

CITY OF WILLMAR, MINNESOTA  
REQUEST FOR COMMITTEE ACTION

Agenda Item Number: \_\_\_\_\_

Meeting Date: March 27, 2014

Attachments:  Yes  No

CITY COUNCIL ACTION

Date: \_\_\_\_\_

- Approved  Denied
- Amended  Tabled
- Other

Originating Department: Planning and Development Services

Agenda Item: Jennie-O Turkey Store Land Transaction

Recommended Action: Receive for information pending public hearing.

**Background/Summary:** The City of Willmar gave preliminary approval to a purchase agreement to transfer 7.6 acres of land to Jennie-O Turkey Store for their corporate office expansion. Additionally, preliminary approval was given to a right of first refusal for an approximately 30 acre parcel, north of the Willmar Avenue Jennie-O Turkey Store Plant. The purchase agreement and right of first refusal drafts have been prepared by the City Attorney. Copies have been made available to all City Council Members for review. Documents will be reviewed and discussed by the Committee in advance of the required public hearing on the land transfer, scheduled for April 7, 2014.

**Alternatives:**

At the hearing the Council will have the option of either:

1. Approving the Ordinance to transfer the properties with the terms stated in the purchase agreement and right of first refusal, or
2. Not approving the ordinance.

**Financial Considerations:** The financial considerations for the purchase agreement are a reduction of the purchase price to \$0 based on application of the City's industrial land write-down policy. The land impacted by the right of first refusal is valued at just over \$1.4 million. The actual price paid will be based on company project investment and job creation for the future projects occurring on the subject property, again utilizing the industrial land write-down policy.

Preparer: Bruce D. Peterson, AICP  
Director of Planning and Development Services

Signature: 

Comments:

**INDUSTRIAL REAL PROPERTY PURCHASE AGREEMENT**  
**AND RIGHT OF FIRST REFUSAL**

**THIS INDUSTRIAL REAL PROPERTY PURCHASE AGREEMENT AND RIGHT OF FIRST REFUSAL** (“Agreement”) is made as of \_\_\_\_\_, 2014, between the City of Willmar, a municipal corporation under the laws of the State of Minnesota (“CITY”), and Jennie-O Turkey Store, Inc., a Minnesota corporation and wholly-owned subsidiary of Hormel Foods, Inc., a Delaware corporation (“JOTS;” collectively, CITY and JOTS are referred to herein as the “Parties”).

**RECITALS**

WHEREAS, CITY owns two parcels of unimproved real property totaling approximately 7.6 acres adjacent to and immediately north of JOTS’s existing corporate and industrial food processing facilities located at 2505 Willmar Avenue Southwest in CITY and legally defined on the attached Exhibit A (the “Phase I Real Property”); and

WHEREAS, CITY owns a larger parcel of unimproved real property approximately 29.97 acres in size adjacent to and immediately north of the Phase I Real Property in CITY and legally defined on the attached Exhibit B (the “Phase II Real Property;” collectively, the Phase I Real Property and Phase II Real Property are referred to herein simply as the “Real Property”); and

WHEREAS, JOTS has proposed to purchase and develop the Phase I Real Property by expanding its existing corporate office facilities as the first phase of a two-phased plan to expand both its corporate office and industrial processing facilities in CITY (the “Phase I Project”); and

WHEREAS, JOTS has proposed to purchase a right of first refusal over the Phase II Real Property, which it desires to purchase and develop as an expansion of its industrial food processing facilities (the “Phase II Project”) following the completion of the Phase I Project (collectively, the Phase I Project and Phase II Project are referred to herein simply as the “Project”); and

WHEREAS, CITY commissioned independent appraisals of each parcel of real property comprising the Real Property, which appraisals indicated a total market value effective September 6, 2013 of \$238,072.00 for the Phase I Real Property and \$1,435,852.00 for the Phase II Real Property, respectively; and

WHEREAS, CITY has adopted an Industrial Land Pricing Write-Down Policy, which is attached hereto as Exhibit C, in order to stimulate and assist economic development projects by reducing the sale price of CITY-owned industrial properties, pursuant to which CITY will credit qualifying businesses \$10,000.00 off the listing price per job created and \$25,000.00 off the listing price per million dollars of estimated taxable market value created as determined by the office of the City Assessor, and which requires the buyer to pay all real estate commissions and legal/administrative costs incurred by CITY in the transaction; and

WHEREAS, CITY has adopted a Business Subsidy Policy, which is attached hereto as Exhibit D, pursuant to the requirements of the Minnesota Business Subsidy Act, Minnesota Statutes, Sections 116J.993 through 116J.995 (the "Business Subsidy Act"), and which establishes principles and specific minimum requirements that recipients of business subsidies must satisfy; and

WHEREAS, pursuant to Minn. Stat. § 469.185, CITY finds that the Phase I Project as proposed by JOTS will stimulate economic development, promote industry, increase CITY's tax base, and provide new and additional employment opportunities for citizens of Willmar; and

WHEREAS, JOTS represents and CITY specifically finds that the Phase I Project is likely to result in the creation of 90 new jobs and an increase in taxable market value of \$4 million in CITY; and

WHEREAS, CITY anticipates that the creation of jobs and taxable market value attributable to the Project will qualify JOTS to receive credits toward the purchase of the Phase I Real Property and/or the Phase II Real Property in amounts that will constitute a business subsidy as that term is defined in Minnesota Statutes, Section 116J.993, subdivision 3, such that the requirements of the Business Subsidy Act apply to the transactions provided for herein, which will require JOTS to enter into a separate Business Subsidy Agreement(s) with CITY and to satisfy the principles and minimum requirements in CITY's Business Subsidy Policy; and

WHEREAS, CITY, in order to facilitate the Project as proposed by JOTS and thereby promote industry, increase CITY's tax base, and provide employment for its citizens, is willing to sell the Phase I Real Property to JOTS and grant JOTS a right of first refusal over the Phase II Real Property pursuant to the terms and conditions established herein.

## AGREEMENT

NOW THEREFORE, in consideration of the covenants and agreements of the Parties hereto, CITY and JOTS agree as follows:

ARTICLE 1. REPRESENTATIONS, WARRANTIES AND RESPONSIBILITIES OF CITY.  
CITY makes the following representations and warranties:

1.1 CITY is a municipal corporation organized and existing under and by virtue of and pursuant to the laws of the State of Minnesota and its Home Rule Charter and has the power to enter into this Agreement and carry out its obligations hereunder.

1.2 There is not pending, nor to the best of CITY's knowledge is there threatened, any suit, action or proceeding against CITY before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of CITY to perform in its obligations hereunder, or as contemplated hereby or thereby, or the validity or enforceability of this Agreement.

1.3 The Project contemplated by this Agreement is consistent with the development objectives set forth in CITY's Comprehensive Plan.

1.4 CITY has not received any notice from any local, state or federal official that the activities of JOTS or CITY with respect to the Project may or will be in violation of any environmental law or regulation (other than those notices, if any, of which JOTS has been notified). CITY is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any local, state or federal environmental law, regulation or review procedure, and CITY is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any person a valid claim under the Minnesota Environmental Rights Act or other state or federal environmental statute.

1.5 CITY makes no representation or warranty, either express or implied, as to the Real Property or its condition or the soil conditions thereon, or that the Real Property shall be suitable for JOTS's purposes or needs.

1.6 CITY is entering into this Agreement to facilitate the Project and to thereby promote industry, increase CITY's tax base, and provide employment for its citizens.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF JOTS. JOTS makes the following representations and warranties:

2.1 JOTS has the power to enter into this Agreement and to perform its obligations hereunder and is not in violation of the laws of the State.

2.2 JOTS is a Minnesota corporation and a wholly owned subsidiary of Hormel Foods, Inc., a Delaware corporation, and has full power and authority to enter into this Agreement and carry out the covenants contained herein.

2.3 JOTS will use the Real Property in accordance with (1) the terms of this Agreement, (2) the terms of separate development and business subsidy agreements as required by Minnesota law, (3) the specific site and building plans it will be required to submit to CITY and any zoning approvals it is required to secure under City Ordinance No. 1060, and (4) all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).

2.4 JOTS has not received any notice or communication from any local, state or federal official that the activities of JOTS or CITY with respect to the Project may or will be in violation of any environmental law or regulation. As of the date of the execution of this Agreement, JOTS is aware of no facts the existence of which would cause it to be in violation of any local, state or federal environmental law, regulation or review procedure, which would give any person a valid claim under the Minnesota Environmental Rights Act.

2.5 The construction of the Project would not be undertaken by JOTS, and in the opinion of JOTS would not be economically feasible within the reasonably foreseeable future,

without the assistance and benefit to JOTS provided for in this Agreement.

2.6 Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which JOTS is now a party or by which it is bound, or constitutes a default under any of the foregoing.

2.7 JOTS will cooperate fully with CITY with respect to any litigation commenced with respect to the Real Property or the Project.

2.8 JOTS agrees to pay the total amount of any costs, charges, expenses and attorneys fees reasonably incurred or paid at any time by CITY because of any Event of Default by JOTS as to any stipulation, agreement, and covenant of this Agreement or in any way related to the Project, resulting in any suit or proceeding at law or in equity to which CITY shall become a party in reference to JOTS's interest in the Real Property or the Project.

2.9 JOTS will cooperate fully with CITY in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

2.10 JOTS will cause construction of the Phase I Project to commence on or before August 1, 2014, and barring unavoidable delays, the Phase I Project will be substantially completed by January 1, 2016.

2.11 JOTS will cooperate fully with CITY as necessary to satisfy the requirements of the Business Subsidy Act, including entering into a Business Subsidy Agreement(s) as required by Minnesota Statutes, Section 116J.994, subdivision 3 and Development Agreement as may be required by Minnesota Statutes, Sections 469.174 through 469.1794, if applicable to the Project or any portion or component thereof.

### ARTICLE 3. AGREEMENT FOR SALE AND PURCHASE OF PHASE I REAL PROPERTY.

3.1 Sale of Phase I Real Property. Subject to the terms and conditions hereof, CITY agrees to sell to JOTS, and JOTS agrees to purchase from CITY, for the amounts and on the terms provided in this Article, all CITY's right, title and interest in and to the Phase I Real Property, excepting any easements and rights benefiting or appurtenant to the Phase I Real Property and improvements including any right, title or interest in the bed of any street, road, highway, alley or other public way adjoining the Phase I Real Property.

3.2 Purchase Price and Manner of Payment. The total purchase price to be paid by JOTS to CITY for the Phase I Real Property shall be \$238,072.00, payable as follows:

3.2.1 \$1.00 and other good and valuable consideration as earnest money at the

time of execution of this Agreement; and

3.2.2 \$238,071.00 cash, on the earlier occurrence of the following (1) the expiration of ten years after the date of closing pursuant to Section 3.3; or (2) the completion of the Project.

3.2.3 At the time payment becomes due under Section 3.2.2, CITY shall apply its Land Pricing Write-Down Policy in effect on the effective date of this Agreement to reduce the purchase price by the following amounts:

3.2.3.1 \$10,000.00 for each new job actually created by JOTS that is directly attributable to the Phase I Project; and

3.2.3.2 \$25,000.00 for each million dollars of estimated taxable market value increase determined by the City Assessor to have resulted directly from the Phase I Project.

3.2.3.3 Any credits for which JOTS qualifies under CITY's Land Pricing Write-Down Policy in effect on the effective date of this Agreement at the time the purchase price becomes due under Section 3.2.2 in excess of the total purchase price shall be applied as a credit to JOTS's purchase of the Phase II Real Property during the term of the Right of First Refusal for that property granted to JOTS in Article 4 below.

3.3 Closing and Possession. The closing of the purchase and sale contemplated by this Article shall occur on a date mutually acceptable to JOTS and CITY, which date shall be on a business day, but no later than July 1, 2014. CITY agrees to deliver possession not later than the date of closing provided that all the conditions of this Agreement have been complied with. The closing shall take place at Willmar City Hall, 333 6<sup>th</sup> Street Southwest, Willmar, MN 56201, unless an alternate location is agreed to by the Parties.

3.4 Conditions Precedent. CITY's obligation to sell the Phase I Real Property to JOTS shall be conditioned on the following:

3.4.1 JOTS shall enter into a Business Subsidy Agreement with CITY pursuant to the requirements of Minnesota Statutes, Section 116J.994, subdivision 3.

3.4.2 The Willmar City Council shall pass an ordinance authorizing the sale of the Phase I Real Property to JOTS consistent with the terms of this Agreement as required by Section 2.12, subdivision 1(G) of CITY's Home Rule Charter.

3.4.3 Prior to the transfer of title, JOTS's plans and specifications for the Phase I Project shall have been approved in writing by CITY. The plans and specifications shall be such as will enable the CITY to determine with reasonable certainty that the project is or will be in compliance with the law and will, if carried out, provide for the intended use.

3.5 Sale Subject to Covenants, Conditions and Restrictions. The sale of the Phase I Real Property shall be subject to the following covenants, conditions, and restrictions which shall be incorporated in any quit claim deed delivered by CITY to JOTS:

3.5.1 The Phase I Real Property herein transferred shall be devoted to the following use: Corporate office space connected to an industrial food processing facility.

3.5.2 The Phase I Real Property shall be devoted to such use by JOTS in accordance with the provisions of the quit claim deed.

3.5.3 JOTS shall, within one year from the date of the quit claim deed, devote the Phase I Real Property to its intended use, or shall commence work on the Phase I Project (but shall complete such improvements no later than two years from the date of the quit claim deed) and shall continue to devote the Phase I Real Property to its intended use for a period of ten years from the date of the closing on JOTS's purchase of the Phase I Real Property; if JOTS fails to commence work on time or fails to devote the Phase I Real Property to its intended use or fails to devote the Phase I Real Property to its intended use on time and for the required duration, title to the real estate shall revert to CITY, and, in that event, JOTS shall promptly offer a deed to the real estate to CITY, who will then, if the deed is accepted by CITY, refund to JOTS any sums actually paid to CITY by JOTS to purchase the Phase I Real Property without interest less any taxes and other encumbrances affecting marketability of title. Notwithstanding the foregoing, CITY may, at its option, consider an extension of time for good cause shown by JOTS. In the event an extension is granted, it (a) shall be to a date certain, (b) may be conditioned by CITY to protect the public interest, and (c) during the period JOTS shall not transfer title to the Phase I Real Property without the express written consent of CITY. After JOTS has devoted the Phase I Real Property to its intended use in accordance with the plans and specifications for the development of the real estate submitted to the CITY, CITY shall provide JOTS with a certificate of compliance/completion in recordable form within 30 days from the determination thereof by CITY.

3.5.4 Except as otherwise provided in the quit claim deed, JOTS shall not transfer title to the real estate within ten years after the date of the quit claim deed without the express written consent of CITY.

3.6 City's Representations and Warranties. CITY makes the following representations and warranties with specific respect to the sale of the Phase I Real Property to JOTS, as follows:

3.6.1 Title to the Phase I Real Property. CITY has good and marketable title to all of the Phase I Real Property and has not caused the Phase I Real Property to become encumbered beyond those encumbrances of record at the Kandiyohi County Recorder's Office.

3.6.2 No Conflict or Breach. The sale of the Phase I Real Property to JOTS, the consummation of the transactions contemplated by this Article, and the performance by CITY of the covenants, warranties, and obligations to be performed by it under this Article will not conflict with, result in the breach of any term or provision of, any indenture, mortgage, deed of trust, or other agreement, instrument, undertaking, understanding, decree, order, stipulation, or consent to which CITY is a party or by which CITY is bound.

3.6.3 The Accuracy of CITY's Representations and Warranties. No representation or warranty made by CITY and no documents or other information furnished or to be furnished to JOTS by or on behalf of CITY pursuant to this Article contains or shall contain any untrue statement of material fact, or omits or shall omit any material fact necessary to make the statement contained therein not misleading. Further, CITY's representations and warranties are true and accurate as of the effective date of this Agreement, and will be true and accurate continuously through the closing date specified in Section 3.3.

3.6.4 Wells and Individual Sewage Treatment Systems. CITY certifies that CITY does not know of any wells or individual sewage treatment systems on or serving the Phase I Real Property.

3.7 Purchase As-Is. The Phase I Real Property is being sold in an "as is" and with "all faults" condition. JOTS's acceptance of title to the Phase I Real Property shall represent JOTS's acknowledgment and agreement that, except as expressly set forth in this Agreement: (i) CITY has not made any written or oral representation or warranty of any kind with respect to the Phase I Real Property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose), (ii) JOTS has not relied on any written or oral representation or warranty made by CITY, its agents or employees with respect to the condition or value of the Phase I Real Property, (iii) JOTS has had an adequate opportunity to inspect the condition of the Phase I Real Property, including without limitation, any environmental testing, and to inspect documents applicable thereto, and JOTS is relying solely on such inspection and testing, and (iv) the condition of the Phase I Real Property is fit for JOTS's intended use. JOTS 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 Phase I Real Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation, the presence of any Hazardous Substance on the Phase I Real Property, whether such Hazardous Substance is located on or under the Phase I Real Property, or has migrated or will migrate from or to the Phase I Real Property. For purposes of this Section, the following terms have the following meanings:

3.7.1 "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.*, all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted; and

3.7.2 “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.

3.7.3 “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).

3.8 Prorations. Real estate taxes due and payable in the year 2014 shall be prorated to the date of closing. JOTS shall pay the real estate taxes due and payable in the year 2014 and any unpaid installments of special assessments payable therewith and thereafter.

3.9 Title Examination.

3.9.1 The Delivery of the Title Commitment. JOTS may obtain, at its option and expense, a commitment for an owner’s policy of title insurance. JOTS shall pay all costs associated with obtaining title insurance including, but not limited to, updating of the abstract or obtaining a new abstract of title for the Phase I Real Property, title insurance premiums and title examination fees (hereinafter the “Title Commitment”), issued by a Title Insurance Company authorized to do business in the State of Minnesota and approved by JOTS (hereinafter the “Title Company”). The Title Commitment shall be based upon the description of the Phase I Real Property provided herein and shall show fee title in CITY, subject only to the permitted encumbrances waived in writing by JOTS, and shall provide for extended coverage risks and include special endorsements for zoning, contiguity and such other matters as JOTS may request.

3.9.2 The Making and Curing of Title Objections. JOTS shall be allowed twenty (20) days after receipt of the Title Commitment, if applicable, in which to make objections to the content of the commitment, said objections to be made in writing. If there are any objections to the title which are not remedied by the Closing Date, CITY shall have one hundred twenty (120) days from the date of receipt of said written objections in which to remedy said objections.

3.9.3 The Consequences of Failing to Cure Title Objections. If said objections are not remedied within one hundred twenty (120) days from the date of CITY's receipt of said objections, then JOTS shall have the following two alternatives:

3.9.3.1 JOTS may accept title to said Property subject to said objections;

or

3.9.3.2 JOTS may declare this entire transaction to be null and void. If JOTS declares this transaction to be null and void pursuant to this paragraph, all earnest money paid by JOTS to CITY shall be immediately refunded by CITY to JOTS.

3.10 Quit Claim Deed. CITY shall execute and deliver a Quit Claim Deed to JOTS in a form substantially consistent with the quitclaim deed attached hereto as Exhibit E.

3.11 Closing Costs. JOTS shall pay the recording fees for CITY's Quit Claim deed. JOTS shall pay the state deed tax for CITY's Quit Claim deed. All other fees and charges related to closing, including those relating to obtaining and filing of instruments required to make title marketable, shall be paid by JOTS.

3.12 Transaction Fees. Pursuant to CITY's Industrial Land Pricing Write-Down Policy, JOTS shall be responsible for reimbursing CITY for any and all real estate commissions and legal/administrative costs incurred by CITY in facilitating the sale of the Phase I Real Property pursuant to this Article.

ARTICLE 4. RIGHT OF FIRST REFUSAL TO PURCHASE PHASE II REAL PROPERTY. For one dollar (\$1.00) and other good and valuable consideration, CITY hereby gives and grants to JOTS a first right to purchase the Phase II Real Property pursuant to the following terms and conditions of this Article (the "Right of First Refusal"):

4.1 Term and Expiration. JOTS's Right of First Refusal shall expire ten years after the effective date of this Agreement.

4.2 Notice of Offer. In the event that CITY shall desire to sell the Phase II Real Property pursuant to any bona fide offer which it shall have received while JOTS's Right of First Refusal is in effect, it shall thereafter notify JOTS of such offer in writing, delivered to JOTS at the address specified in Section 7.19, or as otherwise directed by JOTS.

4.3 Consideration of Offer. JOTS shall have five (5) business days (excluding weekends and holidays) from and after receipt of CITY's written notice of receipt of a bona fide offer pursuant to Section 4.2 to exercise its Right of First Refusal.

4.4 Right of First Refusal Declined. If JOTS shall either give notice of intent not to exercise its Right of First Refusal or shall give no notice within the five business day time specified in Section 4.3, CITY may accept the bona fide offer and proceed with the sale thereunder without further obligation under this Agreement to JOTS unless the purchase

agreement entered into with the bona fide purchaser is subsequently amended or modified in any material respect (as hereafter defined), in which case JOTS's Right of First Refusal shall again be invoked pursuant to the provisions stated in this Article, the same as if said proposed amendment or modification was the initial offer. An amendment or modification to the purchase agreement of a bona fide purchaser, other than JOTS, shall be deemed to be material if it reduces the purchase price or extends the time for any payment of the purchase price (except for an extension of the date for closing the purchase).

4.5 Right of First Refusal Exercised. If JOTS notifies CITY in writing that it elects to purchase the Phase II Real Property pursuant to its Right of First Refusal, the Parties shall enter into a contract of purchase and sale forthwith in a form consistent with the Minnesota Standard Form Vacant Land Purchase Agreement or such other form as required by CITY. Such contract for purchase shall provide, among other things, for the conveyance of title by Quit Claim Deed in the form required by CITY, and may establish a deferred payment period for JOTS's payment of some portion of the purchase price specified in Section 4.5.1. Written notice of election to purchase the Phase II Real Property shall be given by JOTS to CITY by depositing the notice in the United States mail, certified mail, return receipt requested, addressed to the CITY at the address specified in Section 7.19, with postage prepaid, or by personal delivery of the written notice to CITY at the address specified in Section 7.19, prior to the expiration of the five business day time limitation. Notice shall be effective when either deposited in the United States mail as herein described or upon its personal delivery to CITY.

4.5.1 Purchase Price. The purchase price for the Phase II Real Property shall be at the amount of the bona fide offer or \$1,435,852.00, whichever is greater, subject to application of CITY's Land Pricing Write-Down Policy in effect on the effective date of this Agreement to reduce the purchase price by the following:

4.5.1.1 The amount of any credits due JOTS for jobs or taxable market value created as a result of the Phase I Project in excess of the purchase price for the Phase I Real Property pursuant to Section 3.2.3.3.

4.5.1.2 \$10,000.00 for each new job actually created by JOTS that is directly attributable to the Phase II Project; and

4.5.1.3 \$25,000.00 for each million dollars of estimated taxable market value increase determined by the City Assessor to have resulted directly from the Phase II Project.

4.5.2 Conditions Precedent. CITY's obligation to sell the Phase II Real Property to JOTS shall be conditioned on the following:

4.5.2.1 A determination by CITY of the advisability of making a sale after a public hearing required by Minnesota Statutes, Section 116J.994, subdivision 5. Provided, however, following said public hearing, if CITY will not or cannot sell the Phase II Real Property to JOTS, any earnest money paid by JOTS shall be

immediately returned to JOTS.

4.5.2.2 JOTS shall enter into a Business Subsidy Agreement with CITY pursuant to the requirements of Minnesota Statutes, Section 116J.994, subdivision 3.

4.5.2.3 The Willmar City Council shall pass an ordinance authorizing the sale of the Phase II Real Property to JOTS consistent with the terms of this Agreement as required by Section 2.12, subdivision 1(G) of CITY's Home Rule Charter.

4.5.2.4 Prior to the transfer of title, JOTS's plans and specifications for the Phase II Project shall have been approved in writing by CITY. The plans and specifications shall be such as will enable the CITY to determine with reasonable certainty that the project is or will be in compliance with the law and will, if carried out, provide for the intended use.

4.5.3 Sale Subject to Covenants, Conditions and Restrictions. The sale of the Phase II Real Property shall be subject to the following covenants, conditions, and restrictions which shall be incorporated in any quit claim deed delivered by CITY to JOTS:

4.5.3.1 The Phase II Real Property herein transferred shall be devoted to the following use: Industrial.

4.5.3.2 The Phase II Real Property shall be devoted to such use by the JOTS in accordance with the provisions of the quit claim deed.

4.5.3.3 JOTS shall, within one year from the date of the quit claim deed, devote the Phase II Real Property to its intended use, or shall commence work on the Phase II Project (but shall complete such improvements no later than two years from the date of the quit claim deed), and shall continue to devote the Phase II Real Property to its intended use for a period of five years from the date of the closing on JOTS's purchase of the Phase II Real Property; if JOTS fails to commence work on time or fails to devote the Phase II Real Property to its intended use or fails to devote the Phase II Real Property to its intended use on time and for the required duration, title to the real estate shall revert to CITY, and, in that event, JOTS shall promptly offer a deed to the real estate to CITY, who will then, if the deed is accepted by CITY, refund to JOTS the purchase price without interest less any taxes and other encumbrances affecting marketability of title. Notwithstanding the foregoing, CITY may, at its option, consider an extension of time for good cause shown by JOTS. In the event an extension is granted, it (a) shall be to a date certain, (b) may be conditioned by CITY to protect the public interest, and (c) during the period JOTS shall not transfer title to the Phase II Real Property without the express written consent of CITY. After JOTS

has devoted the Phase II Real Property to its intended use in accordance with the plans and specifications for the development of the real estate submitted to the CITY, CITY shall provide the JOTS with a certificate of compliance/completion in recordable form within 30 days from the determination thereof by CITY.

4.5.3.4 Except as otherwise provided in the quit claim deed, JOTS shall not transfer title to the real estate within five years after the date of the quit claim deed without the express written consent of CITY.

4.5.4 Date of Closing. JOTS's notice to exercise its Right of First Refusal shall set a proposed date for the closing of the sale herein contemplated, which date shall be on a business day, and which date shall be not sooner than 30 business days nor longer than 90 business days after the service of the notice of election, unless otherwise agreed upon by the Parties in writing. CITY agrees to deliver possession not later than the date of closing provided that all the conditions of this Agreement have been complied with. The closing shall take place at Willmar City Hall, 333 6th Street Southwest, Willmar, MN 56201, unless an alternate location is agreed to by the Parties.

4.5.5 Closing Costs. JOTS shall pay the recording fees for CITY's Quit Claim deed. JOTS shall pay the state deed tax for CITY's Quit Claim deed. All other fees and charges related to closing, including those relating to obtaining and filing of instruments required to make title marketable, shall be paid by JOTS.

4.5.6 Transaction Fees. Pursuant to CITY's Industrial Land Pricing Write-Down Policy in effect on the effective date of this Agreement, JOTS shall be responsible for reimbursing CITY for any and all real estate commissions and legal/administrative costs incurred by CITY in facilitating the sale of the Phase II Real Property pursuant to this Article, including costs associated with preparing and facilitating this Right of First Refusal.

4.6 Estoppel Certificate. If JOTS elects not to exercise its Right of First Refusal as provided in this Article, or if it otherwise fails to respond to CITY's notice given pursuant to Section 4.1 above within the time period provided in Section 4.2, then in either of such instances, JOTS shall execute an "Acknowledgment, Estoppel and Certification" in a form reasonably acceptable to CITY, which acknowledges and certifies to CITY (and to the bona fide purchaser) that the Right of First Refusal as set forth in this Article does not apply with respect to the sale of the Phase II Real Property to the bona fide purchaser, subject, however, to a closing on the sale of the Phase II Real Property to the bona fide purchaser. Such an Acknowledgment, Estoppel and Certification shall not be a condition precedent as to whether JOTS's Right of First Refusal as set forth in this Article is inapplicable, but shall simply be made available to CITY at its option and at its request.

4.7 Abstracts. Within thirty (30) days from JOTS's receipt of notice from CITY that it will exercise its Right of First Refusal regarding the Phase II Real Property, CITY shall provide JOTS with a currently updated Abstract of Title or, if the Phase II Real Property is registered, an

Owner's Duplicate Certificate of Title and Registered Property Abstract covering the Phase II Real Property. JOTS shall have 15 days after receipt of the updated abstract to examine the title and notify CITY of any title objections or issues of title that need resolution. Failure to deliver an abstract within the time specified herein shall not void this Instrument or otherwise preclude JOTS from demanding an abstract, electing to purchase the Phase II Real Property or completing such purchase.

4.8 Title Corrections. If JOTS is of the opinion that CITY does not have marketable title, JOTS will make written objections ("Objections"), if any, to the form and/or contents of the abstract within 15 days after receipt of the abstract. JOTS's failure to make objections within such time period will constitute waiver of objections. CITY will have sixty (60) days after receiving the Objections to cure the Objections, during which period the closing on purchase of the Phase II Real Property will be postponed as necessary. CITY will use reasonable efforts to correct any Objections. If the Objections are not cured within such 60 day period, JOTS will have the option to 1) terminate the purchase; or 2) waive the Objections and complete the purchase.

4.9 Quit Claim Deed. CITY shall execute and deliver a Quit Claim Deed to JOTS.

4.10 Real Estate Taxes and Special Assessments. CITY warrants that there are no delinquent real estate taxes or levied assessments on the Phase II Real Property. The full amount of current real estate taxes due in the year the deed is dated shall be prorated to the date of closing by the Parties.

4.11 Condition of the Phase II Real Property. CITY shall not transfer or encumber any interest in the Phase II Real Property during the term of this Agreement or prior to conveyance to JOTS, except that CITY may lease the Phase II Real Property. CITY shall remove all rubbish or trash from the Phase II Real Property prior to conveyance and shall prevent and refrain from any use of the Phase II Real Property for any purpose or in any manner which would diminish value or adversely affect JOTS's intended use of the Phase II Real Property for industrial purposes.

4.12 Right of Entry and Inspection. If JOTS exercises its Right of First Refusal, JOTS shall have the right to enter upon the Phase II Real Property at reasonable times following notice to CITY for surveying, conducting an environmental inspection and assessment to detect hazardous or toxic substances, and for other reasonable purposes related to this transaction.

#### ARTICLE 5. INDEMNIFICATION OF CITY.

5.1 JOTS releases from and covenants and agrees that CITY, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Article, collectively the "Indemnified Parties") shall not be personally liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or on the Real Property, provided that the foregoing indemnification shall not be effective for any actions of the

Indemnified Parties that are not contemplated by this Agreement.

5.2 Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, JOTS agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of JOTS (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by CITY in this Agreement or to any actions undertaken by CITY which are not contemplated by this Agreement but shall apply to any pecuniary loss or penalty (including interest thereon from the date the loss is incurred or penalty is paid by CITY at a rate equal to the Prime Rate) as a result of JOTS's actions or inactions with respect to the Project.

5.3 All covenants, stipulations, promises, agreements and obligations of CITY contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of CITY and not of any governing body member, officer, agent, servant or employee of CITY, as the case may be.

ARTICLE 6. TERMINATION. This Agreement shall remain in effect until such time as the later of (1) the purchase price for the Phase I Real Property becomes due under Section 3.2.2; (2) the latest reversion of the Phase I Real Property or Phase II Real Property to CITY pursuant to the terms of the quitclaim deeds provided for herein; or (3) the latest expiration of any covenant, condition or restriction contained in a quitclaim deed conveying either the Phase I Real Property or the Phase II Real Property pursuant to the terms of this Agreement:

6.1 Termination by JOTS. At any time before the closing date on its purchase of the Phase I Real Property, JOTS may terminate this Agreement by providing 60 days written notice to CITY.

6.2 Termination by CITY. If each of the conditions precedent to closing on JOTS's purchase of the Phase I Real Property under Section 3.4 have not been satisfied on or before January 1, 2015, or if after closing on JOTS's purchase of the Phase I Real Property the Phase I Real Property reverts to CITY pursuant to the terms of the quitclaim deed provided for in Section 3.10, or if JOTS otherwise defaults on a material obligation under this Agreement or any Business Subsidy Agreement as required by Minnesota Statutes, Section 116J.994, subdivision 3 or Development Agreement as may be required by Minnesota Statutes, Sections 469.174 through 469.1794, if applicable to the Project or any portion or component thereof, CITY may terminate this Agreement by providing 60 days written notice to JOTS. If JOTS then fails to satisfy the conditions precedent to closing or otherwise cure any material default on JOTS's purchase of the Phase I Real Property or any Business Subsidy or Development Agreement within such 60 day notice period, this Agreement will terminate.

6.3 Effect of Termination. If this Agreement is terminated pursuant to this Article, this

Agreement shall be from such date forward null and void and of no further effect and CITY shall have no liability to JOTS; provided, however, the termination of this Agreement shall not affect the rights of either party to institute any action, claim or demand for damages suffered as a result of breach or default of the terms of this Agreement by the other party, or to recover amounts which had accrued and become due and payable as of the date of such termination.

#### ARTICLE 7. GENERAL PROVISIONS.

7.1 Binding Effect. This Agreement binds and benefits the Parties and their successors and assigns.

7.2 Voluntary and Knowing Action. The Parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

7.3 Authorized Signatories. The Parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it unless expressly stated herein; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

7.4 Assignment. This Agreement may not be assigned by either party without the written consent of the other party.

7.5 Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of CITY and JOTS.

7.6 Cumulative Remedies. The Parties agree that in the event of a breach of this Agreement, the party adversely affected by the breach shall not be required to elect a single remedy. Instead, that party shall be entitled to pursue any and all available legal and/or equitable remedies, including but not necessarily limited to injunctive relief, specific performance, and the recovery of money damages. The Parties agree that the specific mention of certain remedies in this Agreement shall not in any way prevent the Parties from pursuing any other remedies available to them that may not have been specifically mentioned in this Agreement.

7.7 Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, JOTS agrees that CITY, State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of JOTS and involve transactions relating to this Agreement. JOTS agrees to maintain these records for a period of six years from the date of termination of this Agreement.

7.8 Data Practices. The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*

7.9 Compliance with Laws. JOTS shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which JOTS is responsible.

7.10 Interest by CITY Officials. No elected official, officer, or employee of CITY shall, during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

7.11 Governing Law. This Agreement shall be deemed to have been made and accepted in Kandiyohi County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.

7.12 No Waiver. Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.

7.13 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

7.14 Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.

7.15 Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any party, and any undischarged obligations of CITY and JOTS arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

7.16 Execution. This Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

7.17 Other Documents. Each party to this Agreement agrees, both at the closings of the sales of the Real Property provided for herein and after such closings, to execute such other documents as may be reasonably requested by the other party in order to complete the real estate transactions contemplated by this Agreement.

7.18 Recitals. The recitals to this Agreement are made a part hereof and incorporated herein by reference.

7.19 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 CITY by delivering it personally to the City Administrator of CITY; or if it is directed to JOTS, by delivering it personally to an officer of JOTS; or if mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid; or if transmitted by facsimile, copy 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 CITY:                      City Administrator  
    City of Willmar  
    333 6<sup>th</sup> Street Southwest  
    Willmar, MN 56201

If to JOTS:                        Chief Executive Officer  
    Jennie-O Turkey Store, Inc.  
    2505 Willmar Avenue Southwest  
    Willmar, MN 56201

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 one business day after any such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, ten days prior to the effective date of such change.

7.20 Dates and Time Periods. Should the date for the giving of any notice, the performance of any act, or the beginning or end of any period provided for herein fall on a Saturday, Sunday or legal holiday, such date shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday.

*[Signature pages to follow]*



**CITY OF WILLMAR, MINNESOTA**

By: \_\_\_\_\_  
Frank Yanish, Its Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Charlene Stevens, Its City Administrator

Date: \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF KANDIYOHI )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Frank Yanish, as Mayor, and Charlene Stevens, as City Administrator, for the City of Willmar, Minnesota.

\_\_\_\_\_  
Notary Public

**THIS INSTRUMENT WAS DRAFTED BY:**

Robert T. Scott  
Flaherty & Hood, P.A.  
525 Park Street, Suite 470  
St. Paul, MN 55103  
(651) 225-8840

**EXHIBIT A**

**Legal Description of Phase I Real Property**

Outlot B and Lot 1, Block 5, Willmar Industrial Park Third  
Addition, City of Willmar, Kandiyohi County, Minnesota

**EXHIBIT B**

**Legal Description of Phase II Real Property**

Lot 1, Block 3, Willmar Industrial Park Third Addition, City of  
Willmar, Kandiyohi County, Minnesota

## EXHIBIT C

### CITY OF WILLMAR INDUSTRIAL LAND PRICING WRITE-DOWN POLICY

#### Willmar Industrial Land Pricing Write-Down Policy

1. **Purpose**  
The purpose of the land write-down policy is to stimulate and assist economic development projects by reducing the sale price of City-owned (industrial) properties, based on an established formula of price credits for job creation and tax base enhancement.
2. **Impacted Properties**  
This policy shall apply to the sale of any and all City-owned industrial properties. These properties will most likely be located in one of the phases of the Willmar Industrial Park.
3. **Qualifying Buyers/Projects**  
To be eligible for a land write-down, a qualifying business shall be either a permitted or conditional use as listed in the appropriate zoning district of the Willmar Zoning Ordinance. Any approval of a land write-down shall be conditioned on land use approval.
4. **Calculating the Write-Down**  
Any land write-down shall use as its basis the asking/listing price for the property as calculated and offered by the City.
  - A. Employment credit: A qualifying project shall be credited \$10,000 off the listing price per job created. Job creation goals shall be stated and included in a formal agreement between the buyer and the City.
  - B. Tax base credit: A qualifying project shall be credited \$25,000 off the listing price per million dollars of estimated market value created as determined by the office of the City Assessor. Tax base creation goals shall be stated and included in a formal agreement between the buyer and the City.

In no instance shall the amount of the land write-down credited to the buyer exceed the stated price of the property being acquired.
5. **Relationship to Minnesota Statutes**  
Any land write-down shall be authorized by and in full compliance with applicable Minnesota Statutes, including but not limited to Minn. Stat. Chs. 169 and 116J.
6. **Land Write Down/Business Subsidy Process Costs**  
The buyer/write-down recipient shall be responsible for payment of all real estate commissions and legal/administrative costs incurred by the City in the transaction.

## EXHIBIT D

### CITY OF WILLMAR BUSINESS SUBSIDY POLICY

#### City of Willmar Business Subsidy Policy

This Policy is adopted for purposes of the business subsidies act (the "Act"), which is Minnesota Statutes, Section 116J.993 through 116J.995. Terms used in this Policy are intended to have the same meanings as used in the Act, and this Policy shall apply only with respect to subsidies granted under the Act if and to the extent required thereby.

While it is recognized that the creation of good paying jobs is a desirable goal which benefits the Willmar community, it must also be recognized that not all projects assisted with subsidies derive their public purposes and importance solely by virtue of job creation. In addition, the imposition of high job creation requirements and high wage levels may be unrealistic and counter-productive in the face of larger economic forces and the financial and competitive circumstances of an individual business.

The granting of subsidies shall be guided by the following principles and criteria:

1. Each project shall be evaluated based on its perceived importance and benefit to the community from all perspectives deemed relevant, including created or retained employment positions, where applicable.
2. The Act now provides that, after public hearing thereon, if the creation or retention of jobs is determined not to be a goal of a business subsidy, the wage and job goals may be set at zero. Where creation or retention of jobs is a goal, the specific number of jobs to be created or retained shall be stated in the subsidy agreement. Where creation of new jobs is required, those jobs shall have a wage floor of \$12.00 per hour.
3. The specific minimum requirements under Section 116J.994, Subdivision 2, of the Act that a recipient must meet in return for the business subsidy shall be, where applicable:
  1. The retention of existing jobs,
  2. The creation of the specified number of new jobs at or exceeding the wage floor, and/or
    - Where the subsidy relates to the acquisition of personal property or the acquisition and/or physical development of real property, the substantial completion of the acquisition or development thereof
    - Where applicable, the foregoing shall also be the stated measurable, specific and tangible goals for the subsidy under the related subsidy agreement, as provided in Section 116J.994, Subdivision 3(3), of the Act.

4. It is recognized that a particular project which does not include as a goal the creation or retention of jobs may nonetheless be worthy of support and subsidy in respect of other perceived benefits.
5. In cases where the objective is the retention of existing jobs, the recipient of the subsidy shall be required to provide reasonably specific and demonstrable evidence of the job loss, absent the subsidy.
6. Subject to the wage floor, where applicable, the setting of wage and job goals must be sensitive to prevailing wage rates, local economic conditions, external economic forces over which neither the grantor nor the recipient of the subsidy has control, the individual financial resources of the recipient and the competitive environment in which the recipient's business exists.
7. Because it is not possible to anticipate every type of project which may in its context and time present desirable community building or preservation goals and objectives, the governing body must retain the right in its discretion to approve projects and subsidies which may vary from the principles and criteria of this Policy, as may be permitted by but subject to the procedural and other requirements of the Act.
8. As provided in the Act, deviations from the criteria of this Policy are permitted by documenting in writing the reasons for the deviation and attaching a copy of the document to the next annual report to the Minnesota Department of Employment and Economic Development (DEED).
9. The terms of this policy, including the setting of the wage floor, shall be reviewed on a bi-annual basis.

This Policy is intended to conform to the requirements of the Act, including the year 2000 amendments thereto. A copy of this Policy (and any amendments hereto) shall be submitted along with the first annual report to DEED following its adoption.

Adopted by:                   The City Council of the City of Willmar, Minnesota  
Date of Adoption:           March 15, 2004  
Date of Public Hearing:      March 15, 2004

Wage floor amended to \$11.00 per hour as per Council action on April 16, 2007  
Wage floor amended to \$12.00 per hour as per Council action on May 6, 2013

**EXHIBIT E**

**QUITCLAIM DEED CONVEYING PHASE I REAL PROPERTY**

(Top 3 inches reserved for recording data)

---

**QUIT CLAIM DEED**

DEED TAX DUE: \$785.64

DATE: \_\_\_\_\_, 2014

FOR VALUABLE CONSIDERATION, the City of Willmar, Minnesota, a Minnesota municipal corporation (“**Grantor**”), hereby conveys and quitclaims to Jennie-O Turkey Store, Inc., a Minnesota corporation, real property in Kandiyohi County, Minnesota, legally described as follows:

Outlot B and Lot 1, Block 5, Willmar Industrial Park Third  
Addition, City of Willmar, Kandiyohi County, Minnesota

together with all hereditaments and appurtenances belonging thereto (the “**Real Property**”), subject to the following restrictions, covenants, and conditions:

1. The Real Property herein transferred shall be devoted to the following use: Corporate office space connected to an industrial food processing facility.
2. The Real Property shall be devoted to such use by the Grantee in accordance with the provisions of this Deed.
3. Grantee shall, within one year from the effective date of this instrument, devote the Real Property to its intended use, or shall commence work on the improvements required to devote the Real Property to its intended use (but shall complete such improvements no later than two years from the effective date of this instrument).
4. The Real Property shall be devoted to such use by Grantee in accordance with the provisions of this instrument for a period of ten years from the effective date of this instrument.
5. Grantee shall not transfer title to the Real Property within ten years after the effective date of this instrument without the express written consent of Grantor.

6. Grantee's breach of any of the covenants, conditions and restrictions stated herein shall cause the Real Property to revert to Grantor upon Grantor's invocation of its rights hereunder, unless Grantor shall agree to an extension of time to a date certain within which Grantee may comply with said covenant, condition and/or restriction.
7. All of the covenants, conditions and restrictions stated herein relative to the use of the Real Property are covenants running with the land.

The Grantor certifies that the Grantor does not know of any wells on the Real Property.

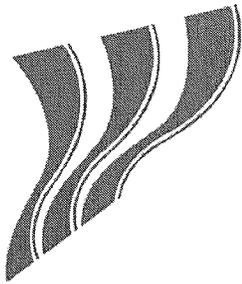
Grantor

**The City of Willmar, Minnesota**

By: \_\_\_\_\_  
Frank Yanish, Its Mayor

By: \_\_\_\_\_  
Charlene Stevens, Its City Administrator





CITY OF WILLMAR, MINNESOTA  
REQUEST FOR COMMITTEE ACTION

Agenda Item Number: \_\_\_\_\_

Meeting Date: March 27, 2014

Attachments:  Yes  No

CITY COUNCIL ACTION

Date: \_\_\_\_\_

- |                                   |                                 |
|-----------------------------------|---------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Denied |
| <input type="checkbox"/> Amended  | <input type="checkbox"/> Tabled |
| <input type="checkbox"/> Other    |                                 |

Originating Department: Planning and Development Services

Agenda Item: BNSF Wye Track Project

Recommended Action: To participate in the project and to enter into the memorandum of understanding for the project.

Background/Summary: The City has been asked to be a partner in a project with BNSF, Kandiyohi County, the City/County, Economic Development Commission, and MnDOT to construct a wye "bypass" on the west side of Willmar. Representatives of BNSF and their engineering consultant will give a presentation on the project. The project would ultimately result in major changes to train traffic into and out of the City of Willmar, as well as to highway geometrics on Highway 12 and Highway 40. One of the primary impetuses of the project at this time is the opportunity to apply for a Federal TIGER grant to cover a portion of project costs. The deadline for that submittal is late April.

Alternatives:

1. To enter into a memorandum of understanding and participate in the project.
2. To decline participation in the project.
3. To continue discussion of local impacts/obligations.

Financial Considerations: Right-of-way for the train tracks will be requested across the former airport property (approximately 20 acres, in the range of \$200,000.) The project, due to the reduction of train traffic in the City of Willmar, may result in less demand for quiet zone development at 7<sup>th</sup> and 10<sup>th</sup> Streets.

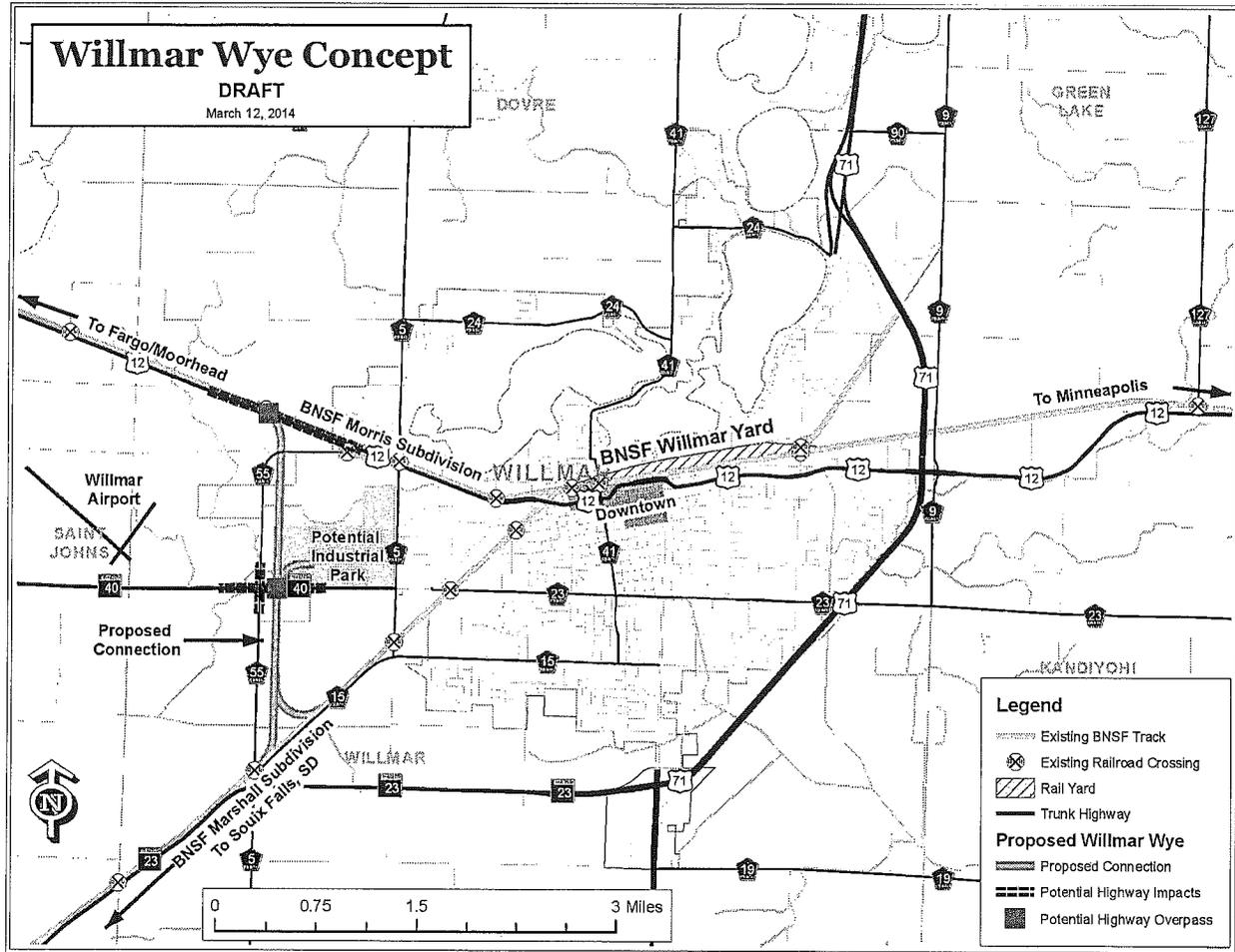
Preparer: Bruce D. Peterson, AICP  
Director of Planning and Development Services

Signature:

Comments:

# EXHIBIT "A"

## Illustration of Proposed Project and Wye Track





# MEMORANDUM OF UNDERSTANDING

## **WILLMAR, MINNESOTA – WYE AND INDUSTRIAL SPUR**

This Memorandum of Understanding ("**Memorandum**") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between BNSF Railway Company, a Delaware corporation ("**BNSF**"), the City of Willmar, Minnesota, ("**City**"), Kandiyohi County, Minnesota, ("**County**"), Kandiyohi County, The Kandiyohi County and the City of Willmar Economic Development Commission ("**EDC**"), and The State of Minnesota by and through its Department of Transportation ("**State**"). BNSF, City and State are collectively referred to as the "**Parties**".

This Memorandum identifies the general terms of a proposed agreement under which the Parties would be willing to pursue a definitive agreement regarding: (i) the creation of a Wye Connection track ("**Wye Track**") (ii) a rail spur extension into the City of Willmar Industrial Park ("**Rail Spur**"), and (iii) establishment of a public-private arrangement for shared funding of said Wye Track construction (matters (i), (ii) and (iii) collectively, ("**Proposed Project**").

It is expressly understood by the Parties that unless expressly provided herein: (i) this Memorandum is not intended to represent a binding agreement between the parties and (ii) BNSF, City, County, EDC and State have no obligation to incur costs relating to the Proposed Project, to perform planning, engineering or construction herein proposed, or to agree to any other portion of the Proposed Project. Within the context of that understanding, all statements applying present, transitive verbs (e.g. "will", "shall", etc.) should be construed as proposed terms to be included in a Definitive Agreement, which would incorporate the concept expressed in such statement.

By its execution hereof, each of the Parties represents that it has been duly authorized to sign this Memorandum. BNSF, City, County, EDC and State agree to discuss and negotiate in good faith using commercially reasonable efforts to further express the details, allocation of costs and other obligations relating to the Proposed Project as may be included in a Definitive Agreement. The proposed terms and conditions of this Memorandum are as follows:

### **Article I. Background and Proposed Project Outline**

1. The Proposed Project consists of the construction of the Wye Track connection running north-south between the BNSF Railway Morris and Marshall subdivisions through the Project Area, as further illustrated in Exhibit "A" attached hereto. The Wye Track would enable through trains to bypass the existing yard, thus reducing the amount of in-town train traffic and at-grade crossing blockages in the central part of Willmar. In addition to the community and environmental benefits, the Wye Track would increase BNSF's operational flexibility and improve its environmental footprint. The Proposed Project would also result in expanded rail service opportunities to businesses and other users in the Park and greater Project Area.

2. As further detailed in this Memorandum, the Proposed Project would be funded by a public-private partnership of BNSF, City, County, EDC and State. The Proposed Project is of regional and national significance and, as such, could be a candidate for state and/or federal funding, including but not limited to funding under the Transportation Investment Generating Economic Recovery ("**TIGER**") grant program administered by U.S. Department of Transportation ("**USDOT**").

**Article II. Public-Private Partnership: City, County, EDC, BNSF and State**

1. The Parties acknowledge and agree that the Proposed Project is made viable only through a public-private partnership arrangement whereby BNSF, City, County, EDC and State would co-fund the Proposed Project, in addition to potential funding contributions from possible third party sources, including without limitation USDOT.

2. Preliminary Engineering. BNSF would organize and fund preliminary engineering and environmental work ("**Preliminary Engineering**") at an estimated cost of \$300,000. The Preliminary Engineering would be conducted for the purpose of achieving the following goals:

- (i) To determine a final configuration of permanent physical structures comprising the proposed Wye Track, including the location of new track, the alteration of existing track, and the orientation of supporting structures;
- (ii) To develop a scope of work for the Proposed Project and cost estimates to a reasonably confident degree; and
- (iii) To identify and assess the Proposed Project from the standpoint of environmental risks and impact, right-of-way acquisition needs, and overall public and private benefits to the community.

BNSF reserves exclusive control of Preliminary Engineering and reserves the right to terminate in the event that findings produced in the course thereof reveal matters which, in BNSF's sole discretion, would materially impede BNSF's financial, legal or operational ability to continue pursuing the Proposed Project.

3. City Development Expenses. If the Parties determine that there is a mutual desire to continue developing the Proposed Project and pursuing the Definitive Agreement, and such continuation will result in expenditures exceeding the BNSF Development Expenses, then City, County and EDC will assume shared financial responsibility for up to \$300,000 in excess of the BNSF Development Expenses (such amount, "**City Development Expenses**"). City Development Expenses may consist of actual funds or in-kind services provided by City, County, EDC, State or third party partner(s). City's obligation to fund the City Development Expenses shall survive the termination of this Memorandum and/or the execution of the Definitive Agreement.

4. Shared Expenses. Any costs and expenses incurred by the Parties in pursuit of the Proposed Project or Definitive Agreement and in excess of \$600,000 are referred to as the "**Shared Expenses**" and are understood to be: (i) divided among BNSF, City, County, EDC, State and any additional partners, in shares to be specifically enunciated in the Definitive Agreement, (ii) variable depending on the findings of the Early Development Goals and final configuration of the Wye Track and other design and construction components of the Proposed Project, (iii) variable depending on the final amount of TIGER grants or other third party supplemental funding and (iv) variable depending on public requirements.

5. TIGER Application. BNSF, City, County, EDC and State acknowledge that the Proposed Project and the Parties' ability to enter into a Definitive Agreement would be materially advanced by a commitment of TIGER funds from USDOT. The parties agree to coordinate efforts to timely submit application for TIGER funds as soon as reasonably possible after USDOT issues a 2014 notice of availability therefor. The Parties will cooperate and assist each other in good faith to procure any materials prerequisite to the TIGER application, as determined by USDOT. BNSF and City further agree to coordinate efforts to timely submit application for funding from other sources

including State or other public agencies as soon as reasonably possible after notice of availability is issued by the applicable granting entity.

6. Permits and Other Government Approvals. BNSF, City, County, EDC and State, agree to cooperate in good faith in order to obtain any governmental permit, license or other approval reasonably necessary for the performance of obligations relating to the Proposed Project.

7. Timeline Goals. The Parties agree to advance discussions in contemplation of the following benchmark achievement dates:

- Memorandum executed April 1, 2014,
- Preliminary Engineering completion April 28, 2014, and
- Public funding applications (including TIGER) April 28, 2014.

7. Timeline Goals. It is anticipated that through the Public-Private Partnership, each party will contribute through financial means, in-kind services or products or other means. The table below indicates the current status of those contributions at the execution of this Memorandum.

<b>Partner</b>	<b>Contribution</b>
<b>BNSF Railway</b>	TBD
<b>MNDOT</b>	TBD
<b>City of Willmar</b>	TBD
<b>Kandiyohi County</b>	TBD
<b>Kandiyohi County and City of Willmar EDC</b>	TBD

**Article IV. BNSF Alternative Loop Track**

1. Notwithstanding the foregoing, the Parties acknowledge that the Proposed Project is contingent on the ability of the Parties to provide and/or obtain outside funding and on uncertain social, governmental and economic circumstances and projections affecting business and operations, among other considerations.

2. Without limitation to BNSF's commitment to pursue the Proposed Project in cooperation with City and State as stated in this Memorandum, BNSF reserves the right to plan and conduct preliminary development of a loop track or other alternative track configurations intended to address BNSF's local and regional operational capacity needs. While the Parties agree to further explore the possibility of moving forward with the Proposed Project and entering into a Definitive Agreement regarding same, the Parties expressly acknowledge and agree that BNSF has the right, in its sole discretion, to pursue any final capacity-expanding project, whether the Proposed Project or an alternative, that best comports with BNSF's regional economic and business goals. City, County, EDC and State expressly acknowledge and agree that BNSF has no obligation to pursue further discussions with City and State regarding the Proposed Project if at any time during the BNSF Early Development BNSF determines, in its sole discretion, that the Proposed Project will not adequately meet BNSF's needs, that findings in BNSF Early Development in regards to costs, mitigation, operational flexibility, or other unforeseen conditions that will adversely impact BNSF.

**Article V. Miscellaneous Provisions**

1. Term. The term of this Memorandum ("**Term**") will begin on the date first written above and expires on the date that is the earliest of the following to occur:

- (i) the Parties agree in writing to terminate this Memorandum;
- (ii) the Parties fully execute the Definitive Agreement; or
- (iii) \_\_\_\_\_, 20\_\_, unless mutually extended in writing by the Parties.

Upon expiration of the Term, the provisions of this Memorandum will become void and of no further force or effect.

2. Ancillary Costs Assumed by Individual Party. Separate from and in addition to the BNSF Development Expenses, any costs incurred by BNSF prior to the executed Definitive Agreement will be borne exclusively by BNSF. Separate from and in addition to the City Development Expenses, if any, any costs incurred by the City prior to the executed Definitive Agreement will be borne exclusively by the City. Neither party will reimburse the other for such costs incurred.

3. Continuing Commitment to Negotiations. Subject to the provisions herein, the Parties agree to discuss and negotiate in good faith using commercially reasonable efforts to reach agreement with respect to the Proposed Project and a Definitive Agreement, including the application for and securing of TIGER funds or other publicly available funds and the allocation of responsibility for any Shared Expenses.

**Article VI. Non-Binding**

The Parties understand and expressly acknowledge that this Memorandum outlines only certain general terms that might be included in a Definitive Agreement concerning the Proposed Arrangement, and that essential elements of a Definitive Agreement still remain to be negotiated and agreed upon by the Parties. It is the express mutual intention of the parties that, except as expressly stated to the contrary, this Memorandum shall not give rise to any legally binding contractual obligations between the parties. Rather, this Memorandum only expresses the intention of the parties to conduct negotiations relative to the Proposed Project which may or may not result in the formation and consummation of a formal, binding Definitive Agreement. It is the express mutual intention of the Parties that, notwithstanding anything to the contrary contained herein, the execution of a formal, written Definitive Agreement by duly authorized representatives of the Parties is a condition precedent to the creation of a binding contractual relationship between the Parties and that no party hereto will be under any legal obligation of any kind whatsoever with respect to the Proposed Project by virtue of this or any other written or oral expression by it or by any of its representatives. BNSF may choose to cease discussions and negotiations with City, County, EDC, State and any additional parties concerning the Proposed Project for any reason at any time, and, without limitation, may commence similar discussions and negotiations with any other party at any time.

*[Signature page follows]*

This Memorandum is made effective and entered into by and between the Parties as of the date first set forth above.

**BNSF:**

BNSF Railway Company, a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EDC:**

Kandiyohi County and City of Willmar Economic Development Commission, a political subdivision of the State of Minnesota

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY:**

City of Willmar, Minnesota, a Minnesota municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE:**

The State of Minnesota by and through its Department of Transportation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COUNTY:**

Kandiyohi County, Minnesota,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# EXHIBIT "A"

## Illustration of Proposed Project and Wye Track

