



**WILLMAR PLANNING COMMISSION MEETING**

**THURSDAY, OCTOBER 5, 2023 @ 6:30 PM**

**City Hall**

**333 6Th Street SW**

**Willmar, MN 56201**

**AGENDA**

1. Call Meeting to Order
2. Roll Call
3. Proposed Additions or Deletions to Agenda
4. Minutes
  - A. Approval of Minutes
5. New Business
  - A. Call for a Public Hearing, Bethesda Preliminary Plat
  - B. Call for a Public Hearing, Bethesda PUD
  - C. Duinick Concrete, LLC Purchase Agreement

**WILLMAR PLANNING COMMISSION  
WEDNESDAY, SEPTEMBER 20<sup>th</sup>, 2023  
515 2<sup>nd</sup> STREET SW, CONFERENCE ROOM 1  
MINUTES**

1. The Willmar Planning Commission met on Wednesday, September 20<sup>th</sup>, 2023, at 6:30pm at the City Hall.

**Members Present:** Stacy Holwerda, Steve Dresler, Christopher Buzzeo and Yvon Fils-Aime.

**Members Absent:** Chair Jonathan Marchand and Vice Chair Kelsey Vosika.

**Others Present:** Director Justice Walker, City Planner Guilherme Motta, Leslie Valiant and Jennifer Kotila.

Commissioner Dresler called for order at 6:32pm and started with the minutes from September 04<sup>th</sup> review. Commissioner Dresler asked if there were any questions regarding the minutes. No questions were asked. Commissioner Buzzeo motioned to approve the minutes and Commissioner Holwerda seconded. Commissioner Fils-Aime voted aye, Commissioner Holwerda voted aye, Commissioner Buzzeo voted aye, and Commissioner Dresler voted aye. The motion was approved.

Commissioner Dresler asked if there were any changes on the agenda. Director Walker said he would like to propose something regarding goats on miscellany and Administrator Valiant commented about changing the date for the next meeting from 4<sup>th</sup> to 5<sup>th</sup> October.

## **2. HENDRICKX SUBDIVISION – PRELIMINARY AND FINAL PLAT / PUBLIC HEARING – FILE 23-07.**

Director Walker overviewed the project according to agenda. He said the project needed to be sent to MnDot for comments and it is a major subdivision because it abuts Highway 12.

Public Hearing was opened at 6:40.

Commissioner Dresler and Director Walker asked if any comments from public. No one was present to comment.

Public Hearing was closed at 6:41.

Commissioner Dresler asked for questions from the commission. Buzzeo asked if it is a combination of lots. Mrs. Valiant asked the Commissioner Dresler if the 20<sup>th</sup> St would develop to north and he responded yes. Commissioner Buzzeo asked what the proposed development is, and commissioner Dresler responded it is commercial.

**Staff recommended in favor of the approval for major subdivision.**

**Commissioner Holwerda motioned to approve the major subdivision; Commissioner Fils-Aime seconded. Commissioner Fils-Aime voted aye, Commissioner Holwerda voted aye, Commissioner Dresler voted aye, and Commissioner Buzzeo voted aye. The motion was approved.**

### 3. MISCELLANY

- a. Director Walker told the Commission people are requesting to use goats for landscaping control in the city. He said they would like to know if it would be possible to display a license on site similar to a building permit. Commissioner Holwerda asked for how long would this be permitted and how many goats would be permitted. Commissioner Fils-Aime asked for location. Commissioner Dresler said they would come for a service and then leave the place and asked if the city has any rules regarding it. Director Walker said it would be allowed on Agricultural District. Commissioner Fils-Aime asked if neighbors are against it. Commissioner Holwerda said it is something for Agricultural and Industrial districts. Director Walker said it would be necessary a temporary fence on properties. Commissioner Dresler said it would be necessary standards if it is a temporary permit. Commissioner Buzzeo suggested permits for 24 hours. The Planning Commission indicated that they would be open to exploring an ordinance change to permit goats with certain performance standards.
- b. Commissioner Dresler asked if any other miscellany. Director Walker said he appreciated the experience with the Planning Commission because he is leaving his current job. City Planner Motta also thanked the Commission for the experience on the position. Commissioner Dresler thanked both and desired success for the new positions. Mrs. Valiant appreciated the work of both.

### 4. ADJOURN

Commissioner Buzzeo motioned to adjourn at 6:55pm. It was seconded by Commissioner Holwerda. All members present aye. The motion carried. With no further business, the meeting was adjourned.

Minutes presented by City Planner Guilherme Motta

**NOTICE OF PUBLIC HEARING FOR PRELIMINARY PLAT**

Notice is hereby given that the City of Willmar Planning Commission will meet on Wednesday, November 1, at 6:30 p.m. at the City of Willmar City Hall, 333 SW 6<sup>th</sup> Street Conference Room 1 (main floor), Willmar, MN, to conduct a public hearing to hear reasons for and against a preliminary plat for Bethesda 4<sup>th</sup> Addition on Willmar Ave SE on parcel 95-914-2610. All property owners in the vicinity of the above-described property are hereby notified of the public hearing that they may appear in person or be represented by counsel to be heard on this matter. If you would like to view the proposed project or relevant conditions, these items are available for review at Willmar City Hall, located at 333 6<sup>th</sup> ST SW. Please contact City Administration at 320-235-4913 if you have any questions.

October 11<sup>th</sup>, 2023  
Date

Leslie Valiant  
City Administrator

## NOTICE OF PUBLIC HEARING FOR CONDITIONAL USE PERMIT

Notice is hereby given that the City of Willmar Planning Commission will meet on Wednesday, November 1, at 6:30 p.m. at the City of Willmar City Hall, 333 SW 6<sup>th</sup> Street Conference Room 1 (main floor), Willmar, MN, to conduct a public hearing to hear reasons for and against a Conditional Use Permit for Bethesda to construct a two-phased multi-family development of approximately 120 and 90 units, respectively, in the Bethesda on Willmar Ave SE on parcel 95-914-2610. All property owners in the vicinity of the above-described property are hereby notified of the public hearing that they may appear in person or be represented by counsel to be heard on this matter. If you would like to view the proposed project or relevant conditions, these items are available for review at Willmar City Hall, located at 333 6<sup>th</sup> ST SW. Please contact City Administration at 320-235-4913 if you have any questions.

October 11<sup>th</sup>, 2023  
Date

Leslie Valiant  
City Administrator

## COMMERCIAL PROPERTY PURCHASE AGREEMENT

This Commercial Property Purchase Agreement (this “Agreement”) is made this \_\_\_\_ day of September \_\_, 2023 (“Effective Date”), by and between Duininck Concrete, LLC, a limited liability company 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, (parts of PID 95-917-5511, PID, 95-197-5510 and PID 95-125-0150 to the extent necessary) legally described on the attached Exhibit A (the “Land”) and depicted and legally described on the attached Exhibit B, together with all improvements thereon. Seller intends to subdivide the Land such that an approximately thirteen (13) acre parcel is created in the approximate configuration as set forth on the attached Exhibit B (the “Property”).
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 concrete storage facility and other real estate development projects (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 Nine Thousand Dollars (\$9,000.00) per acre, estimated to equal One Hundred Twenty-three Thousand Thirty and 00/100 Dollars (\$123,030.00) for the approximately 13.67 acres comprising the Property (“Purchase Price”), payable as follows:
  - a. Ten Thousand Dollars (\$10,000.00) as earnest money (“Earnest Money”) will be delivered to First American Title Insurance Company in Minneapolis, Minnesota Attn: Jim Erickson (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 to be paid on the Closing Date subject to any adjustments, prorations or credits under this Agreement.

The Purchase Price will be adjusted at the Closing to account for the subdivision of the Property following the Subdivision 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 two (2) 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 concrete storage facility on the Property within one E(1) year 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. Seller agrees to provide evidence to Buyer, or its successors, that the option to repurchase has expired, which obligation shall survive Closing.
- b. 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.

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. Seller will pay all costs of the Title Commitment, Buyer will pay the costs 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. Seller 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; and
  - (2) 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

- (3) 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. Utility Service Extension. Prior to Buyer’s completion of the Project, Seller shall extend public water and sanitary sewer services to the boundary of the Property. The costs of such extension shall be shared equally by Buyer and Seller.

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: \_\_\_\_\_

If to Buyer: Duininck Concrete LLC  
% Jason Duininck  
605 Lakeland Drive NE  
Willmar, MN 56201  
E-mail: jasond@duininck.com

With copy to: Messerli & Kramer P.A.  
Attn: Anthony L. Barthel  
100 South Fifth Street, Suite 1400  
Minneapolis, MN 55402

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:**

**DUININCK CONCRETE, LLC**

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

**SELLER:**

**CITY OF WILLMAR**

By: \_\_\_\_\_  
Doug Reese, Mayor

By: \_\_\_\_\_  
Leslie Valiant, City Administrator

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE LAND**

(Actual Legal Description to Govern)

To be determined in accordance with Title Commitment.

**EXHIBIT B**  
**DEPICTION AND LEGAL DESCRIPTION OF THE PROPERTY**

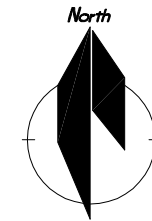
(see attached)



This is a survey of part of:  
**NW¼ of the SE¼**

Located in:

**Section 17, T119N-R35W, Kandiyohi County, Minnesota**



This drawing prepared by:

**Bonnema Runke Stern Inc.**

*Professional Land Surveyors*

4566 Hwy 71 NE - Suite 1

Willmar, MN 56201

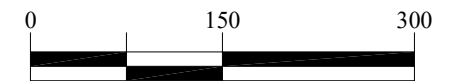
Office (320) 231-2844 Fax (320) 231-2827

Requested by: **Kandiyohi County & City of Willmar - EDC**

222 20th St SE

PO Box 1783

Willmar, MN 56201



Scale in feet

**LEGEND**

- Found Iron Monument from former survey
- Bonnema Runke Stern Placed Capped Iron Monument
- Cast Iron Monument
- - - Tillage Line (Spring 2023)
- ⊕ Fire Hydrant
- ⊕ Utility Pole
- ⊕ Sanitary Manhole
- ⊕ Water Gate Valve
- ▨ Bituminous
- ▨ Gravel

All Documents referred to on this survey can be found in the office of the County Recorder.

Bonnema Runke Stern Inc. is not giving a title opinion or abstract of this parcel. We suggest that you contact your attorney or a title insurance company for that purpose. Easements or neighboring deed conflicts may exist which affect this parcel and are not shown on this survey.

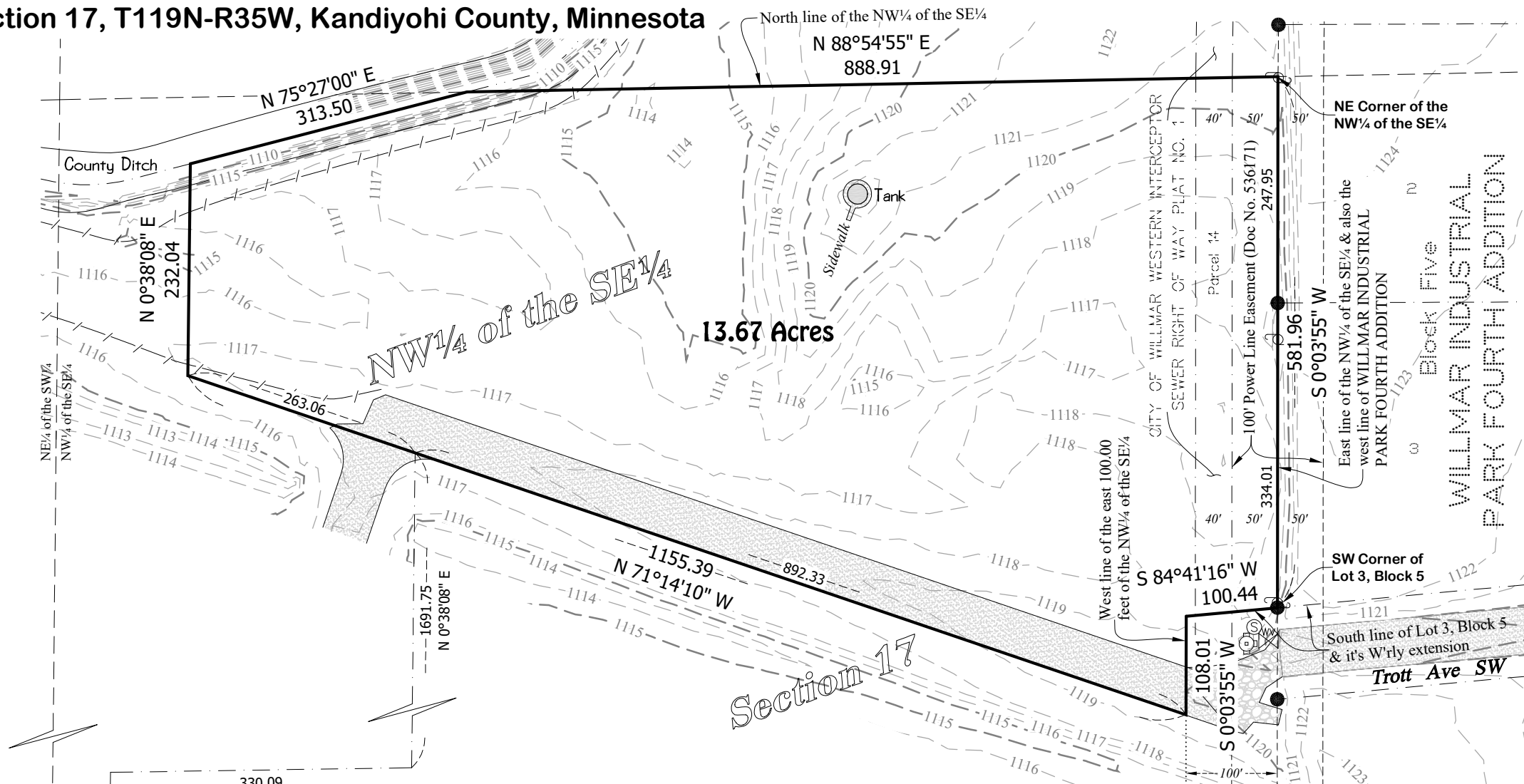
The distances shown from improvements to the property lines are shown for references purposes only and are NOT intended for determining the property line location. Property corner monuments shall always be used when establishing the property line.

I HEREBY CERTIFY THAT THIS SURVEY, PLAN, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA. THE FIELD WORK WAS COMPLETED ON MAY 22, 2023.

**PRELIMINARY RESULTS**

Date June 2, 2023 License No. 46171

Survey Requested By: **EDC - Duinick Parcel**  
 © BONNEMA RUNKE STERN INC. 2023



**Land Description - 13.67 Acres**

That part of the Northwest Quarter of the Southeast Quarter of Section 17, Township 119 North, Range 35 West of the Fifth Principal Meridian, Kandiyohi County, Minnesota, described as follows:

- Commencing at the southwest corner of the Southeast Quarter of said Section 17;
- thence on an assumed bearing of North 88 degrees 41 minutes 00 seconds East, along the south line of said Section 17, a distance of 61.89 feet;
- thence on a bearing of North 00 degrees 38 minutes 08 seconds East a distance of 572.03 feet;
- thence on a bearing of North 89 degrees 07 minutes 13 seconds East a distance of 330.09 feet;
- thence on a bearing of North 00 degrees 38 minutes 08 seconds East a distance of 1691.75 feet to the point of beginning of the land to be described;
- thence on a bearing of North 71 degrees 14 minutes 10 seconds West a distance of 263.06 feet;
- thence on a bearing of North 00 degrees 38 minutes 08 seconds East a distance of 232.04 feet to a point in the ditch;
- thence on a bearing of North 75 degrees 27 minutes 00 seconds East a distance of 313.50 feet to a point in the ditch on the north line of said Northwest Quarter of the Southeast Quarter;
- thence on a bearing of North 88 degrees 54 minutes 55 seconds East, along said north line of the Northwest Quarter of the Southeast Quarter, a distance of 888.91 feet to the east line of said Northwest Quarter of the Southeast Quarter;
- thence on a bearing of South 00 degrees 03 minutes 55 seconds West, along the east line of said Northwest Quarter of the Southeast Quarter, a distance of 581.96 feet to the southwest corner of Lot 3, Block 5 of the record plat entitled WILLMAR INDUSTRIAL PARK FOURTH ADDITION, on file in the office of the Kandiyohi County Recorder;
- thence on a bearing of South 84 degrees 41 minutes 16 seconds West, along the westerly extension of the south line of said Lot 3, a distance of 100.44 feet to the west line of the east 100.00 feet of said Northwest Quarter of the Southeast Quarter as measured perpendicular to the east line of said Northwest Quarter of the Southeast Quarter;
- thence on a bearing of South 00 degrees 03 minutes 55 seconds West, along said west line of the east 100.00 feet of the Northwest Quarter of the Southeast Quarter, a distance of 108.01 feet to a point which bears South 71 degrees 14 minutes 10 seconds East from the point of beginning;
- thence on a bearing of North 71 degrees 14 minutes 10 seconds West a distance of 892.33 feet to the point of beginning.

**Elevation Datum:**

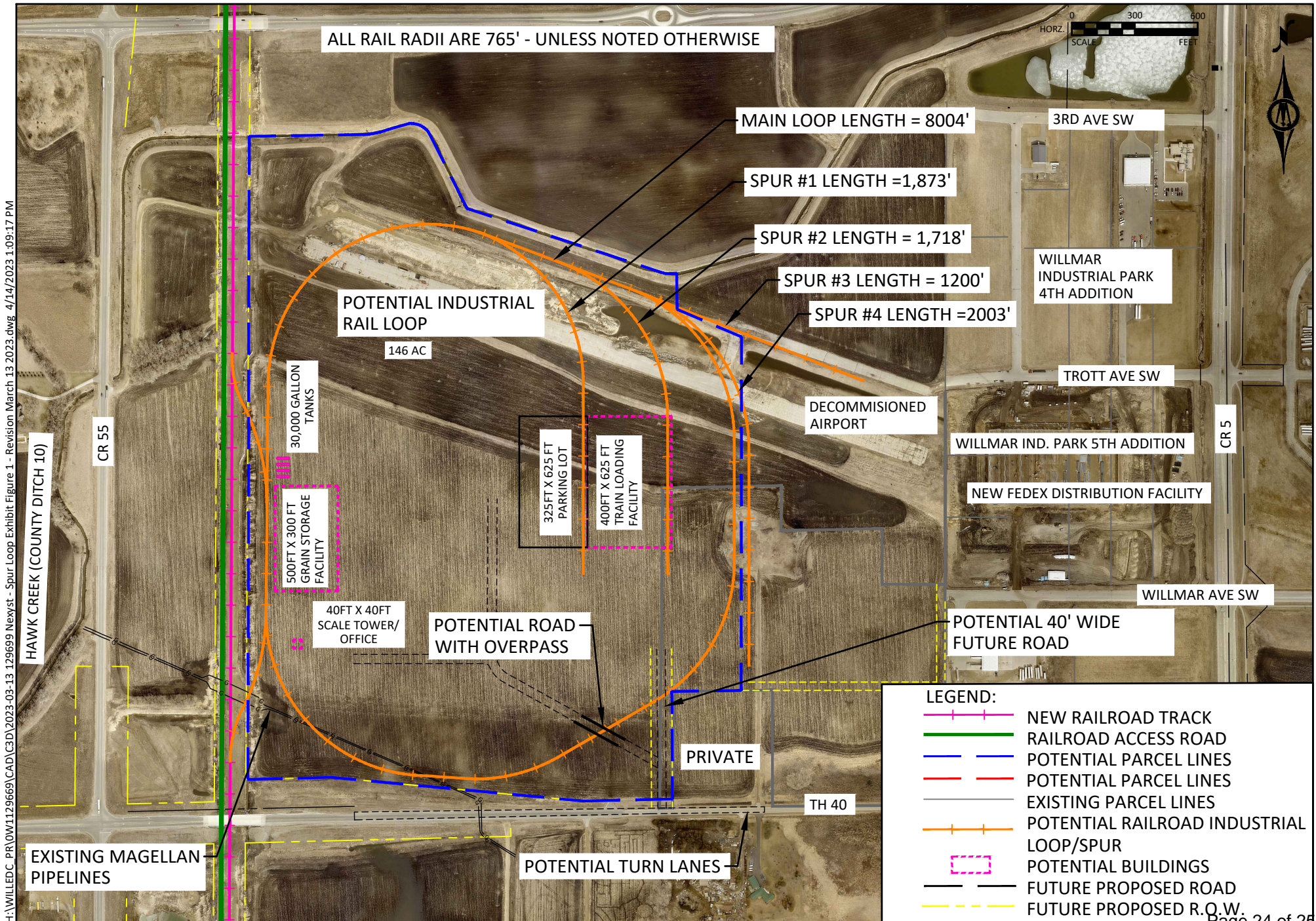
The Elevation Datum used for this survey is the North American Vertical Datum of 1988 (NAVD 88).

MnDOT Geodetic Control Point  
 Willport AZ MK = 1116.73 (NAVD 88)

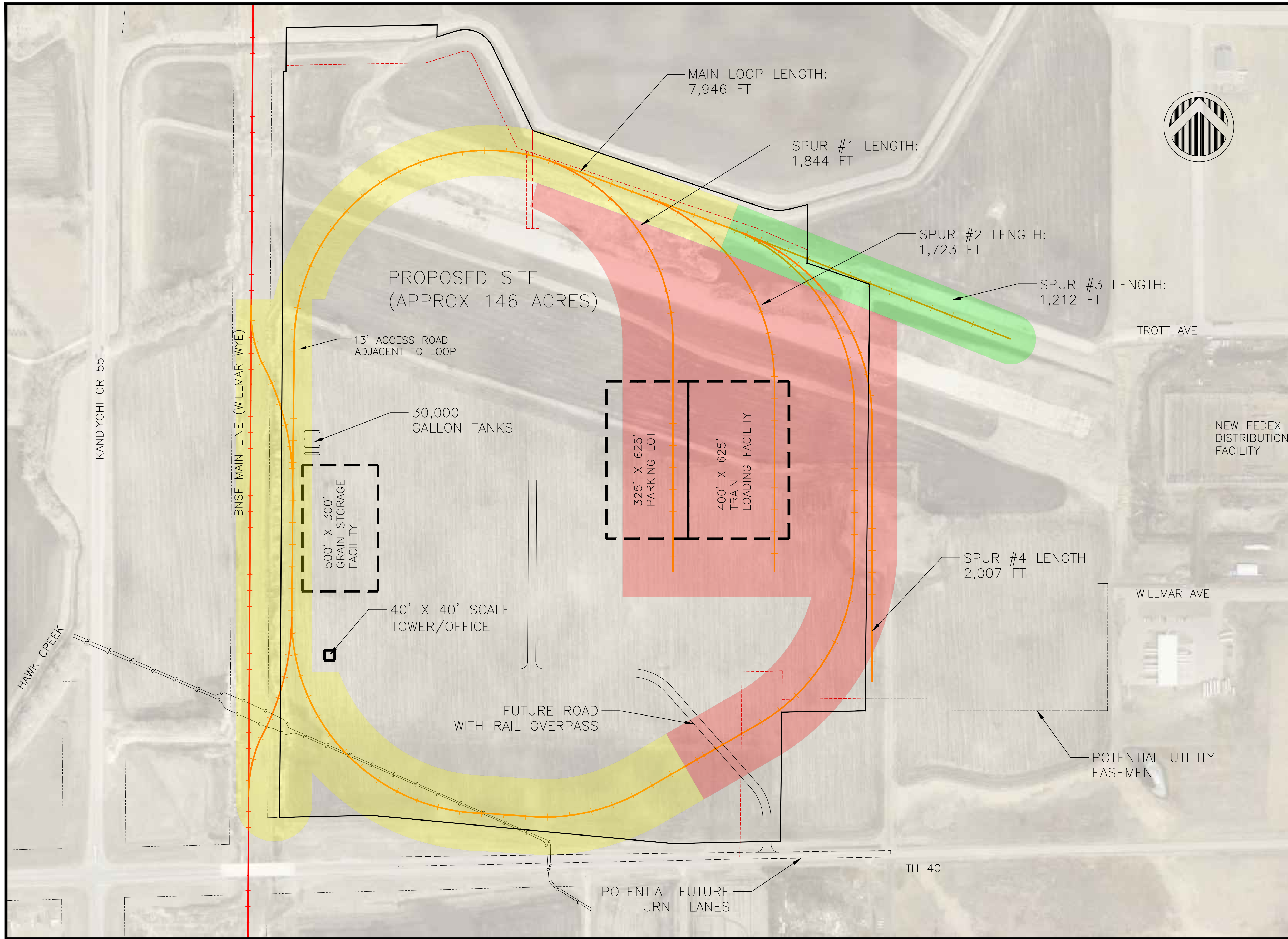
SW Corner of the SE¼ also known as: S¼ Corner Section 17

SE Corner Section 17 (Iron Rod)

South line of Section 17



H:\WILLEDC\_PR\0\1129669\CAD\3D\2023-03-13\_129699 Nexyst - Spur Loop Exhibit Figure 1- Revision March 13 2023.dwg 4/14/2023 1:09:17 PM



**LEGEND**

- PROPOSED PARCEL LINES
- EXISTING MAINLINE RAIL
- PROPOSED RAILROAD LOOP
- POTENTIAL BUILDING SITES
- FUTURE PROPOSED ROAD
- PROPOSED RIGHT-OF-WAY

**PHASING LEGEND**

- PHASE 1 (FALL 2023)
- PHASE 2 (SUMMER 2024)
- PHASE 3 (END OF 2024)

**NOTES**  
 SITE INFRASTRUCTURE AND GRADING WILL BE PERFORMED AS NEEDED BASED ON DEVELOPMENT NEEDS.



DATE	REVISIONS	NO.	BY

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PHONE: (320)978-6011 FAX: (320)978-4978  
 P.O. BOX 208 408 SIXTH STREET  
 PRINSBURG, MN 56281

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE: DATE: 6/7/23  
 NAME: JASON VERSTEEG LIC. NO. 26505

SCALE GRAPHIC
DRAWN BY: JVS
CHECKED BY: JVS
SURVEYED BY:

<b>WILLMAR RAIL PARK CONCEPT PLAN</b>	
<b>WILLMAR, MN</b>	
DATE JUNE 7, 2023	SHEET C2.1