



## STAFF REPORT

DATE: 3/4/25

### **Consent**

**TO: Mayor and City Council for Lake Elmo**

**FROM: Clark Schroeder Special Projects**

**AGENDA ITEM: Olson Property – First Amendment to Purchase Agreement**

**REVIEWED BY: Sarah Sonsalla, City Attorney**

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### **BACKGROUND:**

On January 10, 2025, the City entered into a Purchase Agreement with Fonda Olson to purchase her property in order for it to be part of a sports complex for the City. As you may recall, the City is only purchasing a portion of the Olson property. The remainder of the property will be retained by Fonda Olson and conveyed by her to her son, who owns the adjacent property. The property needed to be surveyed so that the exact legal description of the property that the City is buying could be ascertained. The survey has been completed. The Purchase Agreement is being amended in order to insert this legal description into the Purchase Agreement.

### **ISSUE BEFORE COUNCIL:**

Council needs to amend the Purchase Agreement to reflect the exact legal description of the property the City will be buying before closing on the Olson property.

### **PROPOSAL DETAILS/ANALYSIS:**

See the attached Resolution Approving the First Amendment to Purchase Agreement, the First Amendment to Purchase Agreement, and the Purchase Agreement.

### **FISCAL IMPACT:**

None beyond the Purchase Agreement which was already approved by the City Council.

### **OPTIONS:**

Approve or deny the First Amendment to Purchase Agreement.

### **RECOMMENDATION:**

**If removed from the Consent Agenda:**

*Move to adopt Resolution Number 2025-020 approving the First Amendment to Purchase Agreement.*

### **ATTACHMENTS:**

Purchase Agreement

First Amendment to Purchase Agreement

Resolution Approving First Amendment to Purchase Agreement

## PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made this 10th day of January, 2025 ("Effective Date"), by and between Fonda Olson, a single person ("Seller"), and the City of Lake Elmo, a Minnesota municipal corporation ("Buyer"). The Effective Date, written above, is the date that the last party signed this Agreement.

**1. PROPERTY.** Seller is the fee owner of approximately 37.1 acres of real property identified as Washington County PID 1502921420004 and legally described below (the "Property"):

The part of the West 1385.00 feet of Southeast Quarter Section 15, Township 29 North, Range 21 West, Washington County, Minnesota lying northerly of the north line of the Chicago Northwestern Railroad, formerly known as the St. Paul, Stillwater and Taylors Falls Railroad.

Subject to and together with prior restrictions, reservations and easements, if any.

LESS

That portion of the foregoing conveyed by contract for deed by Merle G. Olson and Fonda R. Olson to Lee Olson and Molly M. Olson and legally described as follows:

The west 445.00 feet of the north 725.00 feet of the Southeast Quarter of Section 15, Township 29 North, Range 21 West, Washington County, Minnesota.

**2. OFFER/ACCEPTANCE.** Buyer desires to purchase 32 acres of the Property. The portion of the Property that Buyer is purchasing is shown on the attached Exhibit A (the "Sale Parcel"). In consideration of the mutual agreements herein contained, Buyer offers and agrees to purchase the Sale Parcel, and Seller agrees to sell and hereby grant to Buyer the exclusive right to purchase the Sale Parcel.

**3. CONTINGENCIES.** This Agreement is subject to the following contingencies:

- A. Buyer having determined, on or before the expiration of the Due Diligence Period, as defined in paragraph 9 of this Agreement, that it is satisfied with the result of all matters disclosed by Buyer's investigations, surveys, soil tests, inspections, and any environmental reviews of the Sale Parcel.
- B. Buyer being satisfied with the condition of the Sale Parcel's title in accordance with paragraph 8 of this Agreement.
- C. A determination by Buyer's governing body, prior to the end of the Due Diligence Period, that the provisions of Minnesota Statutes Section 462.356, subdivision 2 are duly satisfied.
- D. Approval of the subdivision of the Sale Parcel from the Property and combination

of the remnant parcel with PID 1502921420003.

If the contingencies above are satisfied, based on the timing requirements contained herein, then Buyer and Seller shall proceed to close the transaction as contemplated herein. If, however, any of the contingencies is not satisfied, this Agreement shall thereupon be void, Seller shall return the Earnest Money to Buyer, and Buyer and Seller shall execute and deliver to each other the termination of this Agreement. As a contingent purchase agreement, the termination of this Agreement is not required pursuant to Minnesota Statutes Section 559.21, et seq.

#### **4. PURCHASE PRICE AND TERMS:**

- A. **PURCHASE PRICE:** The purchase price for the Sale Parcel is \$38,461/acre or \$1,230,752 ("Purchase Price").
- B. **TERMS:**
  - (1) **EARNEST MONEY.** Earnest money in the amount of Five Thousand Dollars (\$5,000.00) ("Earnest Money") is payable within five business days following the Effective Date. The Earnest Money shall be held by the Title Company, as defined below.
  - (2) **BALANCE DUE SELLER.** Buyer agrees to pay by certified check or wire transfer of funds on the Closing Date the remaining \$1,225,752 balance due according to the terms of this Agreement.
  - (3) **DEED/MARKETABLE TITLE.** Subject to performance by Buyer, Seller agreed to execute and deliver at closing a Warranty Deed ("Deed") conveying marketable title to the Sale Parcel to Buyer, subject only to the following exceptions:
    - a. Building and zoning laws, ordinances, state, and federal regulations; and
    - b. Reservation of minerals or mineral rights to the State of Minnesota, if any.
  - (4) **DOCUMENTS TO BE DELIVERED AT CLOSING.** In addition to the Deed required at paragraph 4.B(3) above, Seller shall deliver to Buyer:
    - a. Standard form Affidavit of Seller;
    - b. A "bring-down" certificate, certifying that all of the warranties made by the Seller in this Agreement remain true as of the Closing Date;
    - c. A certificate that Seller is not a "foreign person" as defined by the

Internal Revenue Service;

- d. A well disclosure certificate;
- e. A Methamphetamine Disclosure Certificate, if required;
- f. Copies of any written lease or similar agreements affecting the Sale Parcel, if any, and details of any oral lease agreements affecting the Sale Parcel, if any, and evidence of the termination of any such leases or agreements; and
- g. Any other documents reasonably required by the Title Company or Buyer's attorney to evidence that title to the Sale Parcel is marketable and that the Seller has complied with the terms of this Agreement.

**5. REPRESENTATIONS AND WARRANTIES BY SELLER.** Seller represents and warrants to Buyer that:

- A. To the best of Seller's knowledge, there is no action, litigation, investigation, condemnation or proceeding of any kind pending against Seller or the Sale Parcel which could adversely affect the Sale Parcel, any portion thereof or title thereto. Seller shall give Buyer prompt written notice if any such action, litigation, condemnation or proceeding is threatened or commenced prior to the Closing Date.
- B. To the best of Seller's knowledge, the Sale Parcel has not been used for the generation, transportation, storage, treatment, or disposal of any hazardous waste, hazardous substance, pollutant, or contaminant, including petroleum, as defined under federal, state or local law and no notice have been received from any federal, state, local, or other governmental agency (or a compliance letter).
- C. To the best of Seller's knowledge, there are no underground storage tanks located on the Sale Parcel.
- D. To the best of Seller's knowledge, there has been no dumping or deposit of construction or other debris on the Sale Parcel.
- E. Seller is unaware of any utilities serving the Sale Parcel that would need to be paid at closing.
- F. Seller is the fee owner of the Sale Parcel and no consents or approvals from any third parties are required for Seller's consummation of this transaction.
- G. There are no tenants or third parties in possession of the Sale Parcel.
- H. To the best of Seller's knowledge, there are no individual sewage treatment systems

or wells located on the Sale Parcel.

Seller hereby agrees that each of the foregoing representations and warranties shall survive closing hereunder and that the breach of any thereof shall constitute a default, whether said breach occurs prior to or after closing, entitling Buyer to exercise any remedy provided to Buyer in this Agreement in the event of a default by Seller or any other remedy at law. In addition, if any of the foregoing warranties or representations shall be breached or shall be untrue, Seller shall indemnify and hold Buyer from any damages or liabilities relating thereto notwithstanding any other language contained in this Agreement.

**6. REPRESENTATIONS AND WARRANTIES BY BUYER.** Buyer represents and warrants to Seller that:

- A. Buyer has the requisite power and authority to enter into and perform its obligations under this Agreement.
- B. Buyer has the financial capacity to meet its obligations specified in this Agreement.
- C. Buyer will timely perform its obligations specified in this Agreement.

**7. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** Seller shall pay all real estate taxes owed on the Sale Parcel, deferred real estate taxes on the Sale Parcel, and all special assessments levied or pending on the Sale Parcel, including interest and penalties thereon, if any, owed for the years prior to the year in which the closing occurs. Seller and Buyer shall prorate as of the date of closing the real estate taxes for the Sale Parcel that are due and payable in the year of closing. Because the Sale Parcel is part of a larger tax parcel, the taxes attributable to the Sale Parcel shall be apportioned based on the ratio of square feet of the Sale Parcel to the total square feet of the Property; the parties shall prorate the taxes attributable to the Sale Parcel; and the Seller shall pay the taxes attributable to the remainder of the parcel.

**8. SURVEY AND TITLE MATTERS.** As soon as reasonably practicable after the execution of this Agreement by the parties, Buyer shall procure a commitment for an owner's policy of title insurance for the Sale Parcel (the "Title Commitment"), issued by a title company that is acceptable to Buyer (the "Title Company"), which Title Commitment shall name Buyer as the proposed insured. Buyer shall order a survey of the Sale Parcel at Seller's expense. Buyer shall have 10 days following the receipt of the Title Commitment and survey to make its title objections, if any, in writing to Seller. Following its receipt of Buyer's written objections to title, Seller shall have 30 days (the "Cure Period") to make commercially reasonable efforts to cooperate with Buyer to correct all such objections, during which period the closing will be postponed, if necessary. If any objections are not cured within the Cure Period and Seller has informed Buyer that she will undertake no further efforts to cure the objections to title, Buyer will have the option to do any of the following: (i) terminate this Agreement without any liability and receive a full refund of all Earnest Money and any accrued interest thereon with neither Buyer nor Seller being liable for any damages hereunder; (ii) extend the Cure Period so long as Seller is making a good faith effort, with demonstrated progress, at Buyer's sole and absolute discretion, for a period mutually agreed upon by the parties; or (iii) waive the objections and proceed to close in which case Buyer shall be

deemed to have accepted the Sale Parcel subject to any and all uncured objections.

**9. DUE DILIGENCE PERIOD.** Within 10 business days following the Effective Date, Seller shall provide Buyer with copies of any and all existing surveys, engineering or other reports in Seller's possession regarding the condition of the Sale Parcel. Additionally, Buyer shall have the right during a period commencing on the Effective Date and ending at 5:00 p.m. CDT on the first business day that falls 60 days thereafter (the "Due Diligence Period"), at its sole cost, expense, and risk, to enter onto, examine and inspect the Sale Parcel and to conduct feasibility studies with regard to its desired ownership and operation of the Sale Parcel. Buyer may enter upon the Sale Parcel to inspect the same, and may conduct tests and examinations to the extent it desires. Buyer hereby agrees to defend and indemnify the Seller from and against any and all claims, causes of action, lawsuits, attorneys' fees, costs and damages arising from or in any way related to Buyer's or Buyer's engineers, consultants or agents' examinations and inspections. Buyer shall promptly, at its sole cost and expense, restore the Sale Parcel to substantially the same condition in which it existed immediately prior to any physical tests conducted by or on behalf of Buyer. Buyer shall have the right, at any time up to the expiration of the Due Diligence Period, as may be extended as set forth above, to terminate this Agreement by delivering written notice, including electronic notice, to Seller. In such event, this Agreement will be considered terminated and all Earnest Money, plus any accrued interest, will be returned to the Buyer, and Buyer will thereafter promptly execute and deliver any and all documents necessary to effectuate the termination of this Agreement.

**10. CLOSING DATE.** The closing of the sale of the Sale Parcel shall take place as soon as reasonably practicable after the expiration of the Due Diligence Period and on a date to be mutually agreed upon by Seller and Buyer (the "Closing Date"), provided, however, that the Closing Date shall occur no later than 30 days following the expiration of the Due Diligence Period. The closing shall take place at Lake Elmo City Hall, 3880 Laverne Avenue N., Lake Elmo, MN or such other location as mutually agreed upon by the parties.

**11. CLOSING COSTS AND RELATED ITEMS.** Buyer shall be responsible for payment of its title insurance premium and any requested endorsements, recording costs related to the recording of the Deed, and one-half of the closing fees charged by the Title Company. Seller shall be responsible for the cost of procuring the Title Commitment (including all title search and examination fees), the cost of subdividing the Property and combining the remnant parcel with PID 1502921420003, Seller's real estate broker's commission, the State Deed tax, the cost of the survey, and any costs associated with preparing and recording any instruments required to establish marketable title for the Sale Parcel, if any. Buyer and Seller shall each be responsible for their own attorneys' and accountants' fees and costs, if any.

**12. "AS-IS" SALE.** Buyer acknowledges that it has inspected or will have the opportunity to inspect the Sale Parcel and agrees to accept the Sale Parcel "AS IS" with no right of set off or reduction in the purchase price. Except for any express representations made in this Agreement, such sale shall be without representation of warranties made by Seller with respect to the physical condition of the Sale Parcel, including but not limited to, the existence or absence of petroleum, hazardous substances, pollutants or contaminants in, on, or under, or affecting the Sale Parcel or with respect to the compliance of the Sale Parcel or its operation with any laws, ordinances, or

regulations of any government or other body, except as stated above. Buyer acknowledges and agrees that Seller has not made and does not make any representations, warranties, or covenants of any kind or character whatsoever, whether expressed or implied, with respect to warranty of income potential, operating expenses, uses, habitability, tenant ability, or suitability for any purpose, merchantability, or fitness of the Sale Parcel for a particular purpose, all of which warranties Seller hereby expressly disclaims, except as stated above.

**13. POSSESSION.** Seller shall transfer possession of the Sale Parcel to Buyer on the Closing Date. Seller agrees to remove from the Sale Parcel any personal property no later than the Closing Date. Items not removed by that date will become property of the Buyer after closing and may thereafter be disposed of by Buyer, in its sole discretion and at the Seller's cost.

**14. BROKER COMMISSIONS.** Seller represents and warrants to Buyer that Seller is represented by Anne Smith of Metrohomesmarket.com. With this exception, Seller has not involved any other broker in this transaction or agreed to pay commission to any other broker. Buyer represents and warrants to Seller that Buyer has not involved a broker in this transaction or agreed to pay commission to any broker. Each party agrees to indemnify, defend, and hold each other harmless for any and all claims for brokerage commissions or finders' fees in connection with negotiations for purchase of the Sale Parcel in accordance with this Agreement.

**15. DEFAULT.** If Seller, through no fault of Buyer, defaults in her obligations hereunder in any manner, Buyer may, by notice upon Seller, (i) terminate this Agreement, in which event all Earnest Money paid hereunder shall immediately be delivered to Buyer, or (ii) avail itself of an action for specific performance. If Buyer shall default in the performance of any of its obligations hereunder, then Seller shall be entitled to terminate this Agreement and, upon such termination, Seller shall retain all Earnest Money paid hereunder, as and for her liquidated damages and sole remedy for said breach, and not as a penalty or forfeiture, actual damages being difficult or impossible to measure, and no party hereto shall have any further claim against the other hereunder.

**16. NO MERGER OF REPRESENTATIONS, WARRANTIES.** All representations and warranties contained in this Agreement shall not be merged into any instruments or conveyance delivered at Closing, and the parties shall be bound accordingly.

**17. ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire agreement between the parties, and no other agreement prior to this Agreement or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein. Any purported amendment shall not be effective unless it shall be set forth in writing and executed by both parties or their respective successors or assigns.

**18. BINDING EFFECT; ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns.

**19. NOTICE.** Any notice, demand, request, or other communication which may or shall be given or served by the parties shall be deemed to have been given or served on the date the same is deposited in the United States Mail, registered or certified, postage prepaid and addressed as

follows:

- A. If to Seller: Fonda Olson  
10472 Stillwater Lane North  
Lake Elmo, MN 55042
- B. If to Buyer: City of Lake Elmo  
Attn: Nicole Miller, City Administrator  
3880 Laverne Avenue N.  
Lake Elmo, MN 55042

With a copy to: Kennedy & Graven, Chartered  
Attn: Sarah Sonsalla  
150 South 5<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402

**20. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

**21. COOPERATION.** Each party shall cooperate in a timely manner, shall take such further action, and shall execute and deliver such further documents as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement.

**22. GOVERNING LAW.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

**23. PARTNERSHIP OR JOINT VENTURE.** Nothing in this Agreement shall be construed or interpreted as creating a partnership or joint venture between Seller and Buyer relative to the Sale Parcel.

**24. RELOCATION WAIVER.** Seller acknowledges that she is being displaced from the Sale Parcel as a result of the transaction contemplated by this Agreement and that Seller may be eligible for relocation assistance and benefits and that the Purchase Price includes compensation for any and all relocation assistance and benefits for which Seller may be eligible and Seller agrees to waive any and all further relocation assistance benefits. The provisions of this paragraph shall survive closing of the transaction contemplated by this Agreement.

*[signature page to follow]*



IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

**SELLER:**

By: Fonda R. Olson  
Fonda R. Olson

Date: 1/10/25

**BUYER:**

**CITY OF LAKE ELMO**

By: Charles Cadenhead  
Charles Cadenhead  
Its: Mayor

Date: 1/07/2025

By: Julie Johnson  
Julie Johnson  
Its: City Clerk

Date: 1-7-2025

## **EXHIBIT A**

### **Legal Description of the Property**

The part of the West 1385.00 feet of Southeast Quarter Section 15, Township 29 North, Range 21 West, Washington County, Minnesota lying northerly of the north line of the Chicago Northwestern Railroad, formerly known as the St. Paul, Stillwater and Taylors Falls Railroad.

Subject to and together with prior restrictions, reservations and easements, if any.

LESS

That portion of the foregoing conveyed by contract for deed by Merle G. Olson and Fonda R. Olson to Lee Olson and Molly M. Olson and legally described as follows:

The west 445.00 feet of the north 725.00 feet of the Southeast Quarter of Section 15, Township 29 North, Range 21 West, Washington County, Minnesota.

## FIRST AMENDMENT TO PURCHASE AGREEMENT

This First Amendment to Purchase Agreement (this “First Amendment”) is executed effective as of \_\_\_\_\_, 2025 (the “Effective Date”) by and between Fonda Olson, a single person (“Seller”) and the City of Lake Elmo, a Minnesota municipal corporation (“Buyer”).

### RECITALS

**WHEREAS**, Seller is the fee owner of certain real property located in the City of Lake Elmo which is legally described in Section 1 of the Purchase Agreement entered into between Seller and Buyer on January 10, 2025 (the “Purchase Agreement”); and

**WHEREAS**, in the Purchase Agreement, Seller agreed to sell and Buyer agreed to purchase a portion of the Property which is defined in the Purchase Agreement as the “Sale Parcel;” and

**WHEREAS**, a survey of the Sale Parcel has been performed and the parties would like to amend the Purchase Agreement to include an exact legal description of the Sale Parcel; and

**NOW, THEREFORE**, the parties hereto agree as follows:

1) Section 2 of the Purchase Agreement is amended to read as follows:

**2. OFFER/ACCEPTANCE.** Buyer desires to purchase a portion of the Property which is defined herein as the “Sale Parcel.” In consideration of the mutual agreements herein contained, Buyer offers and agrees to purchase the Sale Parcel, and Seller agrees to sell and hereby grants to Buyer the exclusive right to purchase the Sale Parcel.

The Sale Parcel is legally described as follows:

That part of the west 1385.00 feet of the Southeast Quarter of Section 15, Township 29 North, Range 21 West, Washington County, Minnesota lying northerly of the north line of the Chicago Northwestern Railroad Company, formerly known as the St. Paul, Stillwater and Taylors Falls Railroad Company and lying easterly of the following described line:

Commencing at the northwest corner of said Southeast Quarter of Section 15; thence westerly along the north line of said Southeast Quarter to the intersection with the east line of the west 237.15 feet of said Southeast Quarter, being the point of beginning of the line to be described; thence southerly along said east line to the intersection with the south line of the north 537.57 feet of said Southeast Quarter; thence easterly along said south line to the intersection with the east line of the west 455.00 feet of said Southeast quarter; thence southerly along said east line to the intersection with said north line of the Chicago Northwestern Railroad Company,

formerly known as the St. Paul, Stillwater and Taylors Falls Railroad Company, and said described line there terminating.

The total area of this parcel is 32.00 acres, more or less.

Subject to Stillwater Boulevard North, also known as County Road 14, formerly known as Trunk Highway 5 and 212 along the southerly line thereof as evidenced by the document recorded in Book 246 of Deeds, page 592, on file and of record in the office of the County Recorder, Washington County, Minnesota.

2) Exhibit A of the Purchase Agreement is hereby replaced with the new Exhibit A attached to this First Amendment as Exhibit A.

3) Except as specifically provided in this First Amendment, the Purchase Agreement remains unchanged and in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment as of the date written above.

**SELLER**

By: \_\_\_\_\_  
Fonda R. Olson

**BUYER**

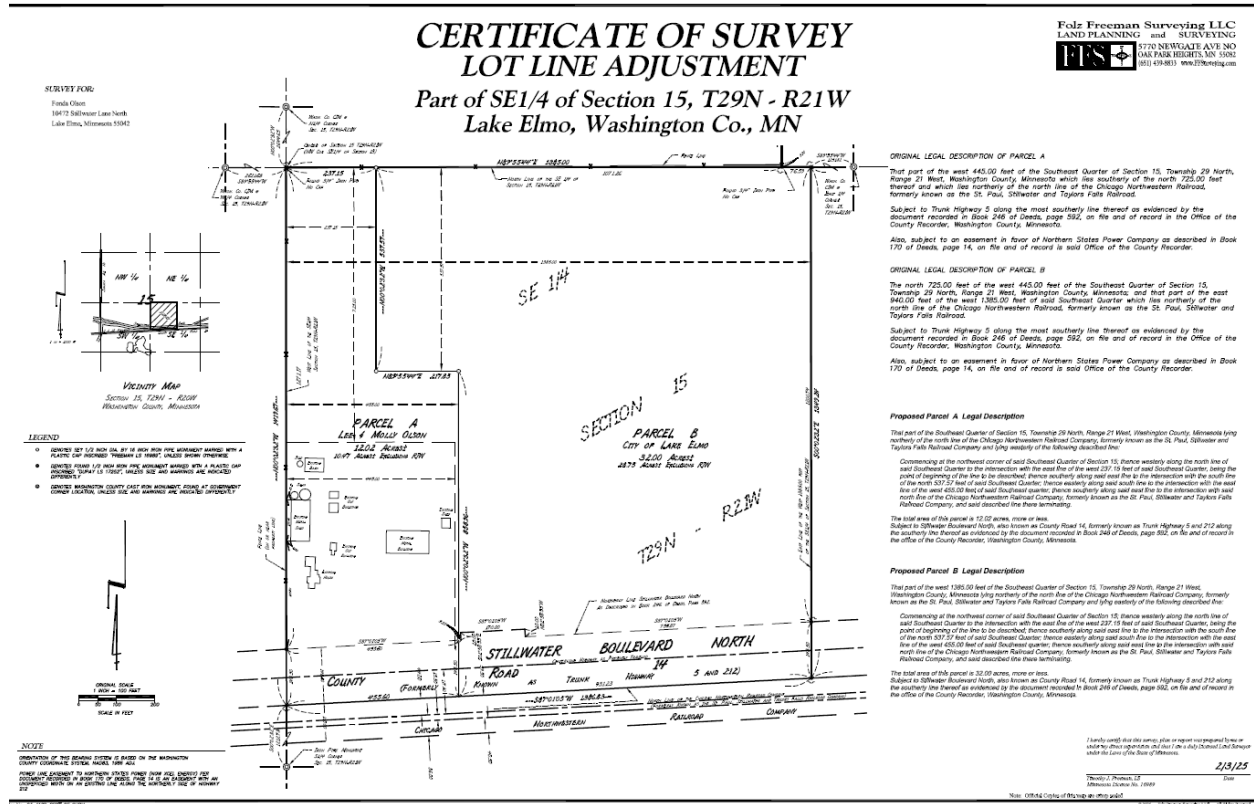
CITY OF LAKE ELMO

By: \_\_\_\_\_  
Charles Cadenhead, Mayor

By: \_\_\_\_\_  
Julie Johnson, City Clerk

# EXHIBIT A

## Depiction of the Sale Parcel (shown as "Parcel B" below)



**CITY OF LAKE ELMO  
WASHINGTON COUNTY  
STATE OF MINNESOTA**

**RESOLUTION NO. 2025-020  
A RESOLUTION APPROVING FIRST AMENDMENT TO PURCHASE AGREEMENT  
FOR THE PROPERTY OWNED BY FONDA OLSON**

**WHEREAS**, Fonda Olson (the “Seller”) is the fee owner of certain real property located in the City of Lake Elmo which is legally described in Section 1 of the Purchase Agreement entered into between Seller and the City of Lake Elmo on January 10, 2025 (the “Purchase Agreement”); and

**WHEREAS**, in the Purchase Agreement, Seller agreed to sell and Buyer agreed to purchase a portion of the Property which is defined in the Purchase Agreement as the “Sale Parcel;” and

**WHEREAS**, a survey of the Sale Parcel has been performed and the parties would like to amend the Purchase Agreement to include an exact legal description of the Sale Parcel; and

**NOW, THEREFORE, BE IT RESOLVED,**

1. That the City Council hereby approves the First Amendment to the Purchase Agreement as presented to the City Council and attached to this Resolution as Exhibit A.

**ADOPTED BY THE LAKE ELMO CITY COUNCIL ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2025.**

**CITY OF LAKE ELMO**

By: \_\_\_\_\_  
Charles Cadenhead  
Mayor

(Seal)  
ATTEST:

\_\_\_\_\_  
Julie Johnson  
City Clerk

**EXHIBIT A**

**Legal Description of the Property**

**First Amendment to Purchase Agreement**

**[to be attached]**