



MEMORANDUM

DATE: June 24, 2020

TO: Commissioners

FROM: Dan Duchniak, General Manager

RE: Approve purchase price of the Rempe Property

In February 2020, the City entered into an offer to purchase agreement for the Rempe Property in the City of Waukesha on E. Broadway Street to accommodate future parkland use and the construction of a booster pumping station, 2-reservoirs and a water tower. The Offer to Purchase was for the acquisition of 33.5 acres at a cost of \$500,000. The offer to purchase agreement and a map of the property are attached to this memo.

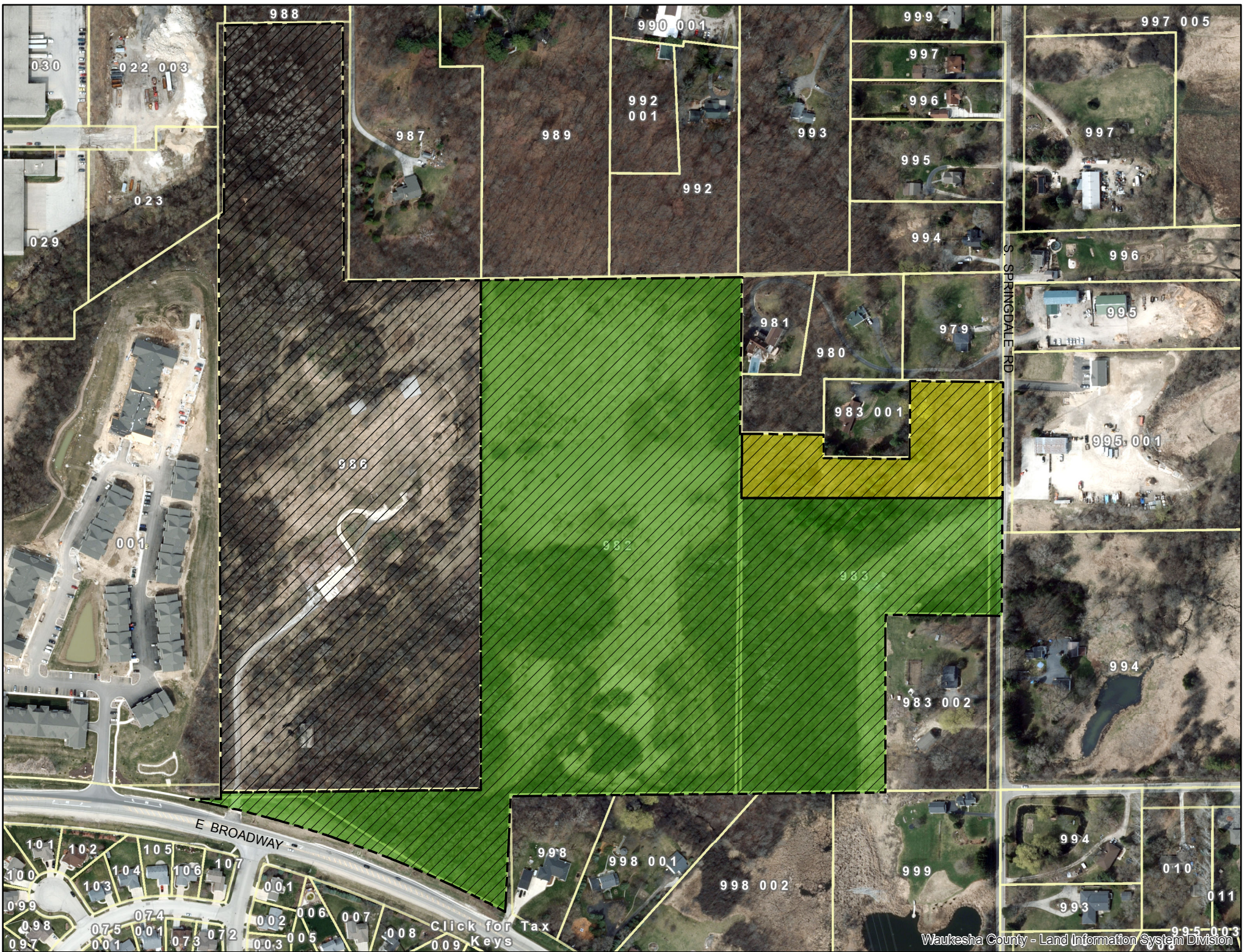
In association with the intergovernmental agreement with the City of New Berlin, the offer to purchase was executed for the relocation of the planned reservoirs and booster pumping station from Minooka Park in New Berlin to Nike Park/Rempe property in Waukesha. Design and permitting processes are ongoing and planned construction is expected in early 2021.

We are seeking approval to finalize the purchase of the Rempe Parcel at a cost of \$500,000.00 plus the additional closing costs related to the purchase. The Water Utility has \$223,000 budgeted for the purchase of land associated with Great Lake Water Supply Project. The City is working towards the determination of land associated with future park use and will reimburse the Utility for the related costs.

Upon approval from the Water Commission, we will seek final approval from the City Common Council.

Please contact me if you have any questions or concerns related to this transaction.

Recommended motion: Move to approve the final purchase price of the Rempe Property at a cost of \$500,000.00 plus closing costs.



Click for Tax
Keys

**OPTION TO PURCHASE
(Exclusive Option)**

**Parcel ID Numbers: WAKC 1300 982
 WAKC 1300 983**

After recording return to:
City Attorney
Waukesha City Hall
201 Delafield St Ste 206
Waukesha WI 53188-3646

Marsha A. Rempe, Rempe Family Revocable Trust dated August 16, 2007, Paul L. Rempe and Kathleen M. Rempe, or successors, trustees; and **James G. Moran and Maria C. "Mia" Moran**, Trustees under the James G. Moran and Maria C. "Mia" Moran Joint Revocable Living Trust, dated May 28, 1993, together referred to herein as the Owners; hereby grant to the **City of Waukesha**, referred to herein as the City, an exclusive option to purchase the following-described parcels of real property and all improvements, fixtures and appurtenances thereto in fee simple, subject to all terms and conditions of this Option. This real property is referred to herein as the Property.

Parcel WAKC 1300 982

The West One-half (1/2) of the Southeast One-quarter (1/4) of the Southeast One-quarter (1/4) of Section One (1), in Township Six (6) North, Range Nineteen (19) East, in the Town of Waukesha, County of Waukesha, State of Wisconsin. Also a strip of land One (1) rod wide on Section line running Westerly from the Southwesterly corner of the Southeast Quarter of the Southeast Quarter to the highway, called South Milwaukee Road.

AND

All that part of the Northeast One-quarter (1/4) of Section Twelve (12), in Township Six (6) North, Range Nineteen (19) East, in the Town of Waukesha, County of Waukesha, State of Wisconsin, lying and being North of the center of the highway running from Waukesha to Milwaukee, known as the South Milwaukee Road, bounded as follows: Commencing at a point where the center line of said South Milwaukee Road projected meets the North line of said Northeast 1/4 of Section 12, and intersects the same, thence running East on said North line 37 rods; thence at right angles, South to the center line of said South Milwaukee Road and thence Westerly along the center line of said road to the place of commencement.

Excepting therefrom those lands described in Certified Survey Map No. 3080 recorded on January 21, 1977 in Volume 23 of Certified Survey Maps at Pages 62 to 65, as Document No. 1016860.

Also excepting therefrom those lands conveyed in a Quit Claim Deed recorded on October 18, 1978 in Reel 329, Image 137, as Document No. 1069458 and in Quit Claim Deed recorded on November 27, 1984 in Reel 644, Image 593, as Document No. 1279130.

Parcel WAKC 1300 983

All that part of the East One-half (1/2) of the Southeast One-quarter (1/4) of the Southeast One-quarter (1/4) of Section One (1), in Township Six (6) North, Range Nineteen (19) East, in the Town of Waukesha, County of Waukesha, State of Wisconsin, described as follows, to-wit: Commencing at the Southeast corner of the said Section and thence North on Section line 1049.65 feet; thence North 89°41.5' West

458.75 feet to the East line of a certain 2.0 acre tract; thence South 0°18.5' West on said line 141.1 feet; thence North 89°41.5' West on South line of said lands 214.9 feet to West line of East 1/2 of the said Southeast 1/4 of Southeast 1/4; thence South 0°18.5' West on said line 920.0 feet more or less to South line of Section; thence Easterly on said South line 679.3 feet more or less to the point of commencement.

EXCEPTING therefrom the East 33 feet for right-of-way and also excepting therefrom premises described in Deed recorded in Volume 1205, Page 633, Document No. 769743 (a/k/a Certified Survey Map No. 1105, Document No. 749683) and also excepting premises described in Volume 1205, Page 635, Document No. 769744 (a/k/a Certified Survey Map No. 1251, Document No. 769339).

This legal description shall be corrected to conform with the legal description provided with the title insurance commitment required hereunder, if necessary.

1. **Option Is Exclusive.** During the term of this Option, and after the expiration of the Term of this Option if the City exercises its Option, the Owners may enter into a contract to sell, sell or convey the Property only to the City. Any other contract, sale or conveyance shall be null and void.
2. **Term.** The Term of this Option shall commence as of the last date of execution by the Parties, and shall expire at 11:59 p.m., September 30, 2020.
3. **Option Fee.** City shall pay to Owners an Option Fee of One Thousand Dollars (\$1000.00) within 5 days of the Owners' acceptance of this Option. The Option Fee shall be non-refundable, and shall be credited towards the Purchase Price at Closing if the City elects to exercise this Option. Owners acknowledge and agree that the Option Fee is adequate and sufficient consideration to support this Option as a binding obligation.
4. **Exercise of Option, Date of Closing.** This Option may only be exercised by the delivery by the City to Owners of a written notice of intent to exercise this Option, on or before the expiration of this Option. If City does so, then Owners shall convey the Property to the City upon City's payment of the Purchase Price and according to the terms of this Option. Closing will take place on a date mutually agreed upon by the Parties no later than 20 days after delivery to Owners of the notice of intent to exercise this Option, or on such other date agreed upon in writing by the Parties.
5. **Purchase Price.** If City elects to exercise this Option, the total Purchase Price for the Property shall be Five Hundred Thousand Dollars (\$500,000.00), and shall be paid at Closing.
6. **Amendment of Legal Description.** City acknowledges that Owners may want to exclude from the Property an approximately-three-acre portion of Parcel WAKC 1300 983 adjacent to a parcel owned by Marsha Rempe, in order to form a buffer between her parcel and the Property. City agrees that this may be done and that the legal description of the Property will be amended to account for this after a survey is done to determine the boundaries of the three-acre portion. The Purchase Price shall remain the same if the three-acre portion is excluded from the Property.
7. **Conveyance of Title.** Upon payment by the City of the Purchase Price at Closing, Owners will deliver to City a warranty deed, conveying fee simple title to the Property to the City, free and clear of all liens and encumbrances, with the exception of municipal ordinances, zoning ordinances, agreements entered into under municipal or zoning ordinances, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, general taxes levied in the year of closing, and no further exceptions.
8. **Recording.** This Option, or a recordable instrument that provides notice of the existence of this Option without disclosing the economic terms of it, may be recorded in the office of the Register of Deeds for Waukesha County, Wisconsin; and Owners agree to execute such recordable instrument.
9. **Personal Property.** No personal property is subject to this Option, and Owners will remove all personal property from the Property prior to Closing. Owners may remove any fixtures or improvements to real estate prior to closing, as well.

10. **Owners' Covenants.** Owners agree that during the term of this Option, and until Closing if City exercises its Option, they will:
 - 10.a. Not allow any toxic or hazardous materials, fill, waste, rubbish, or debris to be placed on the Property.
 - 10.b. Not lease or grant permissive use of all or any part of the Property to any third party.
 - 10.c. Not allow any use or occupancy of the Property which could give rise to claims by third parties of adverse possession, adverse use, prescriptive use or easement; and to maintain boundaries and promptly remove any encroachments upon the Property.
 - 10.d. Not grant any easements or rights-of-way across the Property.
 - 10.e. Not sell or convey all or any part of the Property.
11. **Inspection, Testing and Surveys of the Property.** Owners agree to give the City and the contractors of the City's choice complete access to the Property at any time upon reasonable notice during the term of this Option for the performance of inspections, testing, and surveys of the Property; including, without limitation, soils tests, environmental assessments, and flood plain or wetland delineations. The City agrees to level any ruts or tracks created during testing, and to restore the Property to its prior condition after all testing and inspection, to the extent reasonably possible; however, City will not restore any vegetation.
12. **Property Taxes.** Owners shall be responsible for real property taxes until the day before Closing, and property taxes shall be pro-rated as of the date of Closing and a credit against the Purchase Price shall be given to City for Owners' pro-rata portion and any taxes in arrears for prior tax years. A closing statement showing all pro-rations and credits shall be prepared for execution by the Parties at Closing.
13. **Title Insurance.** City shall obtain, at City's sole expense, title insurance or other title evidence satisfactory to City, prior to exercising its Option. By exercising this Option, City waives all objections to condition of title shown in the commitment or title evidence. The legal description on the deed to be delivered by Owners shall be corrected to conform to the legal description in the title insurance commitment or other title evidence.
14. **Property Condition, Warranty Disclaimer.** City acknowledges that it will conduct all inspections and testing of the Property before exercising its option, and will base its decision to exercise the option on the results of its tests and inspections. If City exercises its option, then it will take the Property as-is, with all faults, including all environmental conditions. Owners make no warranties of quality or condition of the Property, and disclaim all warranties with respect to the Property, expressed or implied, except for the warranty of title in section 7.
15. **Documents to Be Provided by Owners.** Owners will provide copies of the James G. Moran and Maria C. "Mia" Moran Joint Revocable Living Trust, dated May 28, 1993, and the Rempe Family Revocable Trust dated August 16, 2007, and all amendments thereto, no later than 10 days after the final execution of this Option, for verification of the trustees' authority to execute this Option and any conveyance required hereunder. No later than three days before Closing, the Owners shall provide to the City copies of the following documents: A proposed warranty deed warranting title as required by this Option, a proposed closing statement, and a Wisconsin Transfer Tax receipt.
16. **Requirement of Writing.** This Option may be modified only by the mutual, written agreement of the Parties. Any oral modifications are void and unenforceable.
17. **Eminent Domain Disclaimer.** Owners acknowledge and agree to the following:
 - 17.a. Owners approached the City first regarding the possibility of a sale of the Property to the City.

- 17.b. The City is not pursuing eminent domain or condemnation, the exercise of any police power, or any other exercise of government power in the purchase of any property from the Owners, and any transaction taking place pursuant to this Option is an arms-length transaction between willing parties, not subject to any compulsion or duress.
- 17.c. This Option is not a jurisdictional offer.
- 17.d. Owners acknowledge that they will not have the rights and protections of Chapter 32 of the Wisconsin Statutes in connection with this transaction, and waive any such rights in connection with this transaction.
- 17.e. Owners have had the advice of their own independent legal counsel of its choice throughout all negotiations preliminary to this Option, and will continue to have legal counsel during the transaction contemplated by this Option.

City of Waukesha

 Shawn N. Reilly, Mayor
 Date: _____

 Gina L. Kozlik, Clerk
 Date: _____

 Richard L. Abbott, Finance Director
 Date: _____

STATE OF WISCONSIN }
 } ss.
 WAUKESHA COUNTY }

Shawn N. Reilly, Gina L. Kozlik and Richard L. Abbott personally came before me this ____ day of _____, 2020, and are known to me to be the persons who executed this instrument in the indicated capacities and acknowledged the same.

 Brian E. Running, Notary Public, Waukesha County, Wisconsin
 My commission is permanent.

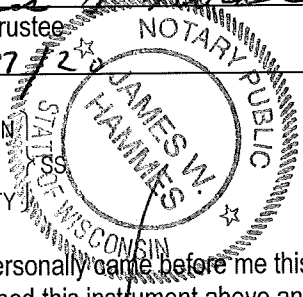
James G. Moran and Maria C. "Mia" Moran Joint Revocable Living Trust, dated May 28, 1993

James G. Moran
James G. Moran, Trustee
Date: 2/7/20

Maria C. Moran
Maria C. "Mia" Moran, Trustee
Date: 2/7/20

STATE OF WISCONSIN

Waukesha COUNTY

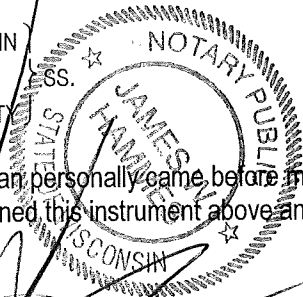


James G. Moran personally came before me this 7th day of February, 2020, and is known to me to be the person who signed this instrument above and acknowledged the same.

James W. Hammes, Notary Public
Waukesha County, Wisconsin
My commission expires (is permanent)

STATE OF WISCONSIN

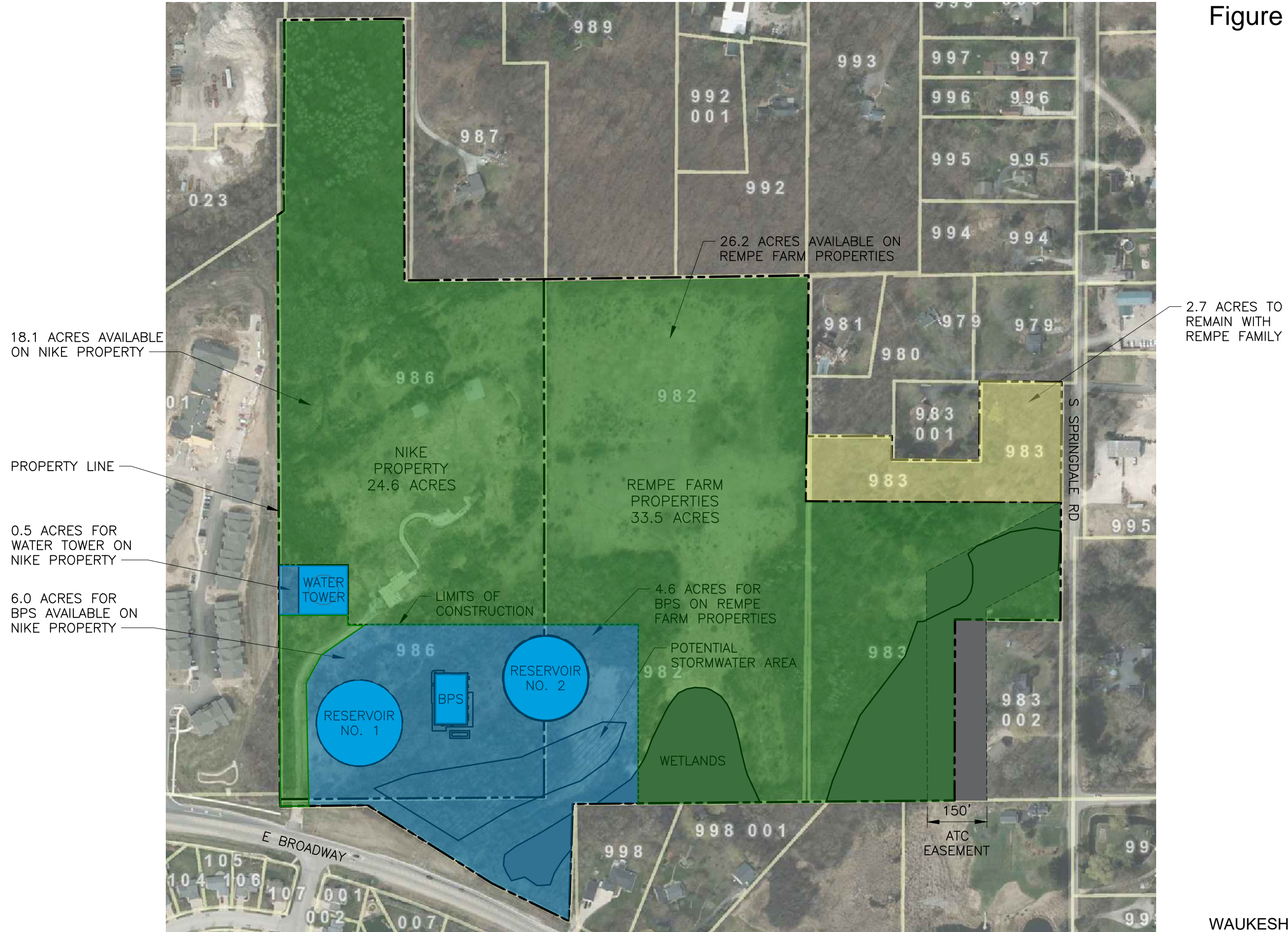
Waukesha COUNTY



Maria C. "Mia" Moran personally came before me this 7th day of February, 2020, and is known to me to be the person who signed this instrument above and acknowledged the same.

James W. Hammes, Notary Public
Waukesha County, Wisconsin
My commission expires (is permanent)

Figure 1



18.1 ACRES AVAILABLE ON NIKE PROPERTY

PROPERTY LINE

0.5 ACRES FOR WATER TOWER ON NIKE PROPERTY

6.0 ACRES FOR BPS AVAILABLE ON NIKE PROPERTY

26.2 ACRES AVAILABLE ON REMPE FARM PROPERTIES

2.7 ACRES TO REMAIN WITH REMPE FAMILY

WATER TOWER

LIMITS OF CONSTRUCTION

4.6 ACRES FOR BPS ON REMPE FARM PROPERTIES

POTENTIAL STORMWATER AREA

WETLANDS

150'
ATC EASEMENT

G:\15310-WAUKESHA GREAT LAKES WATER SUPPLY PM-CM\21 CADD\21.03 RPT FIGURES\01 - PUMPING STATIONS\CONTRACT PACKAGE 3 - BPS\BPS-REMPE-NIKE SITE 2020\02\26 10:19 AM ROMAN, OSCAR