park and trail purposes.

It is anticipated that if Carver County receives grant funds from Metropolitan Council for the acquisition of the property from HCRRA, then Carver County would use the funds to acquire ownership and possession of the property after HCRRA has repaired the slope failure, and to address other land stewardship needs associated with the property.

The HCRRA property to be acquired has an appraised value of \$5,840,000.

It is proposed that Carver County would acquire the HCRRA property, including related fees and services, for \$1,700,000. That is the maximum amount that Carver County can receive from the Park Acquisition Opportunity Fund grant from the Metropolitan Council.

In the terms of the Memorandum of Understanding and the Purchase Agreement, if Carver County does not receive that grant amount from Metropolitan Council, then HCRRA will be solely responsible for the cost of the trail repairs and Carver County would not pay for any of the costs of repairing the slope failure, or of addressing other land stewardship needs; and would not acquire the HCRRA property within Carver County. Carver County will continue to work in good faith with HCRRA to explore other possible funding sources which satisfy the need to complete the trail repairs prior to the transfer of the ownership to Carver County.

To obtain funding from the Metropolitan Council, Carver County must complete an application for Park Acquisition Opportunity Funds. That application requires: 1) An action by the Board authorizing a Memorandum of Understanding along with a Purchase Agreement; and 2) Delivery of an executed Purchase Agreement.

ACTION REQUESTED:

Motion to authorize the Board Chair and County Administrator to execute a Memorandum of Understanding and a Purchase Agreement for \$1.7 million, less any eligible acquisition expenses incurred by Carver County, with the Hennepin County Regional Rail Authority for the Carver County portion of the Southwest Light Rail Transit Line/Minnesota River Bluffs Regional Trail, after review and approval under the contract review process and final authorization to proceed by the County Administrator.

FISCAL IMPACT: Budget amendment request form
 Upon submittal of this RBA, you must fill out a Budget Amendment Request form, available on this site.
If "Other", specify: See below

FUNDING

County Dollars =	
Metropolitan Council	\$1,700,000.00
Total	\$1,700,000.00

FTE IMPACT: None

Insert additional funding source

Related Fiscal/FTE Comments:

The \$1,700,000 Met Council Park Acquisition Opportunity Funds Grant will be the funding source for the purchase of the regional trail from the Hennepin County Regional Rail Authority.

PURCHASE AND ACCEPTANCE
AND
SALE AND DONATION AGREEMENT

This Purchase and Acceptance, and Sale and Donation Agreement ("Agreement") is made and entered into this 27 day of February, 2019, ("Execution Date" is the date the last party signed Agreement), by and between the **HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY**, a political subdivision and local government unit of the State of Minnesota, ("Seller/Donor"), and the **COUNTY OF CARVER**, a political subdivision and local government unit of the State of Minnesota, ("Buyer/Donee"). Seller/Donor and Buyer/Donee are referred to collectively hereinafter as the "Parties."

WITNESSETH:

The Parties mutually agree hereto as follows:

Section 1. Purchase and Acceptance, and Sale and Donation of the Property.

Seller/Donor, the owner of certain real property located in Carver County, Minnesota, hereby agrees to sell and donate and Buyer/Donee hereby agrees to purchase and accept under the terms and conditions set forth in this Agreement, all of Seller/Donor's right, title and interest in and to the real property extending approximately three miles from its intersection at Chaska Boulevard (County State Aid Highway 61) in Chaska, Carver County, Minnesota to the east boundary in Chanhassen, Carver County, Minnesota; which includes the parcels identified for tax purposes by Carver County Parcel Identification Numbers 25.9990600, 30.9990310, 25.9990700 and 25.9990500; which contains approximately ninety (90) acres, more or less; which is legally described in **Exhibit A**, attached hereto and incorporated herein; and which is further depicted in **Exhibit B**, attached hereto and hereby made a part hereof (the "**Land**"), together with all fixtures, improvements, and facilities affixed or installed thereto or thereon, including without limitation, the culverts, ballast, bridges, and appurtenances thereto, to the extent owned by Seller/Donor, ("**Personal Property**"). The Land and the Personal Property are referred to collectively hereinafter as the "**Property**."

The sale and donation made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights whether or not of record, or open and obvious upon the ground.

Section 2. Estimate of Fair Market Value; Purchase Price; Donation; Balance of Purchase Price; Method of Payment; and Payment of Certain Buyer/Donee Costs.

(a) Estimate of Fair Market Value. The fair market value of the Property as of July 6, 2018 and as estimated in a certified appraisal ("**Appraisal**") obtained by Buyer/Donee is FIVE MILLION EIGHT HUNDRED FORTY THOUSAND DOLLARS (**\$5,840,000**).

(b) Purchase Price. The purchase price for the Property ("**Purchase Price**") is FIVE MILLION EIGHT HUNDRED FORTY THOUSAND DOLLARS (**\$5,840,000**).

(c) Donation. Seller/Donor hereby agrees to make a land donation ("**Donation**") to Buyer/Donee in the amount of FOUR MILLION ONE HUNDRED FORTY THOUSAND DOLLARS (**\$4,140,000**).

(d) Balance of Purchase Price. The remaining balance of the Purchase Price ("**Balance of Purchase Price**") is ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS (**\$1,700,000**).

(e) Method of Payment. If all of the Conditions Precedent set forth in and required by Section 3 of this Agreement are fully satisfied, then Buyer/Donee shall pay the Balance of the Purchase Price to Seller/Donor in cash at the time of Closing, as set forth in Section 4 of this Agreement.

(f) Payment of Certain Costs.

(i) If the Balance of Purchase Price exceeds the total of Seller's/Donor's construction costs related to the Repairs of Embankment Failures and Culverts, as set forth in Section 3(b) below, then Seller/Donor shall receive compensation from said excess for Seller's/Donor's design, engineering, and construction administration costs related to said construction, which shall only be compensated up to twenty-five percent (25%) of Seller's/Donor's construction costs.

(ii) If the Balance of Purchase Price exceeds the total of all of the Seller's/Donor's costs described in Clause (i) of this Section 2(f) above, then Seller/Donor shall pay at Closing from said excess the costs of Buyer's/Donee's Phase I Environmental Assessment of the Property, the costs of the Appraisal and Appraisal Review obtained by Buyer/Donee, and Buyer's/Donee's Closing Costs as set forth in Section 4(c).

(iii) If the Balance of Purchase Price exceeds the total of all of the Parties' costs as described in Clauses (i) and (ii) of this Section 2(f) above, then the Parties shall split at Closing the remaining balance of said excess equally (50/50) between the Parties.

Section 3. Conditions Precedent.

The Parties shall execute this Agreement and shall Close on the real estate transaction that is the subject of this Agreement only if all of the following terms are satisfied beforehand:

(a) Funding. Buyer/Donee's obligation to Close on the Property is contingent upon Buyer/Donee receiving a Park Acquisition Opportunity Fund ("**PAOF**") grant from the Metropolitan Council, a public corporation and political subdivision of the state of Minnesota, ("**Met Council**"), which fully covers the Balance of the Purchase Price of the Property.

For purposes of this paragraph, the estimated fair market value of the Property, as of July 6, 2018, and as determined in the Appraisal matches the Purchase Price of the Property.

The Parties hereby agree that Buyer/Donee may use the Donation to fully satisfy the PAOF grant requirement that Buyer/Donee contribute at least 25% of the acquisition and related costs of the Property.

The Parties acknowledge and accept that the PAOF grant will finance the Balance of the Purchase Price of the Property.

(b) Repairs of Embankment Failures and Culverts. Buyer's/Donee's obligation to Close on the real estate transaction that is the subject of this Agreement is contingent upon Seller/Donor repairing and restoring the area of slope failure and culvert on the Property, in accordance with construction plans reviewed and approved by the Parties, which shall include any changes upon which the Parties agree in writing ("**Plans**").

Seller/Donor covenants and agrees to pay in full for all costs of making the Improvements in accordance with the Plans, and to pay in full all persons who perform labor upon the Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished on behalf of Seller/Donor for making the Improvements; and Seller/Donor agrees to indemnify and hold harmless Buyer/Donee against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished prior to the date of Closing.

Upon Seller's/Donor's completion of the Improvements in accordance with the Plans, Seller/Donor shall provide Buyer/Donee with a written notice that Seller/Donor considers the Improvements to be satisfactorily completed ("**Improvement Completion Date**"), whereupon Buyer/Donee shall be afforded the opportunity to exercise its rights and privileges as set forth in Section 3(c) of this Agreement.

(c) Physical Inspection. Commencing on the Improvement Completion Date and continuing for a period of sixty (60) business days thereafter, Buyer/Donee, and its agents and contractors, shall be granted the right and privilege of entering upon the Property for the purpose of physically inspecting the Property ("**Physical Inspection Period**"), including an inspection of the Improvements.

(i) Buyer/Donee covenants and agrees to not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of Buyer/Donee.

(d) Indemnification. Each of the Parties shall be liable for its own acts to the extent provided by law and hereby agrees to indemnify, hold harmless, and defend the other, its officers, and its employees against any and all liability, loss, costs, damages, expenses, claims, or actions, including attorney's fees that the other, its officers, and its employees may hereafter

sustain, incur, or be required to pay arising out of or by reason of any act or omission of the party or its agents, servants, or employees, in the execution or performance of, or failure to adequately perform, its obligations pursuant to this Agreement. It is understood and agreed that the liability of each Party shall be limited by the provisions of Minn. Stat. Chap. 466 and/or other applicable law.

(e) Title Search. Within sixty (60) business days after the Execution Date, Buyer/Donee, may obtain a title search on the Property, limited in scope at Buyer's/Donee's sole discretion, to determine what kind of real property restrictions or allowances, such as real covenants, easements, and other equitable servitudes pertain to the Property; and whether any liens such as mortgages, taxes, mechanic's liens, or other assessments exist on the Property ("**Limited Title Search**").

Within thirty (30) business days after Buyer/Donee receives a report from its Limited Title Search ("**Title Report**"), Buyer/Donee shall approve or disapprove of any liens, encumbrances, covenants, rights of way, easements or other outstanding rights the Title Report discloses ("**Title Contingency Date**").

Disapproval shall be by written notice given by Buyer/Donee to Seller/Donor setting forth the specific item or items disapproved by Buyer/Donee ("**Objections**"). If no such notice of Objections is given by Buyer/Donee by the Title Contingency Date, it shall be presumed that Buyer/Donee approves of the Title Report. Any specific matter not disapproved by Buyer/Donee shall be a "**Permitted Encumbrance**" hereunder.

If Buyer/Donee disapproves of any item or items contained in or disclosed by the Title Report, then Seller/Donor shall have thirty (30) business days after receipt of Buyer/Donee's written Objections to advise Buyer/Donee in writing which Objections that Seller/Donor will cure and which Objections Seller/Donor will not cure ("**Cure Notification**"). Objections Seller/Donor intends to cure under the Cure Notification shall be cured at least forty-five (45) business days before the Closing.

If Seller/Donor does not cure, remove, correct, or satisfy any Objection by the Closing, Buyer/Donee shall have the right, at its sole option, to:

- (1) Terminate this Agreement within thirty (30) business days prior to Closing by giving Seller/Donor written notice of termination; or
- (2) Waive the Objection and proceed to Close, in which case such waived Objection shall become Permitted Encumbrances in the Deed delivered pursuant to Section 6 herein.

In the event that Buyer/Donee terminates this Agreement due to any such uncorrected defect in title, this Agreement shall terminate and be without any further force and effect, and without further obligation of either Party to the other.

(f) Mortgages and Liens. Except as set forth in Section 3(g) immediately below, Seller/Donor shall satisfy any and all mortgages, liens, and other financial encumbrances on the Property at or prior to the date of Closing, including all liens of a definite and ascertainable amount arising from Seller/Donor or Seller/Donor's affiliates, which may be cured by the payment of money, and which may be paid by Seller/Donor from Seller/Donor's proceeds, at Closing.

Seller/Donor shall file the satisfaction or release of any and all such mortgages affecting the Property in the Carver County Recorder's Office, and provide Carver County with a copy of each such recorded satisfaction ten (10) business days prior to Closing.

Any judgment against Seller/Donor that may appear of record as a lien against the Property shall be satisfied and settled by Seller/Donor if and when said lien is judicially determined to be finally valid, and Seller/Donor shall indemnify Buyer/Donee for all loss arising out of Seller/Donor's failure to have said judgment lien so settled and satisfied.

Seller/Donor shall not, without prior written authorization of Buyer/Donee, make any new leases, contracts, opinions, or agreements whatsoever affecting the Property.

At Closing, Seller shall execute and deliver a Seller's Affidavit representing that no encumbrances have been placed on the Property since the Execution Date of this Agreement.

(g) MN/DOT Agreement. The Parties agree and recognize that the State of Minnesota, acting by and through its Department of Transportation ("MN/DOT"), has rights related to the Property, including those contained in Article III, Sections 1 – 4, and Article IV of that certain Agreement No. 66279 between Seller/Donor and MN/DOT ("**Agreement 66279**").

The obligation of either of the Parties to Close on the real estate transaction that is the subject of this Agreement is contingent upon Seller/Donor and MN/DOT, negotiating and executing an agreement ("**the MN/DOT Agreement**") to facilitate the conveyance of the Property as set forth in this Agreement. The MN/DOT Agreement shall include substantially the following terms:

- (1) that the repayment requirements contained in Article III, Sections 1(c) and 4 of Agreement 66279 shall not apply to the real estate transaction that is the subject of this Agreement;
- (2) that MN/DOT has reviewed and approves this Agreement and consents to the conveyance of the Property to Buyer/Donee or to Buyer's/Donor's Regional Railroad Authority;
- (3) that MN/DOT consents to Seller's/Donor's assignment to Buyer/Donee or Buyer's/Donor's Regional Railroad Authority of all or part of Seller's/Donor's rights and obligations under Agreement 66279;
- (4) that MN/DOT agrees that the Property is being sold from Seller/Donor to

Buyer/Donee or to Buyer's/Donee's Regional Rail Authority pursuant to and in full compliance with Article III, Section 1 of Agreement 66279;

- (5) that MN/DOT consents to Seller's/Donor's assignment to Buyer/Donee or Buyer's/Donee's Regional Rail Authority of a portion of the Statutory Mortgage and Assignment of Rents accompanying Agreement 66279 ("**the Statutory Mortgage**"), which portion shall encumber only the Property. The dollar value of the Statutory Mortgage to be assigned to Buyer/Donee or to Buyer's/Donee's Regional Rail Authority shall equal TWO HUNDRED AND NINTEY FOUR THOUSAND DOLLARS (\$294,000); and
- (6) that MN/DOT consent to Seller's/Donor's assignment to Buyer/Donee or to Buyer's/ Donee's Regional Rail Authority of the leases and licenses set forth in Exhibit E attached hereto and incorporated herein ("**the Leases and Licenses**").

All of the terms of the MN/DOT Agreement between Seller/Donor and MN/DOT must be fully satisfactory to Buyer/Donee. Seller/Donor must receive the prior written consent of the County Administrator of Buyer/Donee before Seller/Donor may execute the MN/DOT Agreement.

If Seller/Donor fails to negotiate and execute the MN/DOT Agreement at least thirty (30) business days before Closing, then this Agreement shall be deemed terminated. In the event of such termination, this Agreement shall be without any further force and effect, and without any further obligation of either Party to the other.

(h) Assignment Agreement. The obligation of either of the Parties to Close on the real estate transaction that is the subject of this Agreement is contingent upon Seller/Donor and Buyer/Donee or Buyer's/Donee's Regional Rail Authority negotiating, and executing upon Closing, an assignment agreement ("**the Assignment Agreement**") whereby Seller/Donor assigns to Buyer/Donee or to Buyer's/Donee's Regional Rail Authority, and Buyer/Donee or Buyer's/Donee's Regional Rail Authority accepts all or part of Seller's/Donor's rights and obligations under Agreement 66279, the Statutory Mortgage, and the Leases and Licenses in regard to the Property.

The Parties agree that the dollar value of the Statutory Mortgage to be assigned in the Assignment Agreement to Buyer/Donee or to Buyer's/Donee's Regional Rail Authority shall equal TWO HUNDRED AND NINTEY FOUR THOUSAND DOLLARS (\$294,000).

Seller/Donor shall file the Assignment Agreement in the Carver County Recorder's Office.

If Seller/Donor and Buyer/Donee or Buyer's/Donee's Regional Rail Authority fail to agree upon the form and substance of the Assignment Agreement at least thirty (30) business days before Closing, then this Agreement shall be deemed terminated. In the event of such termination, this Agreement shall be without any further force and effect, and without any further obligation of either Party to the other.

The Assignment Agreement shall provide that Seller/Donor assigns to Buyer/Donee, and Buyer/Donee assumes, all or part of Seller/Donor's right, title, and interest in and to the Leases and Licenses affecting the Property. Rentals and other payments under the Licenses and Leases, if any, shall be prorated between Seller/Donor and Buyer/Donee as of the Closing Date. Prior to Closing, Seller/Donor shall cancel any and all licenses if assignment is not possible.

Buyer/Donee acknowledges that the Property may be subject to other Licenses and Leases, and other third party rights that have not been disclosed by Seller/Donor to Buyer/Donee. Seller/Donor agrees to deliver to Buyer/Donee, within thirty (30) days after the Closing Date, copies of all agreements covering the Property that are disclosed by Buyer's/Donee's Limited Title Search.

If any license or lease affecting the Property is identified after the Closing Date, then Seller/Donor's rights (including, without limitation, any income) under such license or lease will be assigned to and assumed by Buyer/Donee after Closing.

Section 4. Closing.

(a) The purchase and acceptance, and sale and donation of the Property ("Close" or "Closing") shall occur at such date, place, and time as the Parties shall mutually agree, ("Closing Date").

Possession of and title to the Property shall pass to Buyer/Donee on Closing. Buyer/Donee shall have no right to possession or occupancy of or entry upon any portion of the Property, except as otherwise set forth in Section 3(c) of this Agreement, and title thereto shall be and remain vested in Seller/Donor until Closing.

(b) At Closing, Seller/Donor shall pay Seller/Donor's pro rata share of real estate taxes (whether general or special) assessed against the Property and due and payable for the year of Closing. Notwithstanding the above, if the real property taxes on the Property are assessed as part of Seller/Donor's unitary assessment in Carver County, Minnesota, then Seller/Donor will pay its unitary assessment when due and taxes will not be prorated between the Parties.

(c) At Closing, Buyer/Donee shall pay the following costs:

- (i) Agreement Sales Price;
- (ii) Buyer/Donee's pro rata share of locally assessed real estate taxes (whether general or special) assessed against the Property and due and payable for the year of Closing;
- (iii) Title charges;
- (iv) Recording fees/Transfer charges; and

(v) The Minnesota State deed tax, if any.

Section 5. Form of Deed and Donative Bill of Sale.

Upon Closing as set forth in Section 4 of this Agreement, all of Seller/Donor's right, title and interest in and to the Land shall be transferred by Seller/Donor to Buyer/Donee by a duly executed Quit Claim Deed in the form marked **Exhibit C**, attached hereto and hereby made a part hereof, and all of Seller/Donor's right, title and interest in and to all of the Personal Property thereon shall be transferred by Seller/Donor to Buyer/Donee by a duly executed Donative Bill of Sale in the form marked **Exhibit D**, attached hereto and hereby made a part hereof.

Section 6. As Is; Release and Indemnity.

Buyer/Donee acknowledges that it is entering into this Agreement on the basis of Buyer/Donee's own investigation of the physical and environmental conditions of the Property, and Buyer/Donee assumes the risk that adverse physical and environmental conditions may not have been revealed by their investigation.

Section 7. Notices, Demands, Elections, and Instruments.

All notices, demands, elections, and other instruments required or permitted to be given under this Agreement shall be in writing and personally served by either of the Parties upon the other by mail. All notices, demands, elections, and instruments given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing, unless the Parties designate in writing a different address to which notice shall be given:

Seller/Donor: HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY
701 Fourth Avenue South, Suite 400
Minneapolis, MN 55415
Telephone: (612) 348-9260

With copy to: Mr. Ben Schweigert
Assistant Hennepin County Attorney
300 South Sixth Street, Suite 2100
Minneapolis, MN 55487

Buyer/Donee: THE COUNTY OF CARVER COUNTY
Carver County Public Works
ATTN: Martin Walsh, Parks and Recreation Director
11360 U.S. Highway 212
Cologne, MN 55322

With copy to: Ms. Mary E. Shimshak
Office of the Carver County Attorney
Assistant Carver County Attorney

604 East 4th Street
Chaska, Minnesota 55318

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) business days after deposit with the United States Postal Service.

Section 8. Assignment

Buyer/Donee shall not transfer or assign any rights or obligations under this Agreement, or any interest herein, before Closing without the consent in writing of Seller/Donor and MN/DOT. Any such transfer or assignment of right or obligations under this Agreement, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and shall, at the option of Seller/Donor or MN/DOT, terminate this Agreement.

Section 9. Waiver of Breach.

A waiver by either of the Parties hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any remedy related to any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

Section 10. Time of the Essence.

Time is of the essence of this Agreement.

Section 11. Law Governing.

This Agreement shall be governed in all respects by the laws of the State of Minnesota.

Section 12. Merger.

The terms, provisions, covenants, and conditions herein contained shall merge into the Deed to be delivered by Seller/Donor to Buyer/Donee at Closing and shall not survive the Closing of escrow, except for the provisions of Sections 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, and 21.

Section 13. No Broker's Commission.

The negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the Parties without the intervention of any person that would give rise to any valid claim against either of the Parties hereto for brokerage commissions or other like payment. Each party hereto shall indemnify and hold harmless the other party against and from any and all claims for brokerage commission or other like payment arising out of the transaction contemplated by this Agreement and occasioned by the actions of such indemnifying party.

Section 14. Successors and Assigns.

Subject to the provisions of Section 8, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns.

Section 15. Seller's/Donor's Representations.

- a. At Closing, Seller/Donor shall make the representation that Seller has the power to sell, transfer, and convey all right, title and interest in and to the Property.
- b. Seller/Donor represents and warrants that:
 - (i) Seller/Donor is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code ("IRS");
 - (ii) Seller's/ Donor's United States Tax Payer Identification Number is _____; and
 - (iii) Seller shall prepare a Certification in conformance with IRS regulations under Section 1445 of the Internal Revenue Code consistent with the attached form in Exhibit F.

Section 16. Not An Offer.

The submission of this Agreement to Buyer/Donee for review or signature does not constitute an offer to sell and donate the Property to Buyer/Donee or the granting of an option or other rights with respect to the Property to Buyer/Donee. No agreement with respect to the purchase and acceptance, and sale and donation of the Property shall exist, and this writing shall have no binding force or effect, until executed and delivered by both Seller/Donor and Buyer/Donee.

Section 17. Severability.

In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction under applicable law, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

Section 18. Representation on Authority of Parties.

Each person signing this Agreement represents and warrants to the other that he or she is duly authorized and has the legal capacity to execute, acknowledge, and deliver this Agreement and other documents or instruments, incur such expenses, and take such actions, as may be necessary or appropriate to consummate the sale and donation, and the purchase and acceptance of the Property under the terms of this Agreement, in the name of its political subdivision and local government unit of the State of Minnesota. Each of the Parties represents and warrants to the other that the execution and delivery of the Agreement and the performance of that party's

obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

Section 19. Entire Agreement.

It is understood and agreed that all agreements, whether written or oral, heretofore had between the Parties hereto are merged in this Agreement, which alone fully and completely expresses the agreement of the Parties, that neither of the Parties is relying upon any statement or representation not embodied in this Agreement, made by the other, and that this Agreement may not be changed except by an instrument in writing signed by both Parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Section 20. Attorney's Fees.

If any legal action is brought by either of the Parties to enforce any provision of this Agreement, then the prevailing party shall be entitled to recover from the other party the reasonable attorney's fees and court costs in such amounts as allowed by the court.

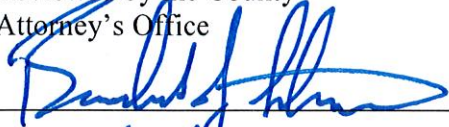
Section 21. Additional Documents.

Seller/Donor and Buyer/Donee agree to execute such additional documents as may be reasonably necessary to carry out the provisions of this Agreement.

[The remainder of this page intentionally left blank – signature pages follow]

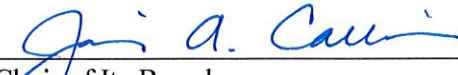
IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate as of the date first herein written.


Reviewed by the County
Attorney's Office




Date: 2/27/2019

**HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY
STATE OF MINNESOTA**

By: 
Chair of Its Board
Date: 2-28-19

ATTEST: 
Deputy/Clerk of County Board
Date: 2-28-19

By: 
Executive Director
Date: 2/27/19

By: 
Deputy Executive Director
Date: 2/27/19

Recommended for Approval:

Director, Community Works

Date: 2/27/19

**THE COUNTY OF CARVER COUNTY, a
political subdivision and local government unit
of the State of Minnesota**

Dated: 3/1/2019 | 7:35:45 AM CST, 2019

DocuSigned by:
By: Randy P. Maluchnik
Randy Maluchnik
Its: Chair, Board of Commissioners

Dated: 3/1/2019 | 5:13:56 AM PST, 2019

DocuSigned by:
By: David Henze
David Henze
Its: County Administrator

As to form and execution:

Dated: 3/1/2019 | 8:42:10 AM CST, 2019

DocuSigned by:
By: Mary E. Skimshak
Mary E. Skimshak. No. 0296958
Assistant Carver County Attorney

EXHIBIT A

(Legal Description of Property)

All that part of a variable width strip of land in Sections 34, 35, 36 and 25, Township 116, Range 23, Carver County, Minnesota, being former railroad right of way as shown on HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY PROPERTY MAP NO.'s 13, 14, 15 and 16, according to the recorded Maps thereof, said Carver County.

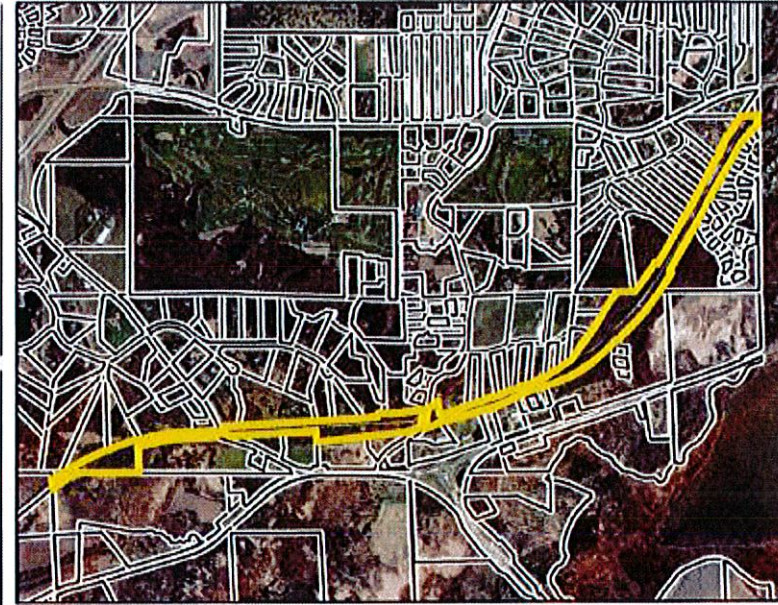
Subject to existing public roads and highways, and easements of record, if any.

Containing approximately 90 acres, more or less.

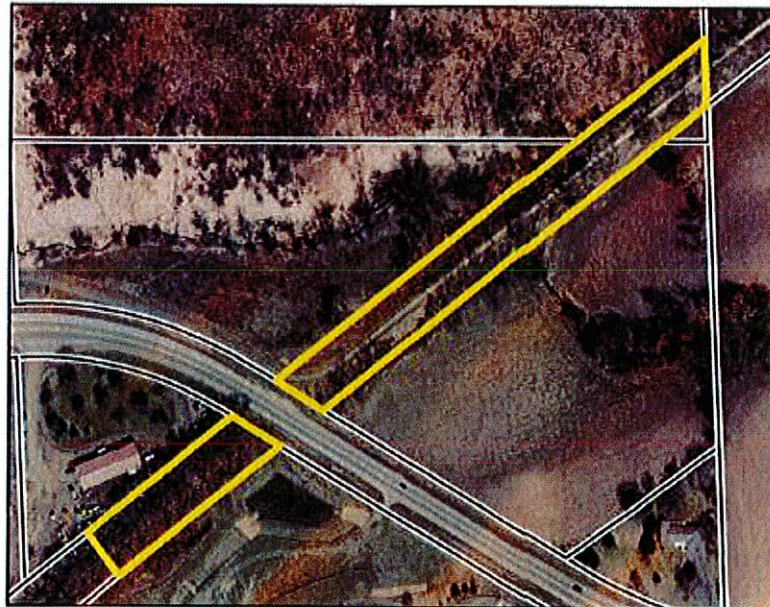
EXHIBIT B

(Property Depictions)

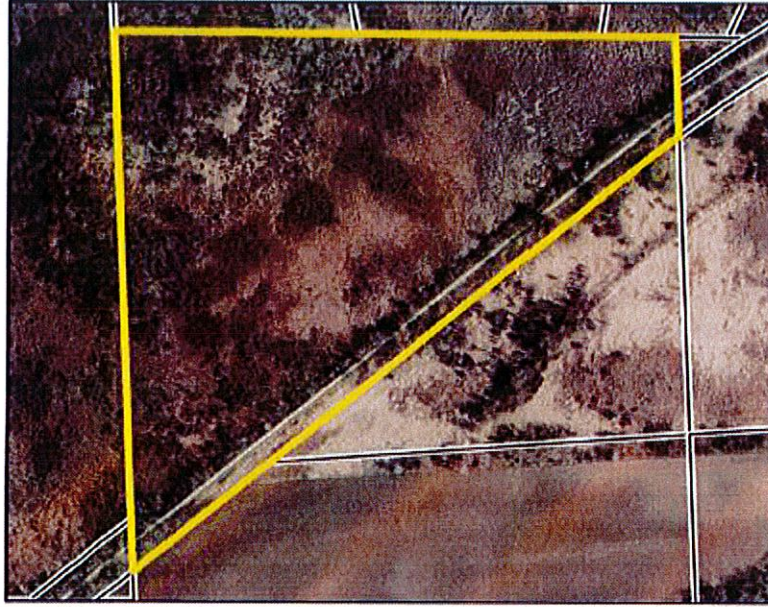
Parcel ID Number 259990600



Parcel ID Number 309990310



Parcel ID Number 259990700



Parcel ID Number 259990500



EXHIBIT C

(Quit Claim Deed)

(Top 3 inches reserved for recording date)

QUIT CLAIM DEED Minnesota Uniform Conveyancing Blanks
Business Entity to Business Entity Form 10.3.5 (2013)

oCRV number: _____

DEED TAX DUE: \$ _____ DATE: _____, 2018
(month/day/year)

FOR VALUABLE CONSIDERATION, HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY
(insert name of Grantor)

a political subdivision and local government unit under the laws of Minnesota ("Grantor"),
hereby conveys and relinquishes to the COUNTY OF CARVER
(insert name of Grantee)

a political subdivision and local government unit under the laws of Minnesota ("Grantee"),
real property in Carver County, Minnesota, legally described as follows:
See Exhibit A, attached hereto and incorporated herein.

Check here if all or part of the described real property is Registered (Torrans)
together with all hereditaments and appurtenances belonging thereto.

Check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: _____.)
- I am familiar with the property described in this Instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY
(name of Grantor)

By: _____
(signature)

Its: _____
(type of authority)

By: _____
(signature)

Its: _____
(type of authority)

State of Minnesota, County of Carver

This instrument was acknowledged before me on _____, by _____
(month/day/year) (name of authorized signer)

_____ as _____
(type of authority)

and by _____
(name of authorized signer)

as _____ of _____
(type of authority) (name of Grantor)

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
(insert name and address)

Office of the Carver County Attorney
Carver County Government Center
604 E. Fourth Street
Chaska, MN 55318

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS
INSTRUMENT SHOULD BE SENT TO:
(insert legal name and residential or business address of Grantee)

EXHIBIT D

DONATIVE BILL OF SALE

HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY, a political subdivision and government unit of the State of Minnesota, ("Donor"), does hereby donate, transfer and deliver to the COUNTY OF CARVER, a political subdivision and government unit of the State of Minnesota ("Donee"), its successors and assigns, the following described personal property, to wit:

Personal property, fixtures and improvements, including, without limitation, the culverts, ballast, bridges and appurtenances thereto ("Personal Property") located in Carver County, State of Minnesota, and located on Donor's real property extending approximately three miles east from its intersection at Chaska Boulevard (County State Aid Highway 61) in Chaska, Carver County, Minnesota, to the east boundary in Chanhassen, Carver County, Minnesota, as such Personal Property is located on the real property described in **Exhibit A** attached hereto and hereby made a part hereof.

DONOR, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING UNDERSTOOD THAT THE DONEE IS ACQUIRING THE PERSONAL PROPERTY DESCRIBED ABOVE IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS.

By its acceptance of this Donative Bill of Sale and from and after the date hereof, Donee, its successors and assigns, agrees that, in its use and maintenance of the Personal Property, it will accept and assume all liability, loss, damage, costs and expenses arising from or growing out of the existence, use or maintenance of the Personal Property, including any third party's use or maintenance of the Personal Property.

(Remainder of page intentionally left blank)
(Signatures on following page)

IN WITNESS WHEREOF, Seller/Donor and Buyer/Donee each have duly executed this instrument as of the dates listed below:

**HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY,
a political subdivision and government unit of the State of Minnesota**

Dated: _____, 2019 By: _____
Janis Callison
Chair

Dated: _____, 2019 By: _____
David Hough
Executive Director

As to form and execution:

Dated: _____, 2019 By: _____
Benedict J. Schweigert
Assistant Hennepin County Attorney

**COUNTY OF CARVER,
a political subdivision and government unit of the State of Minnesota**

Dated: _____, 2019 By: _____
Randy Maluchnik
Its: Chair, Board of Commissioners

Dated: _____, 2019 By: _____
Dave Hemze
Its: County Administrator

EXHIBIT E**LIST OF LEASES AND LICENSES
TO BE ASSIGNED**

Grantee / Tenant	Agreement Type	File Number	Use	Comments
CenturyLink	Easement	73-33043	Underground fiber optic line	Partial assignment from county line to approx. 1,000 feet east of Hwy. 101
City of Chanhassen	Permit	73-33052A	Park trail connection from Pioneer Trail	
Pentom Land Company	Permit	73-33052C	12-Inch outlet pipe	Maintenance by City of Chanhassen
Pentom Land Company	Permit	73-33052D	30-Inch outlet pipe	Maintenance by City of Chanhassen
Pentom Land Company	Permit	73-33052E	Connector trail	Maintenance by City of Chanhassen
County of Carver	Permit	73-33071	Trail permit	

EXHIBIT F

CERTIFICATION OF NON-FOREIGN STATUS

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, COUNTY OF CARVER, that no withholding is required with respect to the transfer of a U.S. real property interest by HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY, the undersigned hereby certifies the following on behalf of HENNEPIN COUNTY RAILROAD AUTHORITY:

1. HENNEPIN COUNTY RAILROAD AUTHORITY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. HENNEPIN COUNTY RAILROAD AUTHORITY is not a disregarded entity as defined in Section 1.445.2(b)(2)(iii) of the Internal Revenue Code;
3. HENNEPIN COUNTY RAILROAD AUTHORITY'S U.S. employer identification number is _____; and
4. HENNEPON COUNTY RAILROAD AUTHORITY'S office address is _____.

HENNEPIN COUNTY RAILROAD AUTHORITY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

HENNEPIN COUNTY RAILROAD AUTHORITY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY.

(Remainder of page intentionally left blank)
(Signatures on following page)

**HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY,
a political subdivision and government unit of
the State of Minnesota**

Dated: _____, 2019 By: _____

Name: _____

Title: _____

(Remainder of page intentionally left blank)

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Client:	Metropolitan Council
Property Owner:	Hennepin County Regional Railroad Authority
Intended User:	Metropolitan Council
Property Address:	Regional Parks Acquisition located at former Union Pacific RR Corridor, Chanhassen, Carver County, MN
Property Type:	Land
Inspection Date:	March 22, 2019
Effective Date of Appraisal:	March 22, 2019
Report Date:	May 06, 2019
Property Rights Appraised:	Fee Simple estate
Classification of Report and Appraisal:	Land property appraisal presented in an Appraisal report
Land Size:	90.766 Acres
Building Size:	0 SF
Rentable Area:	0 SF
Highest and Best Use as Vacant:	Park Land/Trail
Highest and Best Use as Improved:	Park Land/Trail

VALUE ESTIMATE SUMMARY		
Valuation Premise	Effective Date	Estimated Value
"AS IS"	March 22, 2019	\$5,810,000

Exposure period: 6 to 24 months