

## Metropolitan Parks and Open Space Commission

Meeting date: July 9, 2020

For the Community Development Committee meeting of July 20, 2020

For the Metropolitan Council meeting of August 12, 2020

**Subject:** Park Acquisition Opportunity Fund Grant for Crow-Hassan Park Reserve (Berning), Three Rivers Park District

**MPOSC District:** District A, Rick Theisen

**Council District, Member:** 1, Judy Johnson

**Policy/Legal Reference:** Minn. Const. art. XI, sec. 15; Minn. Stat. § 473.315; *2040 Regional Parks Policy Plan*, Chapter 4, Siting and Acquisition Policy- Strategy 1; Chapter 5, Planning Policy- Strategy 1; Chapter 8, Finance Policy- Strategy 7.

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

**Division/Department:** Community Development

### Proposed Action

That the Metropolitan Council:

1. Approve a grant of up to \$326,625 to Three Rivers Park District to acquire the 0.97-acre Berning property located at 26260 141<sup>st</sup> Avenue North in the City of Rogers for Crow-Hassan Park Reserve, contingent on Council approval of the July 2020 Special Budget Amendment, Business Item 2020-182 JT.
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 for up to \$108,875 from its share of a future Regional Parks Capital Bonding Program for costs associated with their local match.
4. Inform Three Rivers Park District that the Council does not under any circumstances represent or guarantee that the Council will grant future reimbursement and that expenditure of local funds never entitles a park agency to reimbursement.

### Background

#### *Park Acquisition Opportunity Fund (PAOF)*

The Council's Park Acquisition Opportunity Fund (PAOF) provides funding to purchase property and easements via two state sources: the Parks and Trails Legacy Fund (PTLF) and the Environment and Natural Resources Trust Fund (ENRTF). The Council contributes by matching every \$3 in state funds with \$2 in Council bonds.

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.

#### *Regional Park Implementing Agency (Agency) and Location*

Three Rivers Park District requested this grant on December 26, 2019. A copy of the Agency's request is attached to this item as Exhibit 2. Crow-Hassan Park Reserve is in the northwestern portion of Hennepin County. It is one of the most diverse restored prairies in the state, with over 840 acres restored and over 100 types of wildflowers.

### Project budget

The appraised value of the property is \$320,000, and the Seller has agreed to 100% of the appraised amount. The total project cost including legal fees, taxes, and stewardship is \$435,500, as shown below.

Table 1. Project budget

Budget item	Requested amount
Purchase price	\$320,000
Due diligence (appraisal)	\$4,300
Holding and closing costs, taxes	\$8,800
Phase I environmental site assessment	\$2,400
Stewardship (including building removal and site restoration)	\$100,000
<b>Total costs</b>	<b>\$435,500</b>
<b>Grant structure</b>	
State FY 2021 PTLF PAOF	\$195,975
Council bonds	\$130,650
<b>Grant amount not to exceed</b>	<b>\$326,625</b>
Local match	\$108,875

### Council review

Council staff conduct review of each PAOF request on a first-come-first-served basis under the following standards:

- the proposed acquisition complies with state statute and Council policy
- all necessary documentation for the acquisition is in place
- the appraisal is reasonable and appropriate

### Subject property

The subject 0.97-acre property is within the Council-approved boundary of the Crow-Hassan Park Reserve. The property contains a house built in 1963 that will be removed, and the site will be restored to its natural state using plantings of local ecotypes.

### Acquisition details

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

### 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 Council approved the master plan for Crow-Hassan Park Reserve in 1972. The proposed acquisition is consistent with the approved plan.
  - 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 will be restored to its natural state and added to the existing natural resource features of Crow-Hassan Park Reserve.
  - Finance Strategy 7 authorizes the use of PAOF as the funding mechanism for the acquisition of Regional Park lands and matching every \$3 in state funds with \$2 in Council bonds.

- All requirements of PTLF and the 2021 appropriation. This funding aligns with the goals of the 25-year, Parks and Trails Legacy Plan, strategic direction of “Acquire land – create opportunities.”

### **Thrive Lens Analysis**

This request is consistent with Thrive’s Livability and Stewardship outcomes. The Council’s investment in Crow-Hassan Park Reserve will provide additional access to outdoor recreation, enhance quality of life, and further protect natural resources.

### **Funding**

The Council will fund this grant through Council Bonds (\$130,650) and State Fiscal Year 2021 Parks and Trails Legacy Funds (\$195,975). Funds are available in the Council’s Authorized Capital Program.

Three Rivers Park District will provide a local match of \$108,875.

### *Future reimbursement consideration*

The Agency is requesting that the Council consider reimbursing its local match of \$108,875 for this acquisition at some point in the future through the Regional Parks Bonding Program. A request for “future reimbursement consideration” is the first step in a process Agencies may use to request repayment of their match amount in a future bonding cycle. The Council is under no obligation to reimburse this amount.

### **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



Berning Property

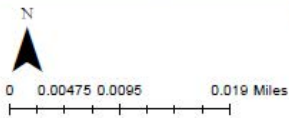
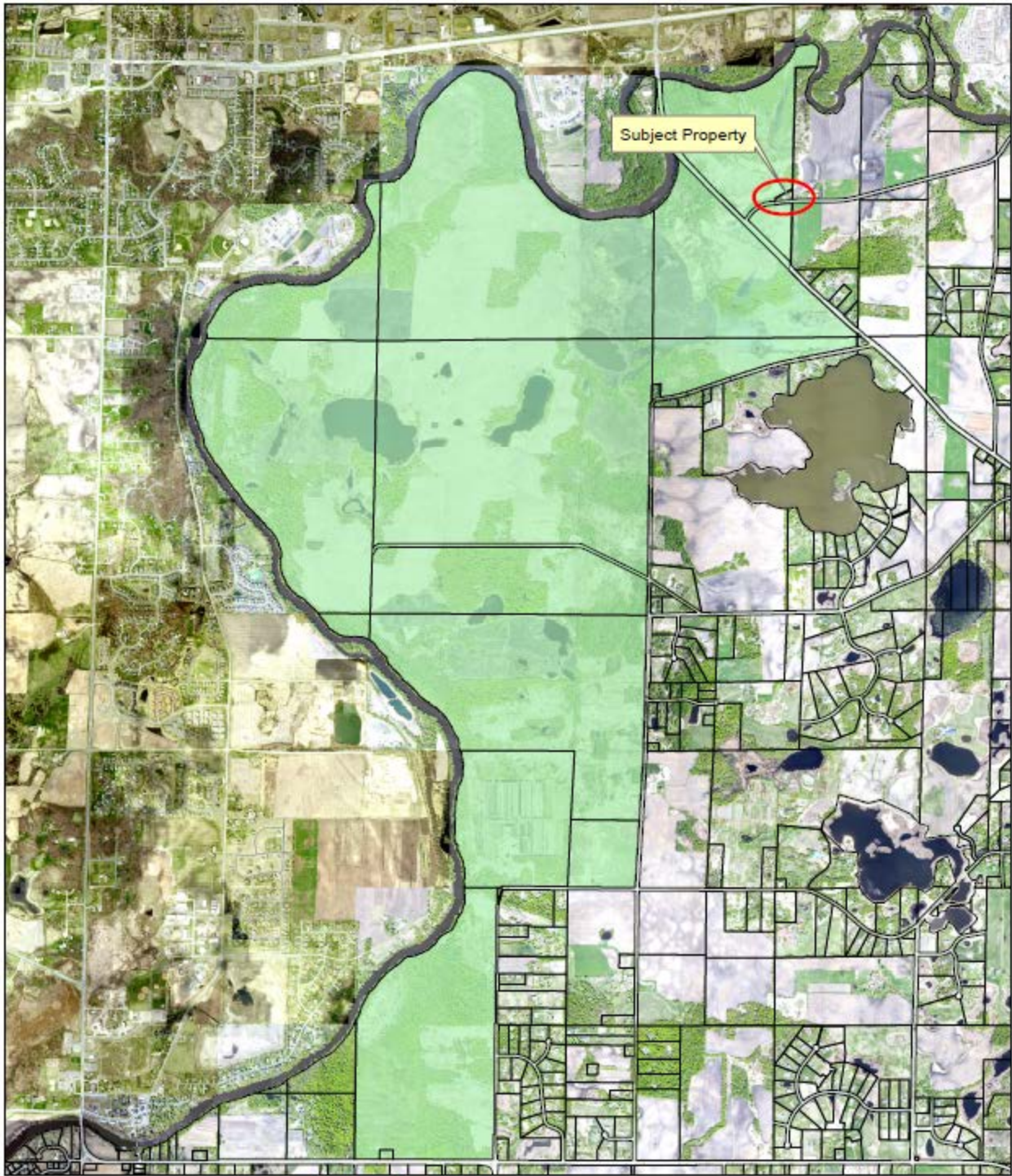


Figure 1. Map of the Berning property



Berning Property

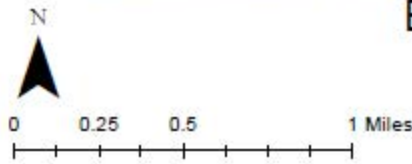


Figure 2. Map of Crow-Hassan Park Reserve with the Berning property circled in red



December 26, 2019

**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  
Crow-Hassan Park Reserve: Berning Property

Jennifer DeJournett  
District 2

Dear Emmett,

Three Rivers Park District respectfully requests a Park Acquisition Opportunity Grant for Crow-Hassan Park Reserve in the amount of approximately \$326,625 for acquisition of .97 acres located in the City of Rogers. 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

**Background Summary**

Staff have been working with the property owner since 2015 when the property owner first reached out to Three Rivers to explore selling their property to Three Rivers. Staff worked with the owner to develop a relationship, monitor the property value and walk through the acquisition process so when the property owner was ultimately ready and comfortable to sell, Three Rivers would be in a strong position to move forward with acquisition. This effort and resulting relationship has paid off as Three Rivers and the property owner successfully negotiated a purchase agreement reflective of the appraised value.

John Gunyou,  
Chair  
District 4

John Gibbs  
District 5

The additional .97 acres proposed for inclusion has comparable natural resource value to Crow-Hassan park land already owned by Three Rivers. In addition, this is one of the last remaining inholdings in Crow-Hassan Park Reserve.

Larry Blackstad  
Appointed  
At Large

*Natural Resource Summary*

The subject property is mostly open with a few trees, surrounded by Crow-Hassan Park Reserve on two sides and overlooks parkland. Upon Three Rivers ownership, the property will be returned to natural open space increasing its natural resource value and supporting the existing surround natural resources within current parkland.

Steve Antolak  
Appointed  
At Large

Cris Gears  
Superintendent

*Funding Request and Timing*

Three Rivers requests FY2020 Parks and Trails Legacy Fund and Metropolitan Council acquisition funding consideration at the Council's earliest opportunity in preparation with a closing date in September 2020.

Thank you for your continued assistance through this process.

A handwritten signature in blue ink that reads "Heather Kuikka". The signature is fluid and cursive, with the first name being more prominent.

Heather Kuikka  
Planning Administrative Specialist

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



## Exhibit 3: Grant application



Application

10851 - 2019 Parks Acquisition Opportunity Fund

13518 - Berning Acquisition - Crow-Hassan Park Reserve

Parks Grants Acquisition

Status: Submitted  
Submitted Date: 12/27/2019 2:17 PM

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### 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

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### 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

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## 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**

Crow Hassan PR-Three Rivers Park District

### Master plan

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

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

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

Crow-Hassan Development  
Concept 11/16/1972  
Name of master plan Council approval date - Format: mmddyyyy  
(Do not enter any punctuation.)

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

### Acquisition method

**Acquisition method**

Fee title

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

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

**Does this acquisition involve eminent domain?** No

### Eminent domain

*If eminent domain is being used:*

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

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

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

**Date the petition was filed.**

**Settlement date**

**Public domain**

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

**Is any portion of the property currently in the public domain?** No

**If yes, describe/name the entity and the portion of the property it owns, as well as why this public-to-public transfer is necessary.**

**Closing date**

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

**Estimated closing date** 09/10/2020

*Format: mmddyyyy (Do not enter any punctuation.)*

**Type of agreement** purchase agreement

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

**Date agreement expires** 09/30/2020

*Format: mmddyyyy (Do not enter any punctuation.)*

**Relocation costs**

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

**Does the requested grant amount include relocation costs?** No

**Appraisal**

*The appraisal must have an effective date within one year of the date the purchase agreement is signed. The appraisal **MUST** list the Metropolitan Council as an intended user, and the intended use must include "negotiation and grant reimbursement."*

**Appraisal effective date** 10/24/2019

**Appraised value** \$320,000.00

**Amount being offered the seller (net of closing and other costs)** \$320,000.00 100.0%  
% of appraised value

**Who performed the appraisal?** Patchin Messner Valuation Counselors

**Who contracted for the appraisal (i.e., was it done at arms' length)?** Three Rivers Park District

**Survey**

**Was a survey done?** No

**Quality of natural resources - is the property...**

**...undeveloped?** Fully Partially

...wooded? Fully Yes  
Partially

...shoreline? Fully Partially

**Describe the existing natural resources it contains**

**Known opposition**

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

If yes, explain:

**Encumbrances**

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

If yes, describe.

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

If yes, describe

Road right-of-way held by the City of Rogers.

**Clear title**

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

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

**Suggested funding source**

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

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

**Anticipated funding source** PTLF Legacy / Council match

*Select as many as apply*

**Funding source comments, if desired**

**Structures currently on the property**

Does the property contain ANY structures? Yes

If yes, are there any habitable structures? Yes

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

If yes, what is the plan for the structure(s)? All the structures will be torn down.

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

No. The house was built in 1963, which means more than likely there is asbestos in the house. It also is not ADA compliant; therefore, it would cost Three Rivers more to make it compliant than it would to demo the house.

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

The property contains a house with an attached single-car garage. Although the house has some minor upgrades (countertops), most of it is original to the date it was built in 1963.

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.

## Stewardship and minimal access

Describe the stewardship plan.

The short-term stewardship cost is to remove any remaining personal property and structures (house, fencing, chicken coop, shed, garage, and miscellaneous trash).

The long-term ecological restoration and management plan is to remove invasive species, if any, and add native vegetation that is consistent with what is already in Crow-Hassan Park Reserve. Vegetation will most likely come from the Park District's nursery, located in Crow-Hassan Park Reserve, which grows herbaceous and woody native plant materials using local ecotypes. The plant material will be selected based on site conditions (soil type, flood plain, etc.).

How will the stewardship implementation be funded?

With PTLF, Met Council bonds, and Three Rivers Park District.

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

If yes, how will those funds be used?

## Site Description

### Land Use History

Current land uses Residential

Select as many as apply

Previous land uses Residential

Select as many as apply

Adjacent land uses Agricultural, Park, Residential

Select as many as apply

### Inspection

Does the property contain any of the following? Wells, Septic, Potential asbestos-containing materials

Select as many as apply

## Sellers and parcels

Seller name	Parcel addresses	PID	Acres (SF for easements)	Date PA signed	Habitable structures?	MN House district	City	County	Met Council district	MPOC	Latitude	Longitude	
Norman and Doreene Berning	26260 141st Avenue North, Rogers, MN 55374	17-120-23-24-0001	0.97	12/13/2019	Yes	34A	Rogers	Hennepin	1	District A	45.203450	-93.614510	
			1										

## Local match

### Source of local match

Land and Development Betterment Fund

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

If yes, how much? \$108,875.00

## Grant agreement signatories

Full name	Title	If this is an attorney, is the signature 'for form only'?
Boe R. Carlson	Superintendent and Secretary to the Board	
Eric Quiring	General Counsel	

## Acquisition Costs

Cost Items	Amount	State funds	Metro funds	Match funds
<b>Purchase price</b>				
Negotiated purchase price	\$320,000.00	\$144,000.00	\$96,000.00	\$80,000.00
<b>Appraisal expenses</b>				
Appraisal	\$4,300.00	\$1,935.00	\$1,290.00	\$1,075.00

Appraisal review	\$0.00	\$0.00	\$0.00	\$0.00
<b>Environmental expenses</b>				
Phase I environmental site assessment	\$2,400.00	\$1,080.00	\$720.00	\$600.00
Phase II environmental site assessment	\$0.00	\$0.00	\$0.00	\$0.00
Environmental contamination remediation	\$0.00	\$0.00	\$0.00	\$0.00
<b>Holding expenses</b>				
Interest	\$0.00	\$0.00	\$0.00	\$0.00
Land stewardship	\$100,000.00	\$45,000.00	\$30,000.00	\$25,000.00
Land development	\$0.00	\$0.00	\$0.00	\$0.00
Pro-rated share of all property taxes/assessments	\$3,000.00	\$1,350.00	\$900.00	\$750.00
Legal services and closing costs	\$2,000.00	\$900.00	\$600.00	\$500.00
Property tax equivalency payment-473.341	\$1,600.00	\$720.00	\$480.00	\$400.00
Relocation costs to seller	\$0.00	\$0.00	\$0.00	\$0.00
State deed tax/conservation fee	\$1,000.00	\$450.00	\$300.00	\$250.00
Title insurance	\$900.00	\$405.00	\$270.00	\$225.00
Well disclosure statement	\$100.00	\$45.00	\$30.00	\$25.00
Other holding	\$0.00	\$0.00	\$0.00	\$0.00
<b>Other expenses</b>				
Other expenses	\$200.00	\$90.00	\$60.00	\$50.00
<b>Totals</b>	<b>\$435,500.00</b>	<b>\$195,975.00</b>	<b>\$130,650.00</b>	<b>\$108,875.00</b>

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### 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
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Total Estimated Acquisition Cost (calculated after costs above are entered)	\$435,500.00	\$195,975.00	\$130,650.00	\$108,875.00	\$326,625.00
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**Required Attachments - Acquisition**



**Exhibit 4: Board approval to purchase property**

**REQUEST FOR BOARD ACTION**

Meeting Date: 12/12/19 Business Item: Current Item Number: **6C**

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

Agenda Item: Crow-Hassan Park Reserve Inholding Acquisition

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Superintendent's Recommendation:

MOTION TO APPROVE A PURCHASE AGREEMENT IN THE AMOUNT OF \$320,000 FOR THE ACQUISITION OF 26260 141<sup>st</sup> AVENUE NORTH IN THE CITY OF ROGERS AND WITHIN CROW-HASSAN PARK RESERVE, AND TO ESTABLISH A PROJECT BUDGET IN THE AMOUNT OF \$440,000 WITH LOCAL FUNDING FROM THE LAND ACQUISITION, DEVELOPMENT AND BETTERMENT FUND.

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The following information was prepared by Kelly Grissman, Director of Planning and Heather Kuikka, Administrative Specialist - Planning.

Background:

Staff recommend entering into a purchase agreement for the acquisition of a high priority inholding located at 26260 141<sup>st</sup> Avenue North in Rogers, MN within Crow-Hassan Park Reserve and about an acre in size (**References 6C-1 and 6C-2**). The property includes a house with a tuck-under garage, detached garage, multiple sheds, fencing and gardens throughout the property. The purchase price is reflected of the appraised value of \$320,000 and the estimated total acquisition budget of \$440,000 includes funding to remove all structures and utilities from the property and return it to natural open space.

Similar to other purchase agreements, the purchase agreement includes several standard contingencies to reflect acquisition rules and processes Three Rivers is required to follow, including but not limited to, municipal consent, partial funding by the Metropolitan Council, environmental assessment and similar.

Acquisition of this inholding is consistent with both the existing master plan and draft master plan currently undergoing final revisions. In addition, this property is adjacent to the unfenced dog-off leash area which has resulted in several conflicts in the past. Acquisition of this property would eliminate these conflicts.

**Funding**

The estimated total acquisition cost of \$440,000 includes the purchase cost, appraisal, environmental assessment work, land stewardship/demolition/restoration, legal fees and title commitment/insurance. The acquisition is eligible for up to 75% acquisition reimbursement (\$330,000) from the Metropolitan Council Park Acquisition Grant Fund. However, Metropolitan Council funding is not available until the Council's 2021 fiscal year (July 2020). The purchase agreement closing date reflects this timing.

Staff recommends funding the remaining 25% local match (\$110,000) from the Land Acquisition Development and Betterment fund.

Relationship to the Vision Plan

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

- Inspire people to recreate
- Connect people to nature
- Collaborate across boundaries

Relationship to the Policy Statement

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

- Policy VII – Land Acquisition
  - A. Method of Acquisition

**Crow-Hassan Park Reserve Inholding Acquisition**

MOTION by Beard, seconded by Antolak, TO APPROVE A PURCHASE AGREEMENT IN THE AMOUNT OF \$320,000 FOR THE ACQUISITION OF 26260 141st AVENUE NORTH IN THE CITY OF ROGERS AND WITHIN CROW-HASSAN PARK RESERVE, AND TO ESTABLISH A PROJECT BUDGET IN THE AMOUNT OF \$440,000 WITH LOCAL FUNDING FROM THE LAND ACQUISITION, DEVELOPMENT AND BETTERMENT FUND.

All ayes, no nays, MOTION ADOPTED

## PURCHASE AGREEMENT

**THIS PURCHASE AGREEMENT** ("Agreement") is entered into by and between **Three Rivers Park District**, a public corporation and political subdivision of the State of Minnesota ("Buyer") and **Norman and Doreene Berning**, ("Sellers").

### RECITALS

**WHEREAS**, Buyer is a political subdivision of the State of Minnesota, whose primary duties are acquisition, development and maintenance of large parks, wildlife sanctuaries or other reservations, and means for public access to historic sites and to lakes, rivers and streams and to other natural phenomena, and to acquire, establish, operate and maintain trail systems; and

**WHEREAS**, Sellers own property located at 26260 141<sup>st</sup> Avenue North, Rogers, Minnesota, legally described on Exhibit A hereto ("Subject Property"), containing approximately 0.97 acres; and

**WHEREAS**, Sellers and Buyer wish to enter into an agreement for the conveyance of the Subject Property from Sellers to Buyer.

**NOW THEREFORE**, for and in consideration of the above premises and the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. Conveyance**. Sellers hereby agree to convey to Buyer and Buyer agrees to accept from Sellers the Subject Property together with all improvements and fixtures.

**2. Consideration**. In consideration of the conveyance, transfer and delivery by the Sellers to the Buyer of the Subject Property, the Buyer shall pay to the Sellers the sum of Three Hundred Twenty Thousand Dollars (\$320,000.00) ("Purchase Price") at Closing.

**3. Deed/Marketable Title**. Subject to performance by the Buyer, Sellers agree to execute and deliver a Warranty Deed in recordable form conveying marketable title to Subject Property subject only to the following exceptions:

- (a) Building and zoning laws, ordinances, State and Federal regulations; and
- (b) Reservation of any minerals or mineral rights to the State of Minnesota.

**4. Real Estate Taxes**. Real estate taxes due and payable in the year of Closing shall be prorated between Sellers and Buyer on a calendar year basis to the actual date of Closing. Sellers shall pay the prorated portion of the real estate taxes up to and including the date prior to the date of Closing. Buyer shall pay its prorated portion of the real estate taxes from and after the date of Closing. Real estate taxes payable in the years prior to Closing shall be paid by Sellers on or before the date of Closing. Real estate taxes payable in the years subsequent to Closing shall be paid by Buyer.

**5. Special Assessments.** Sellers shall pay on or before the date of Closing all special assessments levied or pending against the Subject Property as of the date of Closing.

**6. Prorations.** Except as otherwise provided herein, all items customarily prorated and adjusted in connection with the Closing of the sale of the Subject Property shall be prorated as of the date of Closing. It shall be assumed that the Buyer will own the property for the entire date of the Closing.

**7. Damages To Real Property.** Except for Buyer's inspection activities pursuant to Section 8(d), if there is any loss or damage to the Subject Property between the date hereof and the date of Closing, for any reason, the risk of loss shall be on the Sellers. Sellers shall notify Buyer of loss or damage to the Subject Property promptly upon such occurrence. If the Subject Property is destroyed or damaged before the Closing, this Agreement shall become null and void, at Buyer's sole option. Buyer shall have the right to terminate this Agreement within 30 days after Sellers notify Buyer of such damage. If Buyer elects to not terminate this Agreement, the proceeds of all insurance covering the Subject Property conveyed by this Agreement payable by reason of such damage or destruction shall be paid to the Buyer.

**8. Title and Documents.**

(a) Documents and Information to be provided. Within 15 days after the acceptance of this Agreement by the parties hereto, Sellers shall provide Buyer with the following:

- (i) Copies of any environmental audits or assessments of the Subject Property that are in Sellers' possession.
- (ii) Copies of any certificates, authorizations, permits, licenses and approvals which have been issued covering the Subject Property.
- (iii) Copies of any surveys that are in Sellers' possession.
- (iv) Copies of any written agreements affecting the ownership and use of the Subject Property known to Sellers.
- (v) An abstract of the Subject Property if in Sellers' possession.

(b) Title Commitment. Buyer agrees to obtain an owner's title commitment. Buyer shall pay the title commitment fee and shall pay the premium for any title insurance desired by Buyer.

(c) Review of Commitment. Buyer shall have 30 days after receipt of the title commitment within which to object to the contents. If said objections are not made in writing within such time period, Buyer shall be deemed to have waived such objections. If Buyer objects to the contents of the title documents, Sellers shall have 90 days from the date of such objections to make title marketable. If title is not made marketable within 90 days, this

Agreement shall be null and void at the sole option of Buyer and neither party shall have any further obligation under this Agreement.

(d) Inspections; Document Review. With respect to all of the above items other than the title documents, Buyer shall have 90 days after delivery of the foregoing to Buyer during which to inspect all such items. Further, Buyer may inspect the Subject Property and conduct such other and further inspections or other review as seems necessary by Buyer during such period. If such review and/or inspection by the Buyer shall be unsatisfactory to Buyer, Buyer shall notify Sellers within such time period, and this Agreement shall be null and void at the sole discretion of the Buyer. If said period should expire without notice of Buyer's intention to terminate this Agreement, then this Agreement shall be considered in full force and effect and Buyer shall be deemed to have waived any objections based upon such review and inspection. Sellers hereby grant Buyer and/or its agents the right to enter upon the Subject Property for the purpose of inspection and to prepare topological studies, planning, surveys, soil tests and other engineering studies, and environmental inspection and testing that may be deemed necessary; provided however that Buyer shall pay all costs thereof and shall protect, defend, indemnify, save and hold Sellers and Subject Property harmless from and against any and all costs, damages and liabilities arising from entry upon inspection or testing of Subject Property, including but not limited to costs, damages and liabilities arising from mechanics, materialmens and other liens filed against Subject Property in connection with work performed or material furnished by or at the direction of Buyer and also any legal fees and court costs that may be expended or incurred in defending or releasing such liens. Notwithstanding anything to the contrary herein, this indemnification shall survive termination or cancellation of this Agreement.

**9. Environmental.** To Sellers' knowledge, and except as disclosed in the reports and other documents provided to Buyer, Sellers' operations are in compliance with all applicable federal, state and local statutes, laws, rules, regulations, ordinances, orders, judicial or administrative decisions of any governmental authority or court of competent jurisdiction in effect and in each case, if applicable, as amended as of the Closing relating to (a) pollution of the environment, (b) a Release, as defined below, or threatened Release of Hazardous Materials, as defined below, or (c) the handling, storage, transport or disposal of Hazardous Materials (collectively, "Environmental Laws").

During the period of Sellers' ownership of the Subject Property, to the Sellers' knowledge, and except as disclosed in the reports and other documents provided to the Buyer (a) there has been no Release, as defined below, of any Hazardous Materials, as defined below, on the Subject Property, and (b) there have not been, and Sellers have not received any notices from any governmental authority of any underground storage tanks on the Subject Property. For purposes of this Agreement, "Release" shall mean, in violation of applicable Environmental Laws, depositing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping or placing and other similar actions into or upon any land, water or air, or otherwise entering into the environment, and "Hazardous Materials" shall mean (a) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous substances," "toxic substances," "pollutant or contaminant" or words of similar import, under applicable Environmental Laws; (b) any petroleum or petroleum products,

natural or synthetic gas, radioactive materials, polychlorinate, biphenyls, asbestos in any form that is friable, urea formaldehyde foam insulation or radon, and (c) any other chemical, material or substance, the handling, storage, transport or disposal of which is prohibited, limited or regulated by any governmental authority under applicable Environmental Laws.

Sellers have disclosed to the Buyer all reports and other documents in their possession concerning environmental matters relating to the Subject Property. To Sellers' knowledge there are no existing claims or causes of action, and there are no pending claims regarding the Subject Property against the Subject Property or Seller involving the violation of Environmental Laws, and Sellers have no such claims against third parties.

Sellers shall indemnify and hold Buyer harmless from and against any and all claims brought under Environmental Laws pertaining to conditions in existence and known to Sellers prior to conveyance to Buyer.

**10. Sellers' Warranties.** As an inducement to Buyer to enter into this Agreement, and as part of the consideration therefore, Sellers represent and warrant to and covenant with Buyer that to the best of Sellers' knowledge at the time of Closing there are no persons in possession of the property, including, but not limited to tenants, licensees, or permittees.

**11. Defaults/Right to Terminate.** In addition to the other rights to terminate this Agreement granted to each of the parties pursuant to this Agreement, either party may cancel this Agreement upon 30 day's written notice to the other party at any such time as such other party is in default of its agreements hereunder and remains in such default for 30 days following the written notice of such default.

**12. Due Authorization.** Sellers and Buyer hereby represent to the other that each has the requisite power and authority to execute this Agreement and the documents referred to herein and to perform its obligations hereunder and thereunder; and the individuals executing this Agreement and all such other documents that have a legal power, right and actual authority to bind each of the parties hereto to the terms and conditions of the Agreement and all other such documents. Further, each of the parties to this Agreement hereby represents to the other that its execution and performance of this Agreement and all other documents referred to herein shall not violate any applicable statute, ordinance, governmental restriction or regulation, or any prior restriction or agreement.

**13. Closing; Contingencies.**

- (a) Performance at Closing. Subject to satisfaction of Paragraphs 8 and 13(b) hereof, the Closing of the transaction contemplated by this Agreement shall take place at 3000 Xenium Lane North, Plymouth, MN 55441 on September 10, 2020 or at such other time as may be agreed upon between the parties.
  - (i) At the Closing Sellers shall:
    - (a) sign an Affidavit of Seller confirming the absence of judgments, mechanics liens and unrecorded interests

against the Subject Property not disclosed herein;

- (b) deliver any documents necessary to clear title in accordance with this Agreement, if any;
  - (c) sign the well disclosure statement required by Minnesota Statutes §103I.235,
  - (d) sign the warranty deed, and
  - (e) pay the deed tax.
- (ii) At the Closing, Buyer shall:
- (a) pay the title commitment fee, if not paid pursuant to paragraph 8(b);
  - (b) pay the premium for title insurance, if desired by Buyer;
  - (c) pay any and all other Closing costs including all filing fees; and
  - (d) Pay to the Sellers the Purchase Price for the conveyance, transfer and delivery of the Subject Property to the Buyer.
- (b) Contingencies. Notwithstanding the foregoing, the parties to this Agreement acknowledge that the Closing is expressly subject to the following contingencies and that following the completion of each contingency Buyer shall notify Sellers in writing of contingency satisfaction:
- (i) Buyer shall obtain consent of the City of Rogers to its acquisition of the Subject Property pursuant to Minn. Stat. §398.09(b)(1);
  - (ii) Buyer shall obtain all other consents required from governmental or other regulatory authorities;
  - (iii) Buyer shall have the right, at its sole discretion, to terminate this Agreement based on the environmental inspection findings which will occur within the 90-day inspection window or in the event any storage, dumping or release of hazardous materials, chemicals, pollution or similar occurs after the 90-day inspection window;
  - (iv) This Agreement and the obligations of Buyer hereunder are strictly contingent upon approval of this Agreement by Buyer's Board of Commissioners; and
  - (v) Approval of reimbursement to Buyer by Metropolitan Council.

Any failure to satisfy any contingency contained herein with the exception of satisfactorily completing a contingency within the agreed upon timeframes shall render this Agreement null and void and the parties shall execute any instruments necessary to cancel this Agreement.

**14. Condemnation.** In the event of the initiation of proceedings for condemnation (or sale in lieu thereof) of any portion of the Subject Property prior to Closing, Buyer shall have the right to cancel this Agreement, in which case this Agreement shall be deemed null and void and neither of the parties shall have any further obligations. Conversely, Buyer may elect to purchase Subject Property and close the transaction notwithstanding such proceedings and, if Buyer shall so elect, all awards or payments made for such portion of Subject Property by the condemning authority to which Sellers are entitled shall be paid to Buyer and Buyer shall proceed to close the transactions herein and pay the full Purchase Price to Sellers.

**15. Possession.** Sellers shall deliver possession of the Subject Property on the date of Closing.

**16. Representations and Warranties.** The obligations of the Buyer under this Purchase Agreement are contingent on the representations and warranties of Sellers contained in this Purchase Agreement which must be true as of the date of this Agreement and on the date of Closing. All representations of the parties hereto shall survive Closing and delivery of the deed.

**17. No Intent to Acquire by Condemnation.** Buyer and Sellers agree that Buyer has not indicated an intent to acquire the Subject Property through eminent domain.

**18. Time.** Time is of the essence for performance of the terms of this Agreement.

**19. Binding Effect.** The provisions of this Agreement shall inure to the benefit and shall be binding on representatives, successors and assigns of the parties hereto, provided that neither party hereto shall have the right to assign its rights or obligations hereunder without the prior consent of the other party.

**20. Waivers.** No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing. Any party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

**21. Amendment.** No amendment of this Agreement shall be effective unless set forth in writing expressing the intent to so amend and signed by both parties.

**22. Notices.** Any notices to be provided pursuant to the terms of this Agreement shall be in writing and shall be given by personal delivery or by express courier or by deposit in U.S. Certified Mail, Return Receipt Requested, postage prepaid, addressed to the Buyer or Seller at the addresses set forth below or at such other address as either party may designate in writing. The date notice is given shall be the date on which the notice is delivered, if notice is given by personal delivery, or the date notice is sent by express courier or U.S. Mail if otherwise.



If to Seller:

Norman and Doreene Berning  
26260 141<sup>st</sup> Avenue North  
Rogers, Minnesota 55374

If to Buyer:

Three Rivers Park District  
Office of the Superintendent  
c/o General Counsel  
3000 Xenium Lane North  
Plymouth, MN 55441

**23. Governing Law.** This Agreement is made and executed under and in all respects is to be governed and construed under the laws of the State of Minnesota.

**24. Survival of Covenants.** All covenants, agreements, representations and warranties contained herein shall survive delivery of the deed from Sellers to Buyer and be enforceable by Sellers or Buyer after delivery of the deed.

**25. Entire Agreement.** This written Agreement constitutes the complete agreement between the parties and supersedes any and all other oral or written agreements, negotiations, understandings, and representations between the parties regarding the Subject Property.

**26. Brokers.** No brokers are involved in this real estate transaction.


**27. Disclosures.** Sellers make the following disclosures to Buyer:

- (a) Sellers are not foreign persons for purposes of income taxation, and Sellers will provide Buyer with a FIRPTA Affidavit at Closing.
- (b) Sellers are not aware of any methamphetamine production that has occurred on the Subject Property.
- (c) Sellers are not aware of any human remains, burials or cemeteries located on the Subject Property.


**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement. The effective date of this Agreement shall be the latest date beside the signatory lines below.

**THREE RIVERS PARK DISTRICT**, a public corporation and political subdivision of the State of Minnesota

Dated: 12/12/19

By   
John Gunyou, Board Chair

Dated: 12/12/19

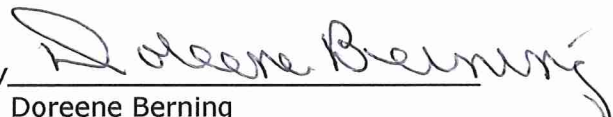
By   
Boe R. Carlson, Superintendent and Secretary to the Board

**SELLERS:**

Dated: November 12, 2019

By   
Norman Berning

Dated: November 12, 2019

By   
Doreene Berning

**EXHIBIT A**

**Legal Description of Subject Property**

COMMENCING AT THE SE CORNER OF THE SE 1/4 OF THE NW 1/4 THEN WEST 316 47/100 FEET THEN DEFLECTING 04 DEGREES 32 MINUTES LEFT 5 82/100 FEET THEN DEFLECTING 96 DEGREES 37 MINUTES RIGHT 59 04/100 FEET THEN DEFLECTING 59 DEGREES 27 MINUTES RIGHT 374 17/100 FEET TO THE EAST LINE OF THE SE 1/4 OF THE NW 1/4 THEN SOUTH TO BEGINNING, HENNEPIN COUNTY, MINNESOTA.

Property Identification Number: 17-120-23-24-0001

### SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Fee Owner:	Norman W. & Doreene G. Berning
Location:	26260 141 <sup>st</sup> Avenue North Rogers, Minnesota
Date of Valuation:	September 16, 2019
Date of Inspection:	September 16, 2019
Property Appraised:	Real Property
Rights & Interests Appraised:	Fee Simple Market Value
Zoning:	RE-5, Rural Estate 5 Acre
Guiding:	<p><u>Actual</u> 2030 Future Land Use Plan – Park/Open Space 2040 Future Land Use Plan – Park and Open Space</p> <p><u>Assumed*</u> <del>Single-Family/Low Density Residential</del></p> <p>*The existing guiding restricts the economic use of the site. Since the purpose of this appraisal is to estimate the subject’s market value, we have disregarded the current guiding, and the assumed guiding is based on the adjacent existing land uses.</p>
Property Description:	The subject consists of a 0.97-acre tract of land, net of existing right-of-way. The property is located in northwestern Hennepin County, south of the Crow River, and adjacent to the east boundary of Crow Hassan Park Reserve. The southerly portion of the site is relatively level, whereas the northerly portion is steeply sloping. Additionally, the site is partially wooded.
Description of Improvements:	<p>The property is improved with a 2,676 SF single-family home with a one-stall-wide, three-stall-deep tuck-under garage. Additionally, there is a 2.5-stall detached garage, a chicken coop, and a storage shed on the property.</p> <p>NOTE: The description of the improvements is based on Hennepin County records and an interior/exterior inspection of the property.</p>

**SUMMARY OF SALIENT FACTS AND CONCLUSIONS**

(CONTINUED)

## Highest and Best Use

As Vacant:	Rural Residential Homesite (Considering the Principle of Consistent Use)
As Improved:	Continued use as currently improved
Site Area:	42,147 SF, or 0.97 Acres
Value Conclusion:	\$320,000