



WILLMAR CITY COUNCIL MEETING
MONDAY, MARCH 11, 2024 @ 6:00 PM
WILLMAR MUNICIPAL UTILITIES
700 LITCHFIELD AVE SW
WILLMAR, MN 56201

AGENDA

1. Call Meeting to Order
2. Roll Call
3. Pledge of Allegiance
4. Proposed Additions or Deletions to Agenda
5. Regular Business
 - A. Consider a Resolution approving the Transition of Operations and Conveyance of Willmar Care Center Real Estate to CURA
 - B. CURA Update and Discussion
 - C. Connect Willmar Initiative Update
6. Adjourn



City Council Action Request

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|------------------------------|--|--------------------------------|------------------------------------|
| Council Meeting Date: | March 11, 2024 | Agenda Item Number: | 5.A. |
| Agenda Section: | Regular Business | Originating Department: | Administration |
| Resolution: | Yes | Prepared By: | Kyle Box, City Operations Director |
| Ordinance: | No | Presented By: | Robert Scott, City Attorney |
| Item: | Consider a Resolution approving the Transition of Operations and Conveyance of Willmar Care Center Real Estate to CURA | | |

RECOMMENDED ACTION:

That the Council Approve the Resolution for the Transition of Operations and Conveyance of Willmar Care Center Real Estate to CURA

OVERVIEW:

Through an operating lease agreement made between the City of Willmar and Carris, a subsidiary of Centra Care Health Systems, the City leases the real estate and buildings of the Hospital and Care Center to Carris under the Operating Lease Agreement and subject to the terms of the Transaction Documents.

After careful consideration and discussions with potential partners, CentraCare has determined that it is in the best interests of CentraCare, Carris, their patients, residents, and communities served to transition the ownership and operations of the Care Center to Cura, effective in spring 2024, and that Centra Care, through Carris, would continue to own and operate the Hospital pursuant to the Operating Lease.

The City has determined that it will be most expedient to achieve the transfer of control or ownership of the Care Center real property to Cura in furtherance of the Cura Transition by amending the Operating Lease Agreement and all other Transaction Documents to remove the Care Center from the Leased Assets, as defined in the Transaction Documents, and for the City to enter into a relationship directly with Cura or a subsidiary of Cura for purposes of leasing and/or transferring the Care Center real property to Cura.

BUDGETARY/FISCAL ISSUES:

ALTERNATIVES TO CONSIDER:

ATTACHMENTS:

1. City of Willmar Resolutions re Cura SNF Transaction

**CITY OF WILLMAR
RESOLUTION NO. 2024-029**

**A RESOLUTION APPROVING THE TRANSITION OF OPERATIONS, AND
CONVEYANCE OF WILLMAR CARE CENTER REAL ESTATE TO CURA**

Motion By: _____ Second By: _____

WHEREAS, the City of Willmar (the “**City**”) is a party to an Operating Lease Agreement (“**Operating Lease**”), Affiliation Agreement, and ancillary documents dated December 31, 2017 with Carris LLC f/k/a Carris Health, LLC (“**Carris**”), a subsidiary of CentraCare Health System (“**CentraCare**”), a Minnesota nonprofit corporation and organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”), pursuant to which the City engaged CentraCare, through Carris, to operate Rice Memorial Hospital (the “**Hospital**”), Willmar Care Center and Therapy Suites (the “**Care Center**”), and their related facilities and operations (collectively, the “**Transaction Documents**”);

WHEREAS, the City leases the real estate and buildings of the Hospital and Care Center to Carris pursuant to the Operating Lease Agreement and subject to the terms of the Transaction Documents;

WHEREAS, after careful consideration of and discussions with potential partners, CentraCare has determined that it is in the best interests of CentraCare, Carris, their patients, residents, and communities served to transition the ownership and operations of the Care Center to Cura, a Minnesota nonprofit corporation and organization described in Code Section 501(c)(3), to be effective in spring 2024 (the “**Cura Transition**”), and that CentraCare through Carris would continue to own and operate the Hospital pursuant to the Operating Lease;

WHEREAS, the City has determined that it will be most expedient to achieve the transfer of control or ownership of the Care Center real property to Cura in furtherance of the Cura Transition by amending the Operating Lease Agreement and all other Transaction Documents to remove the Care Center from the Leased Assets, as defined in the Transaction Documents, and for the City to enter into a relationship directly with Cura or a subsidiary of Cura for purposes of leasing and/or transferring the Care Center real property to Cura.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Willmar, a municipal corporation of the State of Minnesota, as follows:

1. The City Council hereby acknowledges and affirms its support for the Cura Transition.
2. The City Council hereby approves the transition of the Care Center real property to Cura under the terms of the purchase agreement between the City and Cura, with the

goal of such agreement being effective concurrent with the effective date of the Cura Transition.

3. The City Council hereby approves amending the Operating Lease Agreement and all other Transaction Documents to remove the Care Center from the Leased Assets and to otherwise release CentraCare, Carris, and their affiliates from any obligations with respect to the Care Center as of the effective date of the City's conveyance of the Care Center real estate to Cura.
4. If, upon advice of legal counsel to the City, the City may facilitate the Cura Transition's closing on the targeted effective date by providing for an interim arrangement such as sublease of the Care Center from CentraCare to Cura, the City hereby approves and authorizes such interim arrangement, with the goal that the ultimate legal structure involve a leasing or sale relationship for the Care Center directly as between the City and Cura.
5. The City Council hereby authorizes and directs the City Administrator and City Attorney to take all actions necessary to effectuate the foregoing resolutions, including but not limited to negotiation and execution of amendments to the Operating Lease Agreement and Transaction Documents, negotiation and execution of agreements with Cura, preparation of an ordinance authorizing the conveyance of the Care Center real estate to Cura for introduction and consideration by the City Council, and all other documents, actions, filings, or other things that may be necessary or reasonably required to effectuate the foregoing resolutions.
6. The City Council's approval of the Cura Transition contained herein is conditioned upon the amendment of the Operating Lease Agreement referenced in Paragraph 3 above also removing the Rice Home Medical real estate listed on Exhibit A hereto from the Leased Assets and to otherwise release CentraCare, Carris, and their affiliates from any obligations with respect to the Rice Home Medical facilities as of the effective date of the Cura Transition.

PASSED by the City Council of the City of Willmar on this ___ day of _____, 2024.

ATTEST

City Clerk

Mayor

EXHIBIT A
Rice Home Medical Real Estate

Facilities Owned by Rice Home Medical, LLC:

1. **1020 East Bridge St**
Redwood Falls, MN 56283
Parcel Number: 88-106-2130

LOTS SEVEN (7) AND EIGHT (8) OF AUDITOR'S SUBDIVISION NUMBER ONE (1) OF THE NORTHWEST FRACTIONAL QUARTER (NW FR1/4) OF SECTION SIX (6) TOWNSHIP ONE HUNDRED TWELVE (112) NORTH OF RANGE THIRTY-FIVE (35) WEST OF THE FIFTH PRINCIPAL MERIDIAN, ACCORDING TO THE RECORDED PLAT THEREOF, SUBJECT TO HIGHWAY EASEMENTS.
AND
COMMENCING AT THE SOUTHWEST CORNER OF LOT NUMBER SIX (6) OF AUDITOR'S SUBDIVISION NUMBER ONE (1) OF THE NORTHWEST FRACTIONAL QUARTER (NW FR1/4) OF SECTION SIX (6) TOWNSHIP ONE HUNDRED TWELVE (112) NORTH OF RANGE THIRTY-FIVE (35) WEST, ACCORDING TO THE RECORDED PLAT THEREOF, THENCE RUNNING EAST A DISTANCE OF FORTY (40) FEET, THENCE AT RIGHT ANGLES NORTH A DISTANCE OF FORTY (40) FEET, THENCE AT RIGHT ANGLES WEST A DISTANCE OF FORTY (40) FEET, THENCE AT RIGHT ANGLES SOUTH A DISTANCE OF FORTY (40) FEET TO THE PLACE OF BEGINNING, SAID TRACT BEING PART OF AUDITOR'S LOT SIX (6) AFORESAID.

2. **1033 19th Ave SW**
Willmar, MN 56201
Parcel Number: 95-378-0010

Lot 1, Block 1, Hughes Addition, Kandiyohi County, Minnesota.



City Council Action Request

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|------------------------------|----------------------------|--------------------------------|---|
| Council Meeting Date: | March 11, 2024 | Agenda Item Number: | 5.B. |
| Agenda Section: | Regular Business | Originating Department: | Planning and Development |
| Resolution: | No | Prepared By: | Kyle Box, City Operations Director |
| Ordinance: | No | Presented By: | Leslie Valiant, City Administrator, Christopher Corbett, Planning and Development Director |
| Item: | CURA Update and Discussion | | |

RECOMMENDED ACTION:

OVERVIEW:

Since the Fall of 2023, the City of Willmar and the Kandiyohi County & City of Willmar Economic Development Commission (EDC) have been working with Cura, a Paynesville-based, non-profit organization that owns, acquired, and has developed about 1,200 housing units for seniors in Minnesota. They are responsive to community needs, and they retain ownership of their facilities. Cura takes pride in the construction and maintenance of their buildings. They want to create safe and affordable housing options for seniors.

The proposed site is on the south side of Willmar Avenue and west of the CentraCare Care Center. They see an opportunity to directly benefit by being located proximate to the existing skilled care facility, especially in relation to rehabilitation services and the potential for other shared services. Cura is proposing a three-level facility that will include heated parking at grade with access off of Willmar Avenue. Under an Early Access Agreement, they have already undertaken soil borings of the site. Cura likes the site and the nearby municipal trails. They are open to partnering with the City’s Park & Recreation Department on programming.

BUDGETARY/FISCAL ISSUES:

The purchase price for the 5.54-acre site is \$150,000. In addition, Cura would be paying a Park Dedication Fee (7% of the land value) that would be an estimated \$10,500; and they would cost share with the City of Willmar on stormwater improvements required for the project.

ALTERNATIVES TO CONSIDER:

ATTACHMENTS:

1. WMU - Swansson Field South Well Field Memo
2. 2024-023 Approving Commercial Property Purchase Agreement with CURA
3. Willmar-Cura Senior Living - purchase agreement for cc approval)
4. Ordinance authorizing sale to CURA 021424

Willmar Planning Commission Meeting – March 6, 2024

Subject: Swansson Field South Property - Well Field

Willmar Municipal Utilities would like to inform the Planning Commission and the City of Willmar of one of the intended uses of the Swansson Field South property. That use is to provide a source of water to the city water.

Willmar Municipal Utilities (WMU) supports development and growth within the City, however WMU understands the city has multiple projects planned for Swansson Field South that could compromise the use of the property for well fields

WMU has invested significant resources to identify quality water sources for the city with the goal of meeting the current and future water needs of the community. Present water treatment plants have been strategically placed based on water resource availability.

There are (3) areas identified as sources of ground water in volumes to serve the City on a municipal level.

- NE Well Field (Lakeland Drive)
- North Pump Station/Hedin Park Area (Radio Station Road/College Road)
 - To be noted that the Hedin Park area is for future use and undeveloped, it would require the construction of a new water treatment plant and storage facility.
- SW Well Fields (North and South of Willmar Avenue)

The Swansson Field South provides for future wells that will be required as the community grows and has been preserved for water supply. Repurposing the property and utilizing it for an apartment along with a storm water pond minimizes or could even eliminate the ability for construction of future wells. If Phase 2 stormwater pond is constructed on that property, great care must be taken in the design of the stormwater pond to not compromise the aquifer.

WMU's goal is to preserve the current and future aquifers/well fields and this is accomplished by protecting the land use within the identified well fields.

- A land use agreement exists between the City and WMU for the well field/ball fields north of Willmar Avenue owned by WMU and the Hedin Park area owned by the City. This agreement has guided how these properties have been developed and maintained for many years.
- It is the intention of WMU to partner with the City to formally draft a land use agreement for the City owned well field/recreational property south of Willmar Avenue.

In closing, it is the position of Willmar Municipal Utilities, and in the best interest of the City of Willmar to maintain and preserve the Swansson Field South area for current and future water supply for the City of Willmar. Further, WMU needs to maintain land use that protects the water quality of the aquifers and minimizes potential contamination.

Sincerely,

WILLMAR MUNICIPAL UTILITIES

John Harren, General Manager

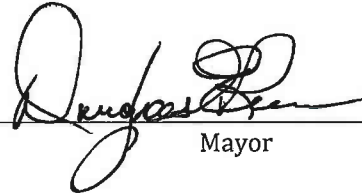
Resolution No. 2024-023

A RESOLUTION APPROVING THE COMMERCIAL PROPERTY PURCHASE AGREEMENT WITH CURA

Motion By: Asmus Second By: Davis

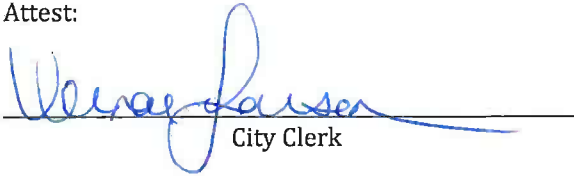
BE IT RESOLVED by the City Council of the City of Willmar, a Municipal Corporation of the State of Minnesota that the Commercial Property Purchase Agreement with CURA is accepted and approved, and be it further resolved that the Mayor and City Administrator of the City of Willmar are hereby authorized to execute a version thereof that is substantially consistent with the version appended to this resolution.

Dated this 20th day of February, 2024



Mayor

Attest:



City Clerk

COMMERCIAL PROPERTY PURCHASE AGREEMENT

This Commercial Property Purchase Agreement (this “Agreement”) is made this _____ day of _____, 2024 (“Effective Date”), by and between CURA, a non-profit corporation organized under the laws of the State of Minnesota, hereinafter referred to as “Buyer”, and the City of Willmar, a municipal corporation under the laws of Minnesota, hereinafter referred to as “Seller.”

RECITALS

1. Seller is the owner of certain real estate located in the City of Willmar, Kandiyohi County, Minnesota, (PID 95-921-5690) (the “Land”), together with all improvements thereon. Seller intends to subdivide the Land, such that a parcel approximately 5.54 acres in size as legally described on the attached Exhibit A and depicted on the attached Exhibit B (the “Property”) is created.
2. Buyer desires to acquire from Seller the entirety of the Property by voluntary sale for purposes of developing the Property by constructing and operating thereon a senior rental housing and assisted living facility (the “Project”; also the “Intended Use”).
3. Seller is willing to sell its interest in the Property “as is” without making any representations or warranties as to the condition of the Property or its suitability to Buyer’s purposes.

AGREEMENT

In consideration of the mutual covenants and agreements of the parties hereto contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Offer/Acceptance. Buyer agrees to purchase and Seller agrees to sell the Property under the terms and conditions set forth in this Agreement.
2. Purchase Price. The purchase price for the Property shall be One Hundred and Fifty Thousand and 00/100 Dollars (\$150,000.00) for the approximately 5.54 acres comprising the Property (“Purchase Price”), payable as follows:
 - a. Five Thousand Dollars (\$5,000.00) as earnest money (“Earnest Money”) will be delivered to [INSERT name of Title Company and contact at company] (the “Title Company”) within five (5) business days after the Effective Date. All Earnest Money shall be held by the Title Company and shall be returned to Buyer if Buyer terminates this Agreement at Buyer’s election as permitted herein, or be credited against the Purchase Price at Closing; and

- b. The balance, in immediately available funds, is to be paid on the Closing Date, subject to any adjustments, prorations, or credits under this Agreement.
 - c. The Parties agree that the Purchase Price may be adjusted at the Closing to account for the subdivision of the Property following the Subdivision protocols as set forth in Section 8(a)(vi) of this Agreement.
3. Conveyance; No Representations or Warranties. Seller agrees to quit claim the Property to Buyer on the Closing Date using a quit claim deed without making any representations or warranties about the condition of the Property, and Buyer agrees to accept the Property “as is,” subject to the terms and conditions herein contained.
4. Seller’s Reserved Interests; Restrictions and Covenants. Seller’s conveyance of the Property to Buyer shall be subject to the following interests reserved to the Seller and restrictions and covenants:
- a. Option to Repurchase. Seller and its successors and assigns shall retain a conditional option to repurchase the Property valid for a period of three (3) years from and after the Closing Date for an amount equivalent to the Purchase Price. Seller’s option shall only vest upon Buyer’s failure to commence construction of a senior rental housing and assisted living facility on the Property within two (2) years after the Closing Date. For purposes of this section, construction is considered to be commenced upon the beginning of physical improvements beyond grading. Seller may, in its sole discretion and judgment, at any time after the vesting of such option and before the earlier of (i) Buyer’s commencement of construction on the Property, or (ii) the expiration of Seller’s option, exercise the option to repurchase as provided herein. Upon the expiration of Seller’s reserved option to repurchase as provided herein, on the request of Buyer or its successors, Seller agrees to provide evidence to Buyer, or its successors, that the option to repurchase has expired, which obligation shall survive Closing.
 - b. Permanent Easements Reserved to Seller. Seller and its successor and assigns shall retain, for the use and benefit of the public, certain permanent easements on the Property to be depicted on the final plat to be recorded prior to Closing pursuant to Section 8.a.vi below and/or reserved on the Seller’s quit claim deed, as follows:
 - i. A permanent easement, 70 feet in width, for utility, road right-of-way, drainage and trail purposes, over, under and across that portion of the eastern portion of the Property on which an existing public trail is situated;

- ii. A permanent easement, 25 feet by 25 feet, for utility purposes, over, under and across that portion of the Property on which an existing monitoring well is located, and the right of ingress and egress thereto;
- iii. A permanent easement, 25 feet in width, for utility and drainage purposes, over, under and across the ten feet in width along the entire perimeter of the Property; and
- iv. A right of flight for the passage of aircraft in the airspace above the surface to the Property. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Willmar Municipal Airport.

c. Restrictive Covenants.

- i. Buyer, on behalf of itself and its successors and assigns, shall not engage in any activities on the Property that would interfere with or be a hazard to the flight of aircraft over such land or to and from the Willmar Municipal Airport or interfere with air navigation and communication facilities serving such airport.
- ii. Buyer, on behalf of itself and its successors and assigns, shall not erect structures or allow natural objects to grow on the Property that would constitute an obstruction to air navigation as defined in Federal Aviation Regulations, Part 77.
- iii. Buyer, on behalf of itself and its successors and assigns, further agrees that they will not use or permit or suffer use of the Property herein conveyed in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft.
- iv. Buyer, on behalf of itself and its successors and assigns, further agrees to comply with Notice requirements contained in Federal Aviation Regulations Part 77, Subpart B.

5. Closing Date. The closing shall take place through an escrow type closing using the Title Company as the closing agent, or at such other place as may be agreed to mutually by the parties, on a date mutually agreed to by the parties, but no later than thirty (30) days after the Inspection/Due Diligence Period described in Section 13 has expired or is waived in writing by Buyer, subject to extension for title curative matters pursuant to Section 10 (the "Closing Date"). Seller agrees to deliver possession of the Property to Buyer on the Closing Date in the same condition as the same existed on the Effective Date.

6. Seller's Closing Documents. On the Closing Date, Seller shall deliver to Buyer the following:

- a. Quit Claim Deed. A duly executed quit claim deed, conveying the entirety of Seller's interest in the Property, subject to Seller's reserved interests and the restrictions and covenants as listed in Section 4 herein, to Buyer.
 - b. Seller's Affidavits. Seller shall provide a standard owner's affidavit and/or indemnity which may be reasonably required by the Title Company to issue an owner's policy of title insurance conforming to the requirements of Section 10 of this Agreement.
 - c. Well Certificate. If there are wells on the Property, a Well Certificate in the form required by Minn. Stat. § 103I.
 - d. Other Affidavits. Any other affidavits or certificates that may be required under Minn. Stat. § 116.48, Subd. 6, or Sect. 115B.16 or other provisions of law.
 - e. Abstract. The abstract of title or the owner's duplicate certificate of title for the Property, if the same is in the Seller's possession.
 - f. Subdivision. Evidence that the Property has been legally subdivided in accordance with the Subdivision Ordinance of the City of Willmar.
 - g. Other. Such other documents as may reasonably be required to transfer fee title to the Property to Buyer and to enable the Title Company to provide the Title Policy as required by this Agreement.
7. Buyer's Closing Obligations. On the Closing Date, Buyer will deliver to Seller the Purchase Price subject to any adjustment, prorations and credits (less the Earnest Money previously paid to Seller and subject to the prorations set forth below), in immediately available funds.
8. Contingencies.
- a. Buyer's Contingencies. The obligation of the Buyer to perform under this Purchase Agreement is contingent upon the timely occurrence or satisfaction of each of the following conditions:
 - i. On the Closing Date, title to the Property shall be acceptable to Buyer in accordance with the provisions of Section 10 and the Title Company has unconditionally agreed to issue the Title Policy.
 - ii. The Inspection/Due Diligence Period described in Section 13, shall have expired without Buyer's termination of the Purchase Agreement.

- iii. Buyer has obtained financing or otherwise obtained funds sufficient to enable it to pay the Purchase Price.
- iv. Seller shall have performed all of its obligations required to be performed by Seller under this Agreement as and when required under this Agreement.
- v. No Material Event (as herein defined) shall have occurred. For purposes hereof, the term “Material Event” shall mean and include any of the following that has occurred after the expiration of the Inspection/Due Diligence Period: (w) any material change in the condition of such Property including, without limitation, the environmental condition thereof, (x) any amendment to, or enactment of any new, law, rule, regulation or ordinance, or issuance of any judicial or other legal imposition that would materially affect the zoning, use, occupancy or operation of such Property or Buyer’s proposed development thereof, (y) the institution or issuance by any applicable governmental authority having jurisdiction of notice of any pending or proposed moratorium with respect to the Property or any portion thereof that would materially affect Buyer’s proposed development or use of the Property, and (z) the issuance by any applicable governmental authority having jurisdiction of any notice of any violation of law, or institution of any litigation, suit or proceeding against the Property, any part thereof, or Seller which materially affects Buyer’s proposed development or use of the Property.
- vi. The Property will have been subdivided from the Land, it being agreed by the parties that a sale of the Property will require the Seller to subdivide the Property from the existing parcels of Land and to effect the issuance of a separate tax parcel for the Property. The legal description for the Property to be sold and acquired under this Agreement shall be established by the subdivision of the Land accomplished by Seller. If so requested by either party, this Agreement shall be amended to reflect the correct and complete updated legal description of the Property. Seller shall provide copies of any survey, preliminary plat, and final plat or similar documents required to effect the subdivision of the Property to Buyer as they are produced.
- vii. Seller shall have granted any easements over lands owned by Seller that may be required, if any, for legal access to utility services extending public water, sanitary and storm sewer services to the Property as provided in Section 15 hereof.

The contingencies in this section are solely for the benefit of, and may at any time be waived by, the Buyer. If any approval as provided herein is not obtained by the Closing Date, this Agreement shall be null and void at the option of the

Buyer, and in this event the Earnest Money paid by Buyer shall be returned to Buyer.

- b. Seller's Contingencies. The obligation of the Seller to perform under this Purchase Agreement is contingent upon the timely occurrence or satisfaction of each of the following conditions:
- i. The City Planning Commission shall review the sale and provide a recommendation on the proposed conveyance as required by City Charter, Section 4.02, subd. 8., which shall be prepared by the Sellers and submitted within thirty (30) days of the Effective Date.
 - ii. The Willmar City Council shall pass an ordinance authorizing the sale of the Property to Buyer consistent with the terms of this Agreement as required by Section 2.12, subdivision 1(G) of the City's Home Rule Charter.
 - iii. Buyer shall have performed all of its obligations required to be performed by Buyer under this Agreement as and when required under this Agreement.
 - iv. The execution and recording of a Development Agreement between Seller and Buyer, in a form satisfactory to Seller in Seller's sole discretion, consistent with Section 15 of this Agreement.

The contingencies in this Section are solely for the benefit of, and may at any time be waived by, the Seller.

9. Prorations. Seller and Buyer agree to the following prorations and allocation of costs regarding this Agreement.

- a. Title Insurance and Closing Fee. Buyer will pay all costs of the Title Commitment and all premiums required for the issuance of the Title Policy and any endorsements. Seller shall pay any costs to perfect its own title and/or to release encumbrances other than Permitted Exceptions (defined below) the Property. Seller and Buyer will each pay one-half (1/2) of any closing fee imposed by the Title Company. All other costs charged by the Title Company will be prorated as is normal and customary.
- b. Deed Tax. Seller shall pay the state deed tax as required in order to convey the Property to Buyer.
- c. Real Estate Taxes and Special Assessments. General real estate taxes and installments of special assessments payable therewith payable in the year prior to the year of Closing (including any so-called green acre taxes imposed because of a change in use of the Property after Closing thereof)

will be paid by Seller. General real estate taxes and installments for special assessments payable in the year of Closing shall be prorated such that Seller shall pay such portion of such taxes and assessments attributable to the period beginning on January 1 of the year in which the Closing Date takes place, and continuing through and including the Closing Date and Buyer shall pay such portion of such taxes attributable to the period beginning on the first day after the Closing Date takes place; provided, however, if the Property is exempt from real estate taxes for the year in which Closing occurs there shall be no tax proration. If general real estate taxes due and payable during the year in which the Closing Date takes place have not yet been determined as of the Closing Date, Buyer and Seller shall prorate based on the last tax statement available.

- d. Recording Costs. Buyer will pay the cost of recording Seller's quit claim deed and Well Certificate, if any. Seller shall pay the cost of recording any documents necessary to perfect its own title or which release encumbrances other than Permitted Exceptions.
- e. Professional Consultants' Fees. Buyer shall be responsible for payment of all real estate commissions, legal fees and/or other professional or administrative fees and expenses incurred by itself in connection with the sale and conveyance of the Property to Buyer. However, Seller shall be responsible for paying any commissions due to any real estate brokers or agents engaged by Seller and shall indemnify, defend and hold the Buyer hereunder from any claim related thereto. Buyer shall be responsible for the payment to any professionals required to be retained to effect the subdivision of the Property.
- f. Other Costs. All other operating costs of the Property will be allocated between Seller and Buyer as of the Closing Date, so that Seller pays that part of such other operating costs accruing on or before the Closing Date, and Buyer pays that part of such operating costs accruing after the Closing Date.

10. Title. Seller shall convey the entirety of its interest in the Property to Buyer at Closing by delivery of a quit claim deed, and Buyer shall have the opportunity to satisfy itself that Seller's interest in the Property is free of encumbrances other than Seller's reserved interests and the restrictions and covenants as listed in Section 4 herein, any easements and restrictions of record which do not materially interfere with Buyer's intended use of the Property, as determined by Buyer in its sole discretion, and Permitted Exceptions as provided herein.

- a. Title Commitment. Seller may obtain at its sole cost and expense, a title commitment ("Title Commitment") covering the Property and binding the Title Company to issue at closing a current form ALTA Owner's Policy of Title Insurance ("Title Policy") in the full amount of the Purchase Price

hereunder in favor of the Buyer. Within thirty (30) days of the Effective Date of this Agreement, Seller shall deliver to Buyer one or more Abstracts of Title, if the same are in Seller's possession, covering all parcels that make up the Property.

- b. Objections. During the Inspection/Due Diligence Period Buyer may deliver to Seller such written objections as Buyer may have to any matters disclosed by the Title Commitment or in any survey to be prepared by Buyer. Seller shall use commercially reasonable efforts to satisfy such objections prior to the Closing Date.
- c. Buyer's Rights if Seller Fails to Cure Objections. If Seller delivers written notice to Buyer on or before the date thirty (30) days after its receipt of Buyer's written objections that Seller is unable to satisfy any objection, Buyer may, as Buyer's exclusive remedies, waive such objections and accept such title as Seller is able to convey, extend the Closing Date in order to cure such objections itself, or terminate this Agreement by written notice to Seller and receive a refund of the Earnest Money, provided that such termination notice must be delivered on or before the Closing Date.
- d. Permitted Exceptions. The following shall be deemed to be "Permitted Exceptions":
 - (1) Building and zoning laws, ordinances, state and federal regulations in effect at the conclusion of the Inspection/Due Diligence Period described in Section 13 and not identified by Buyer as objectionable information during such Inspection/Due Diligence Period;
 - (2) Permanent easements as described Section 4 above and/or depicted on the final plat to be recorded prior to Closing pursuant to Section 8.a.vi above.
 - (3) The lien of general real property taxes for the year of Closing which by the terms of this Agreement are to be paid or assumed by Buyer (but prorated as described herein); and
 - (4) Matters contained in any title commitment or survey which Buyer is in possession of and for which Buyer does not make any objection to or waives any objection to and proceeds to closing on the Property.

11. Operation Prior to Closing. During the period from the date of Seller's acceptance of this Agreement to the Closing Date (the "Executory Period"), Seller shall operate and maintain the Property in the ordinary course of business in accordance with prudent, reasonable business standards, including the maintenance of adequate liability insurance and any currently-maintained insurance against loss by fire, windstorm and other hazards,

casualties and contingencies, including vandalism and malicious mischief, provided, that Seller will not enter into any contracts or agreements pertaining to the Property, except contracts or agreements which are not inconsistent with Buyer's rights hereunder and which may be terminated on not more than 30 days' notice or enter into any new leases, or renew any lease terms (other than on a month-to-month basis), or modify or terminate any lease, or accept the surrender of any leased premises, without the written consent of Buyer, which consent shall not be unreasonably withheld or delayed. Seller shall (i) comply with all laws, ordinances, regulations and restrictions affecting the Property and its use, (ii) not create any mortgage, lien, pledge or other similar encumbrance in any way affecting the Property, nor otherwise convey any interest in the Property; and (iii) not commit any waste or nuisance upon the Property.

12. Damage. If, prior to the Closing Date, all or any part of the Property is substantially damaged by fire casualty, the elements or any other cause, Seller shall immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within fifteen (15) days after Seller's notice), this Agreement shall terminate. In the event Buyer so terminates this Agreement, the parties will have no further obligations under this Agreement and any Earnest Money, together with any accrued interest, shall be refunded to Buyer.

13. Inspection/Due Diligence Period. Buyer shall have one hundred twenty (120) days from the Effective Date, subject to extension pursuant to Sections 13.c) or (d) below (the "Inspection/Due Diligence Period"), to (i) conduct such surveys, reviews, inspections and tests of the Property as Buyer in its sole discretion deems necessary or advisable, (ii) conduct a Phase I environmental site assessment of the Property and, if a Recognized Environmental Condition is found or if recommended in the Phase I assessment, a Phase II environmental site assessment of the Property, (iii) obtain such federal, state and local governmental approvals (including, without limitation, zoning and site plan approvals and approvals of the plans and specifications) and permits (including, without limitation, building permits) and other necessary or desirable approvals, permits, and entitlements (collectively, "Entitlements") as Buyer in its sole discretion deems necessary or advisable for Buyer's proposed development and use of the Property, including all requisite governmental and third party approvals for the design and extension of all utilities to the Property that support the Intended Use (the "Utilities"); (iv) determine the legal and economic feasibility of the proposed development; and (v) obtain financing for Buyer's proposed development on such terms and conditions as are satisfactory to Buyer, in Buyer's sole discretion. Such rights of inspection/due diligence by Buyer shall include, but not necessarily be limited to, the following:

- a. Seller shall allow Buyer and its agents, upon 24 hours' advance verbal or written notice from Buyer to Seller, the right of any ingress and egress over and through the Property for the purpose of inspecting and testing the same and making other observations as Buyer deems prudent, necessary or advisable, all however, at Buyer's expense. Buyer agrees to indemnify, defend and hold harmless Seller from all expense, injury, death, or property damage or claims of any kind whatsoever arising out of or in any way incidental to Buyer's presence on the Property for the purposes aforesaid,

except to the extent attributable to any pre-existing defects in the Property, it being understood and agreed that Buyer shall not be responsible for the restoration, remediation or other affirmative act with respect to any pre-existing condition which indemnity and hold harmless obligation of Buyer shall survive termination of this Purchase Agreement for any reason, provided Seller shall tender defense of any claim subject to Buyer's indemnity to Buyer in sufficient time to avoid prejudice, and Buyer shall have the right to assume and control the defense thereof with counsel selected by Buyer and reasonably acceptable to Seller. Buyer will return the Property to its original condition after any inspections and testing.

- b. If prior to the end of the Inspection/Due Diligence Period, Buyer finds any information or conditions relating to the Property or Buyer's proposed development and use thereof that are objectionable to Buyer in Buyer's sole discretion, Buyer shall have the right to terminate this Purchase Agreement by giving written notice of termination to Seller no later than the end of the Inspection/Due Diligence Period and in such case, any Earnest Money shall be promptly refunded to Buyer.
- c. In the event that the Phase I environmental site assessment of the Property conducted by Buyer finds a Recognized Environmental Condition or recommends that a Phase II environmental site assessment of the Property be completed, the parties shall agree to extend the Inspection/Due Diligence Period as reasonably necessary to allow such Phase II environmental site assessment to be completed if desired by Buyer, and any other applicable time periods established herein shall be extended by the same amount of time as the Inspection/Due Diligence Period extension.
- d. Buyer shall have the right and option to extend the Inspection/Due Diligence Period for one (1) period of sixty (60) days. Buyer shall exercise its right and option to extend the Inspection/Due Diligence Period, as aforesaid, if at all, by: (i) giving Seller notice of such election on or before the date the Inspection/Due Diligence Period expires (as the same may be extended).
- e. Regardless of any other provision to the contrary in this Agreement, Buyer at any time on or prior to the expiration of the Inspection/Due Diligence Period, may elect, in its sole discretion, for no reason or for any reason, to terminate this Agreement by delivery of a written notice (the "Termination Notice") to Seller, with a copy to Title Company, given on or before the last day of the Inspection/Due Diligence Period, whereupon the Earnest Money, together with all interest earned thereon, shall be returned immediately to Buyer and neither party shall have any further liability to the other hereunder, except as hereinafter specifically provided in this Agreement.

14. Purchase “As-Is”. Subject to Buyer’s right to terminate this Agreement during the Inspection/Due Diligence Period (Section 13) and subject to the satisfaction of the conditions to Closing, Buyer agrees to accept the condition of the Property at Closing, including specifically without limitation, the environmental and geological condition of the Property, in an “AS-IS” and with “ALL FAULTS” condition. Buyer’s acceptance of title to the Property shall represent Buyer’s acknowledgment and agreement that, except as expressly set forth in this Agreement: (i) Seller has not made any written or oral representation or warranty of any kind with respect to the Property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose), (ii) Buyer has not relied on any written or oral representation or warranty made by Seller, its agents or employees with respect to the condition or value of the Property, (iii) Buyer has had an adequate opportunity to inspect the condition of the Property, including without limitation, any environmental testing, and to inspect documents applicable thereto, and Buyer is relying solely on such inspection and testing, and (iv) the condition of the Property is fit for Buyer’s intended use. Buyer agrees to accept all risk of Claims (including without limitation all Claims under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) whether past, present or future, existing or contingent, known or unknown, arising out of, resulting from or relating to the condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation, the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated or will migrate from or to the Property.

For purposes of this Section, the following terms have the following meanings:

“Environmental Law” means the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §9601 et seq. the Federal Water Pollution Control Act, 33 U.S.C. §1201 et seq., the Clean Water Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Toxic Substances Control Act, 33 U.S.C. §1251 et seq., and the Minnesota Environmental Response and Liability Act, all as amended from time to time, and any other federal, state, local or other governmental code, statute, regulation, rule, law, permit, consent, license, order or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted; and

“Hazardous Substance” means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law; and

“Claim” or “Claims” means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines,

judgment, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

15. Development Agreement Required. Prior to Closing, Seller and Buyer shall enter into and record a Development Agreement, which agreement is expected to contain, to the extent applicable, provisions consistent with the following:

- a. Buyer shall be responsible for the management and associated costs for extending utility lines as required to connect to existing City utility infrastructure to serve the Property;
- b. Buyer shall be responsible at Buyer's sole cost and expense for relocating any drainage and other utility infrastructure existing on the Property, including but not limited to Buyer's existing stormwater main which exists on and crosses the Property from the northeast to the southwest, as may be required to accommodate the Project. All such utility relocations shall be completed to the satisfaction of Seller's City Engineer.

16. Notices. Any notice required or permitted to be given by any party upon the other is given in accordance with this Agreement if it is directed to Seller by delivering it personally to a representative of Seller; or if it is directed to Buyer, by delivering to a representative of Buyer; or if mailed by United States registered or certified mail; return receipt requested, postage prepaid; or if transmitted by facsimile or e-mailed copy, and unless a confirmation of receipt is received then it must be followed by mailed notice as above required, or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Seller: City Administrator
City of Willmar
333 Sixth Street Southwest
Willmar, MN 56201
Tel. No. (320) 235-4913
E-mail: lvaliant@willmarmn.gov

If to Buyer: CURA
Attn: Tom A. Opatz

E-mail: _____

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit as aforesaid; provided, however, that if notice is given by deposit, that the time for response to any notice by the other party shall commence to run two (2) business days after any such deposit. Any party may change its address for the service of notice by giving advance written notice of such change to the other party, in any manner above specified. Attorneys for each party shall be authorized to give notices for such party.

17. Entire Agreement; Amendments. This Agreement represents the complete and final agreement of the parties and supersedes any prior or contemporaneous oral or written understanding between the parties. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in writing executed by the parties. This Agreement may be amended only in writing, signed by both parties.

18. Binding Effect; Assignment. This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. Each party agrees to give the other party notice prior to assigning its interest in the Property or this Agreement. Buyer may assign all of Buyer's rights hereunder to and have its obligations hereunder assumed by any person, firm, partnership, corporation or other entity, and in the event of any such assignment, Buyer shall be released from any further obligations which have not yet accrued hereunder.

19. Controlling Law. The Parties acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of this Agreement. The Parties have equal bargaining power and intend the plain meaning of the provisions of this Agreement. In the event of an ambiguity in or dispute regarding the interpretation of this Agreement, the ambiguity or dispute shall not be resolved by application of any rule that provides for interpretation against the drafter of the Agreement. This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.

20. Remedies. If Closing does not occur as a result of a default by Buyer which is not cured within thirty (30) days after receipt of written notice from Seller identifying such default, then Seller has the right to immediately terminate this Agreement and retain the Earnest Money as liquidated damages, time being of the essence of this Agreement. The termination of this Agreement and retention of the Earnest Money will be the sole remedy available to Seller for such default by Buyer, and Buyer will not be liable for damages. If Closing does not occur as a result of a default by Seller which is not cured within thirty (30) days after receipt of written notice from Buyer identifying such default, then Buyer has the right to (a) immediately terminate this Agreement and have the Earnest Money returned to it or (b) enforce this Agreement by specific performance.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute a single, integrated contract.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

BUYER:

SELLER:

CURA

CITY OF WILLMAR

By: _____
Tom A. Opatz, Its President/CEO

By: _____
Douglas E. Reese, Mayor

By: _____
Leslie Valiant, City Administrator

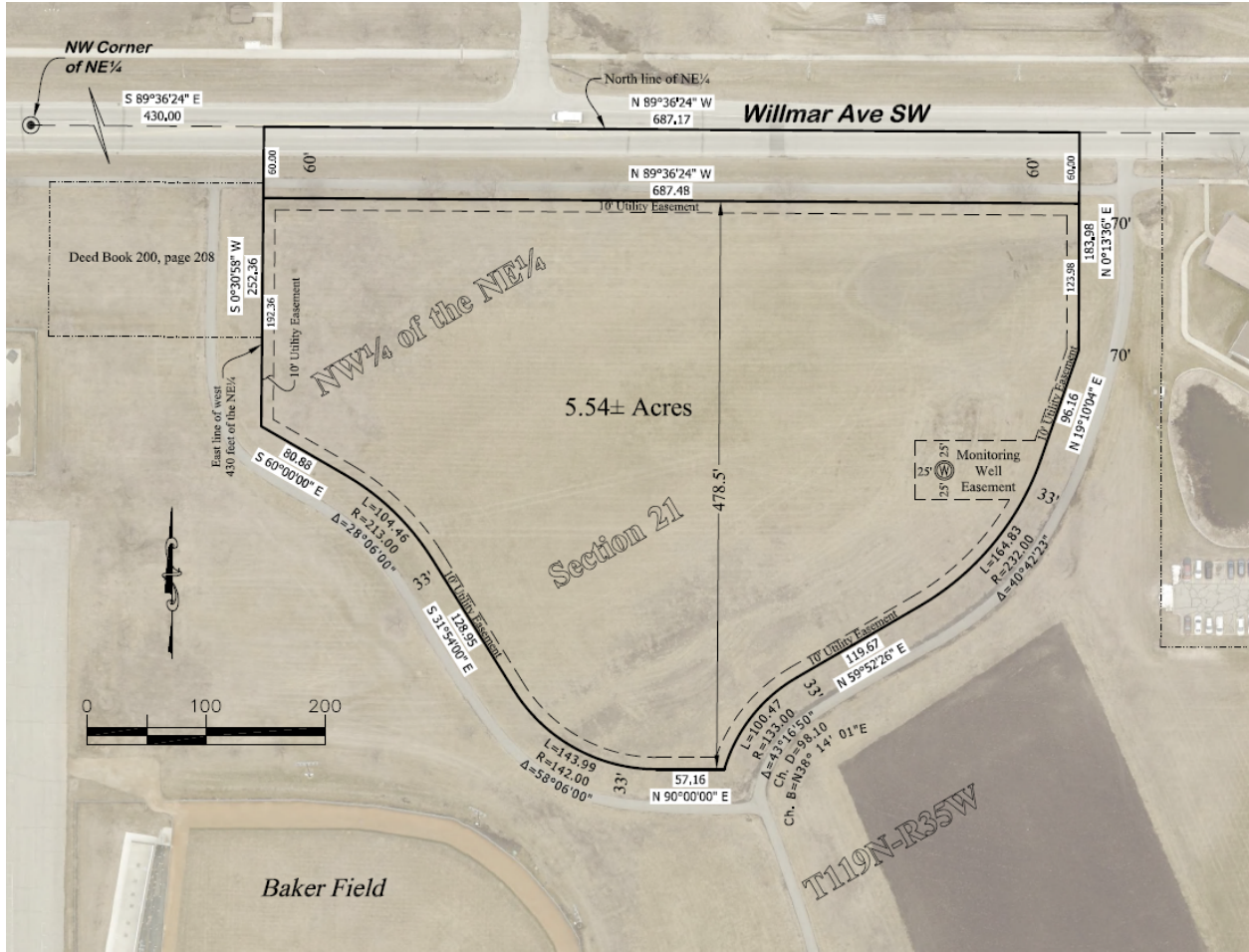
EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

(Subject to revision in accordance with Title Commitment)

That part of the Northwest Quarter of the Northeast Quarter of Section 21, Township 119 North, Range 35 West of the Fifth Principal Meridian, Kandiyohi County, Minnesota, described as follows:

- Commencing at the northwest corner of said Northeast Quarter;
- thence on an assumed bearing of South 89 degrees 36 minutes 24 seconds East, along the north line of said Northeast Quarter a distance of 430.00 feet to the east line of the west 430 feet of said Northeast Quarter, as measured perpendicular to the west line of said Northeast Quarter, which is the point of beginning of the land to be described;
- thence on a bearing of South 0 degrees 30 minutes 58 seconds West, along said east line of the west 430 feet of the Northeast Quarter, a distance of 252.36 feet
- thence on a bearing of South 60 degrees 00 minutes 00 seconds East a distance of 80.88 feet;
- thence southeasterly a distance of 104.46 feet, along a tangential curve, concave to the southwest, which has a radius of 213.00 feet and a central angle of 28 degrees 06 minutes 00 seconds;
- thence on a bearing of South 31 degrees 54 minutes 00 seconds East, tangent to last said curve, a distance of 128.95 feet;
- thence southeasterly a distance of 143.99 feet, along a tangential curve, concave to the northeast, which has a radius of 142.00 feet and a central angle of 58 degrees 06 minutes 00 seconds;
- thence on a bearing of North 90 degrees 00 minutes 00 seconds East, tangent to last said curve, a distance of 57.16 feet;
- thence northeasterly a distance of 100.47 feet, along a non-tangential curve, concave to the southeast, which has a radius of 133.00 feet, a central angle of 43 degrees 16 minutes 50 seconds, a chord bearing of North 38 degrees 14 minutes 01 seconds East and a chord distance of 98.10 feet;
- thence on a bearing of North 59 degrees 52 minutes 26 seconds East, tangent to last said curve, a distance of 119.67 feet;
- thence northeasterly a distance of 164.83 feet, along a tangential curve, concave to the northwest, which has a radius of 232.00 feet and a central angle of 40 degrees 42 minutes 23 seconds;
- thence on a bearing of North 19 degrees 10 minutes 04 seconds East, tangent to last said curve, a distance of 96.16 feet;
- thence on a bearing of North 0 degrees 13 minutes 36 seconds East a distance of 183.98 feet, to the north line of said Northeast Quarter;
- thence on a bearing of North 89 degrees 36 minutes 24 seconds West, along the north line of said Northeast Quarter, a distance of 687.17 feet to the point of beginning.

EXHIBIT B DEPICTION OF THE PROPERTY



ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE SALE OF
REAL PROPERTY TO CURA

The City Council of the City of Willmar hereby ordains as follows:

Section 1. AUTHORIZATION OF SALE. Finding it to be in the best interests of the City of Willmar, the Willmar City Council hereby authorizes the sale and conveyance of real property owned by the City consisting of approximately 5.54 acres located within Parcel No. 95-921-5690, as legally defined on Exhibit A hereto, to CURA, a non-profit corporation organized under the laws of the State of Minnesota, by quit claim deed pursuant to the terms and conditions of a Commercial Property Purchase Agreement to be entered into between the City and CURA.

Section 2. EFFECTIVE DATE. This ordinance shall take effect after its adoption and second publication.

Passed by the City Council of the City of Willmar this ___ day of _____, 2024.

ATTEST:

Vernae Larsen, City Clerk

Douglas E. Reese, Mayor

VOTE: ___ ASK ___ ASMUS ___ BUTTERFIELD ___ DAVIS
 ___ FAGERLIE ___ NELSEN ___ O'BRIEN ___ SHULDES

This Ordinance introduced by Council Member: _____

This Ordinance introduced on: _____

This Ordinance published on: _____

This Ordinance given a hearing on: _____

This Ordinance adopted on: _____

This Ordinance published on: _____

EXHIBIT A
LEGAL DESCRIPTION

(Subject to revision in accordance with Title Commitment)

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- thence northeasterly a distance of 100.47 feet, along a non-tangential curve, concave to the southeast, which has a radius of 133.00 feet, a central angle of 43 degrees 16 minutes 50 seconds, a chord bearing of North 38 degrees 14 minutes 01 seconds East and a chord distance of 98.10 feet;
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- thence on a bearing of North 19 degrees 10 minutes 04 seconds East, tangent to last said curve, a distance of 96.16 feet;
- thence on a bearing of North 0 degrees 13 minutes 36 seconds East a distance of 183.98 feet, to the north line of said Northeast Quarter;
- thence on a bearing of North 89 degrees 36 minutes 24 seconds West, along the north line of said Northeast Quarter, a distance of 687.17 feet to the point of beginning.



City Council Action Request

| | | | |
|------------------------------|-----------------------------------|--------------------------------|------------------------------------|
| Council Meeting Date: | March 11, 2024 | Agenda Item Number: | 5.C. |
| Agenda Section: | Regular Business | Originating Department: | Administration |
| Resolution: | No | Prepared By: | Kyle Box, City Operations Director |
| Ordinance: | No | Presented By: | Kyle Box, City Operations Director |
| Item: | Connect Willmar Initiative Update | | |

RECOMMENDED ACTION:

OVERVIEW:

Hometown Fiber, the Broadband Committee, and city staff will summarize and update the City Council on the Connect Willmar Initiative.

The prepared agenda will discuss the following:

1. Project Roadmap: Members of the Broadband Committee and staff will summarize their efforts in evaluating the steps needed to develop this project.
 - a. Summary of the February 5, 2024, Council meeting: Hometown Fiber and staff will respond to questions and statements made at the February 5 City Council meeting.
2. Demonstration/ Explanation of Fiber: Hometown Fiber will lead this discussion on the capabilities of fiber.
3. Community Outreach & Education: Hometown Fiber and staff will provide an update and future requests for outreach and education for this project.
 - a. Business Survey: Hometown Fiber will update the Council on a future business survey and its impact on the final design.

Materials and handouts will be provided prior to the meeting.

BUDGETARY/FISCAL ISSUES:

ALTERNATIVES TO CONSIDER:

ATTACHMENTS:

None