

## Metropolitan Parks and Open Space Commission

Meeting date: March 3, 2022

For the Community Development Committee meeting of March 7, 2022

For the Metropolitan Council meeting of March 23, 2022

**Subject:** West Mississippi River Regional Trail, Park Acquisition Opportunity Fund (Haider), Three Rivers Park District

**MPOSC District:** District A, Monica Dillenburg

**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:** Chee Yang, Parks Planner (651-602-1449), and 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 \$262,500 to Three Rivers Park District to acquire the 1.22-acre Haider property located at 17700 Dayton River Road in the City of Dayton for the West Mississippi River Regional Trail.
2. Authorize the Community Development Director to execute the grant agreement and restrictive covenant on behalf of the Council.

### Background

#### *Regional Park Implementing Agency (Agency) and Project Request*

Three Rivers Park District requested a Park Acquisition Opportunity Fund (PAOF) grant on January 26, 2022, to fund the acquisition of a 1.22-acre property for the West Mississippi River Regional Trail. A copy of the Agency's request is attached to this item as Exhibit 2 with application details in Exhibit 3. The West Mississippi River Regional Trail when completed will span 20 miles adjacent to or near the Mississippi River in northeast Hennepin County, connecting the communities of Dayton, Champlin, Brooklyn Park and Brooklyn Center. The regional trail is also part of the National Mississippi River Trail that spans the entire length of the Mississippi River from the headwaters at Itasca State Park to the mouth in Louisiana.

#### *Subject Property*

The subject property is within the Council-approved boundary of the West Mississippi River Regional Park. The property is adjacent to the Mississippi River and contains 142 feet of shoreline. The parcel contains a house and detached garage that will be removed so the land can be restored to its natural habitat.

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

The Council's Park Acquisition Opportunity Fund (PAOF) Program provides funding to purchase property and easements via two state sources: the Parks and Trails Legacy Fund (PTLF) and the Environment and Natural Resources

Trust Fund (ENRTF). The Council contributes by matching every \$3 in state funds with \$2 in Council funds. The \$3 to \$2 match is required at the program level, not individual project level.

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

### *Project budget*

The appraised value of the property is \$260,000, and the Seller has agreed to 100% of the appraised amount. See Exhibit 4 for more information on the appraisal. The total project cost including legal fees, taxes, appraisal, environmental assessments, and stewardship is \$350,000, as shown in Table 1 below.

**Table 1. Project budget**

<b>Budget item</b>	<b>Requested amount</b>
Purchase price	\$260,000
Stewardship	\$75,000
Appraisal, legal fees, taxes, closing costs	\$12,500
Environmental assessments	\$2,500
<hr/>	
Total costs	\$350,000
<b>Grant structure</b>	
Grant amount	\$262,500
Local match	\$87,500

### *Acquisition Details*

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

### **Rationale**

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

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

This acquisition is consistent with:

- *The 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 West Mississippi River Regional Trail master plan in 2018 ([Business Item 2018-85](#)). The proposed acquisition is within the boundaries of the approved master plan.
  - Siting and Acquisition Strategy 1 prioritizes the acquisition of lands with natural resource features, access to water, and/or restoration potential for the Regional Parks System. The subject property is along the Mississippi River, contains 142 feet of shoreline, and will be restored to its natural state. The property is also located within the Mississippi River Corridor Critical Area, which is a designation that helps protect and preserve the river’s biological and ecological functions.

- 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. 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 the West Mississippi River Regional Trail will provide additional access to the river, nature, and the outdoors, enhance quality of life, and further protect natural resources.

### **Funding**

The Council will fund the 75% share with Parks and Trails Legacy Funds and Council funds. Funds are available in the Council’s Authorized Capital Program.

Three Rivers Park District will provide a local match of \$87,500.

### **Known Support / Opposition**

The Board of Three Rivers Park District approved the purchase of this property (Exhibit 5) on January 6, 2022 and executed the purchase agreement (Exhibit 6) on January 10, 2022. There is no known opposition associated with this acquisition or grant.

**Exhibit List**

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

## Exhibit 1 – Images

Figure 1. Map of West Mississippi River Regional Trail



Figure 2. Location of the Haider property along the West Mississippi River Regional Trail Dayton segment



Figure 3. Image of the Haider property





January 26, 2022

**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

Marge Beard  
District 1

RE: Trail Acquisition Opportunity Grant Fund Request  
West Mississippi River Regional Trail: Haider Property  
17700 Dayton River Road, Dayton, MN 55327  
PID: 06-120-22-11-0017

Jennifer DeJournett  
District 2

Dear Emmett,

Daniel Freeman  
Vice Chair  
District 3

Three Rivers Park District respectfully requests a Park Acquisition Opportunity Grant for West Mississippi River Regional Trail in the amount of \$262,500 for acquisition of 1.22 acres located in the City of Dayton. Please process this request and forward to the Metropolitan Parks Open Space Commission, Community Development Committee, and Metropolitan Council for consideration and approval.

John Gunyou  
Chair  
District 4

**Background Summary**

Three Rivers is pursuing acquisition of several properties along Dayton River Road in City of Dayton near Goodin Island to create a river overlook for the future West Mississippi River Regional Trail. This regional trail is proposed to follow the Mississippi River/Dayton River Road and is also part of the National Mississippi River Trail and US Bikeway 45. The entire area is within the Mississippi National River Recreation Area (MNRRA) which the National Park Service works with partners to implement and operate. Acquisition of the property supports the long-term vision of the West Mississippi River Regional Trail corridor.

John Gibbs  
District 5

*Regional Recreation Amenity*

Acquisition of this parcel, as well as several others along the Mississippi River, are critical to the long-term West Mississippi River Regional Trail vision. When complete, the regional trail will span over 20 miles adjacent to, or near, the Mississippi River through northeastern Hennepin County. The regional trail connects the communities of Dayton, Champlin, Brooklyn Park and Brooklyn Center – with the confluence of the Crow/Mississippi Rivers and the Minneapolis Grand Rounds acting as bookends.

Jesse Winkler  
Appointed  
At Large

*Natural Resource Summary*

The property totals 1.22 acres including approximately 139 feet of Mississippi River shoreline along the back half of the undeveloped portion of the property. The homestead area includes a home/garage/driveway and mowed lawn with partial tree

Boe Carlson  
Superintendent



coverage whereas the undeveloped portions of the portions of the property include smooth brome grass, mature non-native trees, river shoreline, and areas of mowed lawn.

*Funding Request*

Three Rivers requests FY2021 Parks and Trails Legacy Fund and Metropolitan Council acquisition funding consideration at the Council's earliest opportunity in preparation with a pending closing date of February 28, 2022 or March 28, 2022 if the timing is too close to the MPOSC cutoff for February's meeting.

Thank you for your continued assistance through this process.

A handwritten signature in blue ink that reads "Heather Kuikka". The signature is cursive and fluid.

Heather Kuikka  
Planning & Research Coordinator

Enclosures

C: Jonathan Vlaming, Associate Superintendent  
Kelly Grissman, Director of Planning  
Jessica Lee, Metropolitan Council

# Exhibit 3: Grant Application



Application

15205 - 2021 Park Acquisition Opportunity Fund Program

17092 - Haider Property - 17700 Dayton River Road, Dayton

Parks Grants Acquisition

Status: Submitted  
Submitted Date: 01/26/2022 8:59 AM

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## Primary Contact

**Name:\*** Ms. Heather Kuikka  
Pronouns First Name Middle Name Last Name

**Title:** Planning & Research Coordinator

**Department:**

**Email:** Heather.Kuikka@threeriversparks.org

**Address:** 3000 Xenium Lane N

**\*** Plymouth Minnesota 55441  
City State/Province Postal Code/Zip

**Phone:\*** 763-694-7649  
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:**

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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**

West Mississippi Regional Trail

**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**

West Mississippi River  
Regional Trail

04/25/2017

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** 02/28/2022

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

**Type of agreement** Purchase Agreement

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

**Date agreement expires** 03/31/2022

*Format: mmdyyy (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** 12/09/2021

**Appraised value** \$260,000.00

**Amount being offered the seller (net of closing and other costs)** \$260,000.00 100.0%  
% of appraised value

**Who performed the appraisal?** Patchin Messner and Dodd

**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?** Yes  
Fully Partially

...wooded?		Yes
	Fully	Partially
...shoreline?		Yes
	Fully	Partially

**Describe the existing natural resources it contains**

The property is partially wooded with approximately 142feet of shoreline along the Mississippi River.

**Known opposition**

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

If yes, explain:

**Encumbrances**

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

If yes, describe.

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

If yes, describe

**Clear title**

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

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

**Suggested funding source**

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

If there are habitable structures, could they be relocated? If yes, how? If no, why not? No. The house was built around 1898-1900 and does not have a typical foundation. The house is not structural sound and is leaning.

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

The house was built around 1898-1900. The house has some moderate updating, but is not structural sound, the walls are leaning and the floors are uneven. The basement is not finishable and the beams to hold up the house are not anchored to anything. The stairs are not up-to-code and the septic is non-compliant. Although habitable, it would need quite a few upgrades to bring it up to code and safer.

**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 house and garage will be deconstructed and demolished. The stairs leading down to the river are unsafe and will need to be removed as well. Once demolished, the area will be reseeded and brought back to the original state. The parcel will eventually house a portion of the West Mississippi River Regional Trail, which will bring the trail off Dayton River Road, which is an extremely busy road with trucks constantly hauling.

Three Rivers has a signed purchase agreement with the adjacent property to the east. This will bring approximately 1.25 of acres for trail users. The adjacent property is potential LAWCON property with the City of Dayton. If the National Park Service approves this, the adjacent property will have two parking spaces and a bench overlooking the river.

**How will the stewardship implementation be funded?**

Metropolitan Council funds and Three Rivers Land Acquisition Development and Betterment fund.

**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** Residential

*Select as many as apply*

**Inspection**

**Does the property contain any of the following?** Wells, Septic

*Select as many as apply*

## Sellers and parcels

Seller name	Parcel addresses	PID	Acres (SF for easements)	Date PA signed	Habitable structures?	MN House district	City	County	Met Council district	MPOSC	Latitude	Longitude	
Alexandra and Michael Haider	17700 Dayton River Road, Dayton, MN	06-120-22-11-0017	1.22	01/10/2022	Yes	34A	Dayton	Hennepin	1	A	45.235480	-93.504230	
			1										

## Local match

### Source of local match

Three Rivers Land Acquisition Development and Betterment fund.

## 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	Yes

## Acquisition Costs

Cost Items	Amount	State funds	Metro funds	Match funds
<b>Purchase price</b>				
Negotiated purchase price	\$260,000.00	\$117,000.00	\$78,000.00	\$65,000.00
<b>Appraisal expenses</b>				
Appraisal	\$3,440.00	\$1,548.00	\$1,032.00	\$860.00
Appraisal review	\$0.00	\$0.00	\$0.00	\$0.00
<b>Environmental expenses</b>				
Phase I environmental site assessment	\$2,500.00	\$1,125.00	\$750.00	\$625.00

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	\$75,000.00	\$33,750.00	\$22,500.00	\$18,750.00
Land development	\$0.00	\$0.00	\$0.00	\$0.00
Pro-rated share of all property taxes/assessments	\$2,502.40	\$1,126.08	\$750.72	\$625.60
Legal services and closing costs	\$3,500.00	\$1,575.00	\$1,050.00	\$875.00
Property tax equivalency payment- 473.341	\$1,357.60	\$610.92	\$407.28	\$339.40
Relocation costs to seller	\$0.00	\$0.00	\$0.00	\$0.00
State deed tax/conservation fee	\$1,150.00	\$517.50	\$345.00	\$287.50
Title insurance	\$500.00	\$225.00	\$150.00	\$125.00
Well disclosure statement	\$50.00	\$22.50	\$15.00	\$12.50
Other holding	\$0.00	\$0.00	\$0.00	\$0.00
<b>Other expenses</b>				
Other expenses	\$0.00	\$0.00	\$0.00	\$0.00
<b>Totals</b>	<b>\$350,000.00</b>	<b>\$157,500.00</b>	<b>\$105,000.00</b>	<b>\$87,500.00</b>

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### Total Estimated Acquisition Costs

<b>Totals</b>	<b>Total acquisition cost</b>	<b>Total paid with state funds</b>	<b>Total paid with metro funds</b>	<b>Total paid by agency</b>	<b>Total grant amount</b>
Total Estimated Acquisition Cost (calculated after costs above are entered)	\$350,000.00	\$157,500.00	\$105,000.00	\$87,500.00	\$262,500.00

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### SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Fee Owner:	Alexandra Brackenwagen and Michael Haider
Location:	17700 Dayton River Road Dayton, Minnesota
Tax Identification Number:	06-120-22-11-0017
Date of Valuation:	November 22, 2021
Date of Inspection:	November 22, 2021
Property Appraised:	Real Property (Land and Buildings)
Rights & Interests Appraised:	Fee Simple Market Value
Zoning:	A-1, Agricultural
Guiding:	Rural Estate – Dayton’s 2040 Comprehensive Plan
Property Description:	The subject of this report is a 1.22-acre parcel, net of existing right-of-way, with approximately 142 LF of frontage along the Mississippi River. The site is effectively rectangular, and located on the northeast side of Dayton River Road at 17700 Dayton River Road in Dayton, MN. Furthermore, the northeastern portion of the site along the property boundary fronts the Mississippi River, and is heavily wooded and steeply sloping. Conversely, the remainder of the site is generally level to gently sloping with light tree coverage. The subject is accessed via a paved driveway and apron in the southern portion of the property along Dayton River Road.
Description of Improvements:	The site is improved with a 1.5-story single-family residence originally built in circa 1900, with 1,218 SF of total finished area. The home contains three bedrooms and one full bathroom. In addition to the home, the subject is improved with a deck and three-car detached garage with a workshop area.  Note: The description of the improvements is based on Northstar MLS data and Hennepin County records, as well as an exterior and interior viewing of the property.

Highest and Best Use:

As Vacant

Development of a single-family residence

As Improved

Interim use as currently improved, with future development of a single-family home that maximizes use of the site.

Market Value Conclusion:

**\$260,000**

## Exhibit 5: Board Approval

### **REQUEST FOR BOARD ACTION**

Meeting Date: 01/06/22 Business Item: Current Item Number: **6A**

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

Agenda Item: West Mississippi River Regional Trail Purchase Agreement

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#### Superintendent's Recommendation:

MOTION TO APPROVE A PURCHASE AGREEMENT IN THE AMOUNT OF \$260,000 FOR THE ACQUISITION OF 17700 DAYTON RIVER ROAD LOCATED IN THE CITY OF DAYTON ALONG THE WEST MISSISSIPPI RIVER REGIONAL TRAIL AND TO ESTABLISH A PROJECT BUDGET IN THE AMOUNT OF \$350,000 WITH LOCAL FUNDING FROM THE LAND ACQUISITION DEVELOPMENT AND BETTERMENT FUND.

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The following information was prepared by Heather Kuikka, Planning and Research Coordinator.

#### Background Information:

Three Rivers staff pursued acquisition of 17700 Dayton River Road which was for sale on the open market and located directly adjacent to the property approved by the Board for acquisition at the regular December 2021 Board meeting. Similarly, acquisition of this property would create a greater opportunity to separate the future West Mississippi River Regional Trail from Dayton River Road providing a significantly more desirable and safer trail user experience.

The 1.22-acre property sits directly on the Mississippi River overlooking Goodin Island, has a residential structure, detached garage, and stairs leading down to the river and provides an opportunity to work with the adjacent parcel which Three Rivers anticipated closing on in early 2022 to better connect future trail users with the Mississippi River (**Reference 6A-1**).

Due to the property being sold on the open market, staff immediately conducted an appraisal and prepared a purchase agreement reflecting the appraised value of \$260,000 (**Reference 6A-2**). The seller has signed the purchase agreement and understands that the purchase agreement includes several standard contingencies to reflect acquisition rules and processes Three Rivers is required to follow. This includes, but not limited to, municipal consent, partial funding by the Metropolitan Council, environmental assessment and similar.

Staff are coordinating with Dayton staff to commence the formal municipal consent process following Board approval of the purchase agreement.

#### **Funding**

The estimated total acquisition cost of \$350,000 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% (\$262,500) reimbursement from the Metropolitan Council Park Acquisition Grant Fund. The remaining balance of \$87,500 would come out of the Land Acquisition Development and Betterment Fund.

Similar to other acquisitions, staff will request that the local match be eligible for future reimbursement from the Metropolitan Council’s Capital Improvement Program.

Relationship to the System Plan

The Request for Action supports the following goal(s) of the System Plan:

- Goal 1: You Belong Here
- Goal 2: Parks Matter

**DRAFT EXCERPT FROM 01/06/22 UNAPPROVED BOARD MINUTES**

Regular Board Meeting

- 4 -

January 6, 2022

**6. CURRENT BUSINESS**

**A. West Mississippi River Regional Trail Purchase Agreement**

MOTION by DeJournett, seconded by Freeman, TO APPROVE A PURCHASE AGREEMENT IN THE AMOUNT OF \$260,000 FOR THE ACQUISITION OF 17700 DAYTON RIVER ROAD LOCATED IN THE CITY OF DAYTON ALONG THE WEST MISSISSIPPI RIVER REGIONAL TRAIL AND TO ESTABLISH A PROJECT BUDGET IN THE AMOUNT OF \$350,000 WITH LOCAL FUNDING FROM THE LAND ACQUISITION DEVELOPMENT AND BETTERMENT FUND.

Beard	<u>Aye</u>	Freeman	<u>Aye</u>	Winkler	<u>Aye</u>
DeJournett	<u>Aye</u>	Gibbs	<u>Aye</u>	Gunyou, Chair	<u>Aye</u>
		Kay	<u>Aye</u>		

**MOTION ADOPTED**

## Exhibit 6: Purchase Agreement

### 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 **Alexandra Haider and Michael Haider**, ("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 17700 Dayton River Road, Dayton, Minnesota, legally described on Exhibit A hereto ("Subject Property"), containing approximately 1.22 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 Two-hundred Sixty Thousand Dollars (\$260,000) ("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 topographical 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 Seller 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, Seller's 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 Sellers' 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 Sellers involving the violation of Environmental Laws, and Seller has 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 Subject 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 or before March 31, 2022 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:
- (i) Buyer shall obtain consent of the City of Dayton 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 Seller is 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.

**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 a foreign person 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: 1/6/22

By   
John Gunyou, Board Chair

Dated: 1/6/22


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

**SELLERS:**

Dated: 1/10/2022

By   
Alexandra Halder

Dated: 1/10/2022

By   
Michael Haider

**EXHIBIT A**

**Legal Description of Subject Property**

That Part Of Govt Lot 3 Desc As Beg At A Pt On Ctr Line Of W River Rd Dist 784.67 Ft N 55  
Deg 27 Min W Along Said Ctr Line From A Pt In E

Property Identification Number: 06-120-22-11-0017