

TO: MAYOR AND CITY COUNCIL

FROM: Neil Jensen, City Administrator

SUBJECT: VFW Option Agreement

MEETING DATE: April 18, 2023

BACKGROUND

The VFW is requesting a purchase option for a piece of city property along the north and west side of their building (see attached survey). This request was brought to the proper boards about a year ago to present them their project. They want to build a deck on the north and west side that overlooks the river (see attached).

The Option Agreement will be for 3 years and describes the terms of the purchase agreement. The sale will be for \$1 but will have reversionary interest in case the VFW does not complete the development. Veteran's Lane will remain open for traffic

The property will be sold "As-Is".

The public hearing and ordinance for the sale of the property will be held when the parties come to terms with the Purchase Agreement and the VFW reaches their fundraising goals.

The Option Agreement has been reviewed and approved by the Finance Committee.

STAFF RECOMMENDATION

Please approve the Option Agreement with the VFW for the right to purchase 3,300 Sq. Feet +- of Lot 1 as provided in the agreement.

REQUESTED COUNCIL ACTION

Please make a motion to approve the Option Agreement with the VFW for the right to purchase 3,300 Sq. Feet +- of Lot 1 as provided in the agreement.

OPTION AGREEMENT

THIS OPTION AGREEMENT (“Option”) is made and effective as of the _____ day of _____, 2023 (“Effective Date”), by and between the City of Cannon Falls (the “City”), and the Cannon Falls VFW Post 4452 (the “VFW”). The City and VFW are each a “Party” and collectively the “Parties” to this Agreement.

RECITALS:

WHEREAS, the City owns the real property legally described on the attached Exhibit A (the “Property”);

WHEREAS, the VFW owns property adjacent to the Property located at 218 4th St. N, Cannon Falls, MN 55009;

WHEREAS, the VFW desires to acquire the Property from the City for the purposes of constructing a deck and related improvements to better serve its members, community and the City’s residents (the “Development”);

WHEREAS, the Parties desire to enter into this Option to grant the VFW a conditional, exclusive option to purchase the Property.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual terms, covenants, conditions and agreements herein contained, the Parties agree as follows:

1. **Incorporation**. The above recitals and the attached exhibits are a material part of this Option and are incorporated herein.
2. **Option Payment**. The VFW shall pay to the City the sum of \$1.00 (“Option Payment”) upon execution of this Option. The Option Payment is non-refundable but will be credited against the purchase price at Closing (defined below).
3. **Grant of Option**. Upon receipt of the Option Payment, the City gives and grants to the VFW the exclusive option to Purchase the Property on the terms stated in this Option and the purchase agreement required by section 7 below. In further consideration for the sum paid in this Option, the Owner shall not sell or convey the Property during the period of this Option, which shall commence upon the execution of this Option and shall terminate as described in Section 3 below.
4. **Period of Option; Termination**. The VFW may exercise this Option by giving the City written notice at any time during the Option Period (the “Option Notice”). For the purposes of this instrument, the “Option Period” shall be for a period of three (3) years following the execution of this Option; provided, however, that the Parties may terminate the Option prior to the end of the Option Period in a written instrument signed by both Parties. If the VFW does not exercise the Option within the Option Period or the Parties mutually agree to terminate the Option,

- i. Terms granting the City a reversionary interest in the Property in the event the VFW breaches its obligations under the Purchase Agreement;
- j. Restrictions on the VFW's sale, assignment, transfer or other alienation of the Property as the City deems necessary or appropriate to encourage construction and use of the Property for the Development; and
- k. Any other commercially reasonable terms agreed to by the Parties.

If the Parties have not entered into a Purchase Agreement within thirty (30) days of the VFW's exercise of the Option, the VFW shall have no further rights or interests in the Property and neither Party shall have any further obligation to the other Party under this Option, except as provided in section 19.

8. **Governmental Approvals.** This Option and the Purchase Agreement shall not constitute or be construed in any way as a building permit or any other form of governmental approval or authorization required for the Development. The VFW shall apply to the City for all necessary approvals and permits as and when required by the applicable sections of the Cannon Falls City Code and the Purchase Agreement.

9. **Property Optioned and Sold "As-Is."** The City hereby specifically disclaims any warranty (oral or written) concerning: (i) the nature and condition of the Property and the suitability thereof for the Development and any and all other activities and uses that the VFW elects to conduct thereon; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements; (iii) the compliance of the Property or its operation with any laws, rules, ordinances or regulations of any government or other body; and (iv) any other matter whatsoever except as expressly set forth in this Agreement. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR THE PURCHASE AGREEMENT, THE SALE OF THE PROPERTY IS MADE ON AN "AS-IS" "WHERE IS" BASIS AS OF THE CLOSING, AND THE CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED THEREON OR ANY SOIL CONDITIONS RELATED THERETO.

10. **Notices.** Any notice under this **Agreement** shall be given in writing to the Party for whom it is intended in person or by registered mail at the following address, or such further address as may be designated in writing:

If to the VFW: Cannon Falls VFW Post 4452
218 4th St. N
Cannon Falls, MN 55009
Attn:

19. **Recording of Option.** The Parties agree that this Option shall be recorded with the County Recorder or Registrar of Deeds, whichever is applicable, of Goodhue County, Minnesota. Upon the termination or expiration of the VFW's option rights under this Option, the VFW agrees to execute any documentation required by the City to reflect the termination of all such rights.

IN WITNESS WHEREOF, the parties to this option have set their hands this _____ day of _____, 2023.

CITY OF CANNON FALLS

By: _____
 Matt Montgomery, Mayor

By: _____
 Neil Jensen, City Administrator

STATE OF MINNESOTA)
)SS.
 COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Matt Montgomery and Neil Jensen, the Mayor and City Administrator respectively of the City of Cannon Falls.

 Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

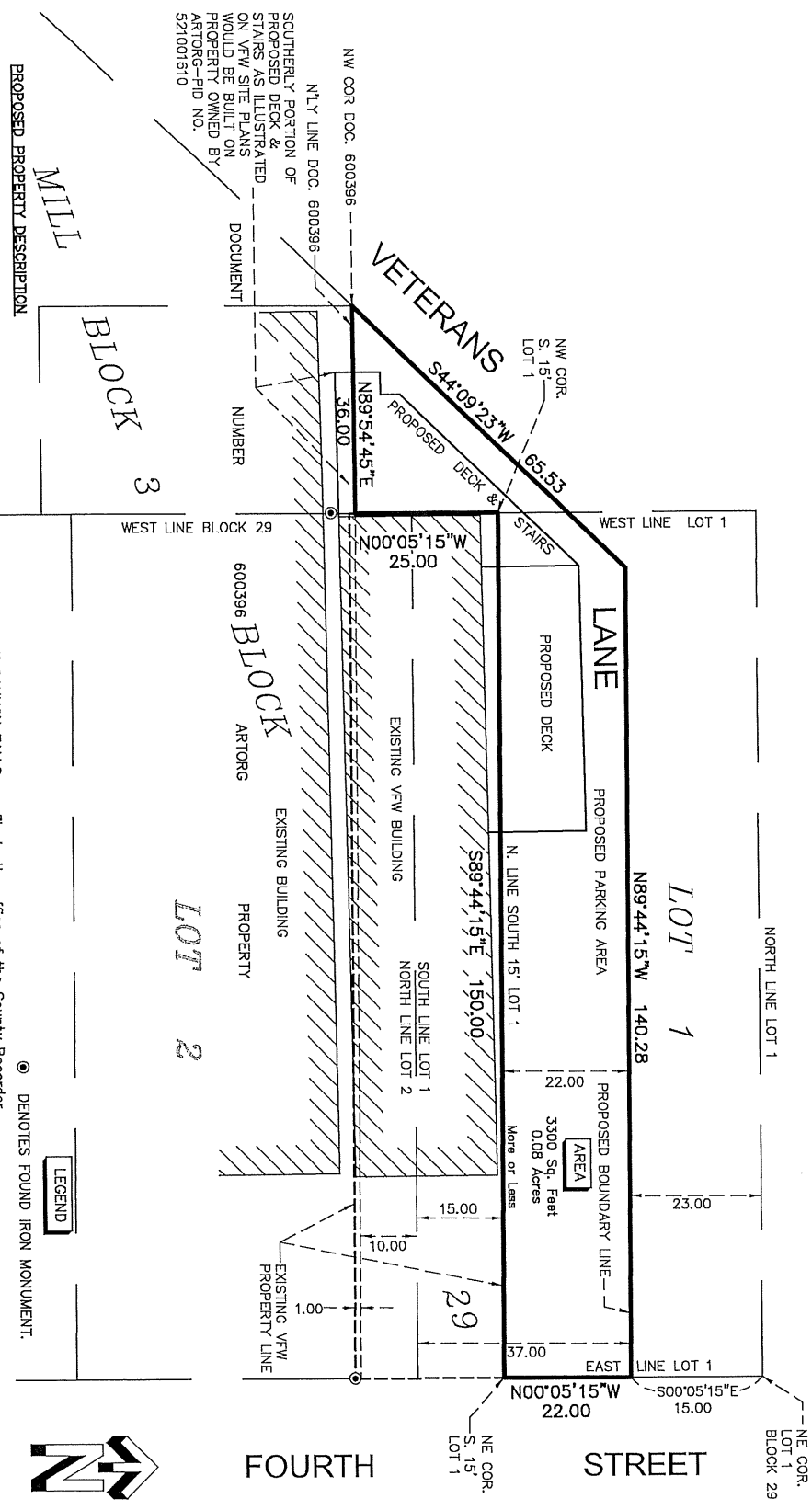
That part of Mill Block 3 and that part of Lot 1, Block 29, original plat of the TOWN OF CANNON FALLS, on file in the office of the County Recorder, Goodhue County, Minnesota, described as follows:

Commencing at the northeast corner of said Lot 1, Block 29, original plat of the TOWN OF CANNON FALLS, thence on an assumed bearing of South 00 degrees 05 minutes 15 seconds East, along the east line of said Lot 1, a distance of 15.00 feet to the point of beginning of the land to be described; thence North 89 degrees 44 minutes 15 seconds West, a distance of 140.28 feet; thence South 44 degrees 09 minutes 23 seconds West, a distance of 65.53 feet to the northeast corner of that certain property described in Goodhue County Document Number 600396; thence north 89 degrees 54 minutes 45 seconds East, along the north line of said property described in Document Number 600396, a distance of 36.00 feet to the west line of said Block 29; thence North 00 degrees 05 minutes 15 seconds West, along said west line, a distance of 25.00 feet to the northwest corner of the South 15.00 feet of said Lot 1; thence South 89 degrees 44 minutes 15 seconds East, along the north line of the South 15.00 feet of said Lot 1, a distance of 150.00 feet to the northeast corner of the South 15.00 feet of said Lot 1; thence North 00 degrees 05 minutes 15 seconds West, along the east line of said Lot 1, a distance of 22.00 feet to the point of beginning.

PROPOSED PROPERTY DESCRIPTION

That part of Mill Block 3 and that part of Lot 1, Block 29, original plat of the TOWN OF CANNON FALLS, on file in the office of the County Recorder, Goodhue County, Minnesota, described as follows:

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● DENOTES FOUND IRON MONUMENT.

LEGEND

BEARINGS SHOWN HEREON ARE ORIENTED TO THE GOODHUE COUNTY COORDINATE SYSTEM, NAD 83, 1996 ADJUSTMENT (HARN)

path: s/share/plate/city of cannon falls/block 29/vfw/vfw 3-15-2023.dwg

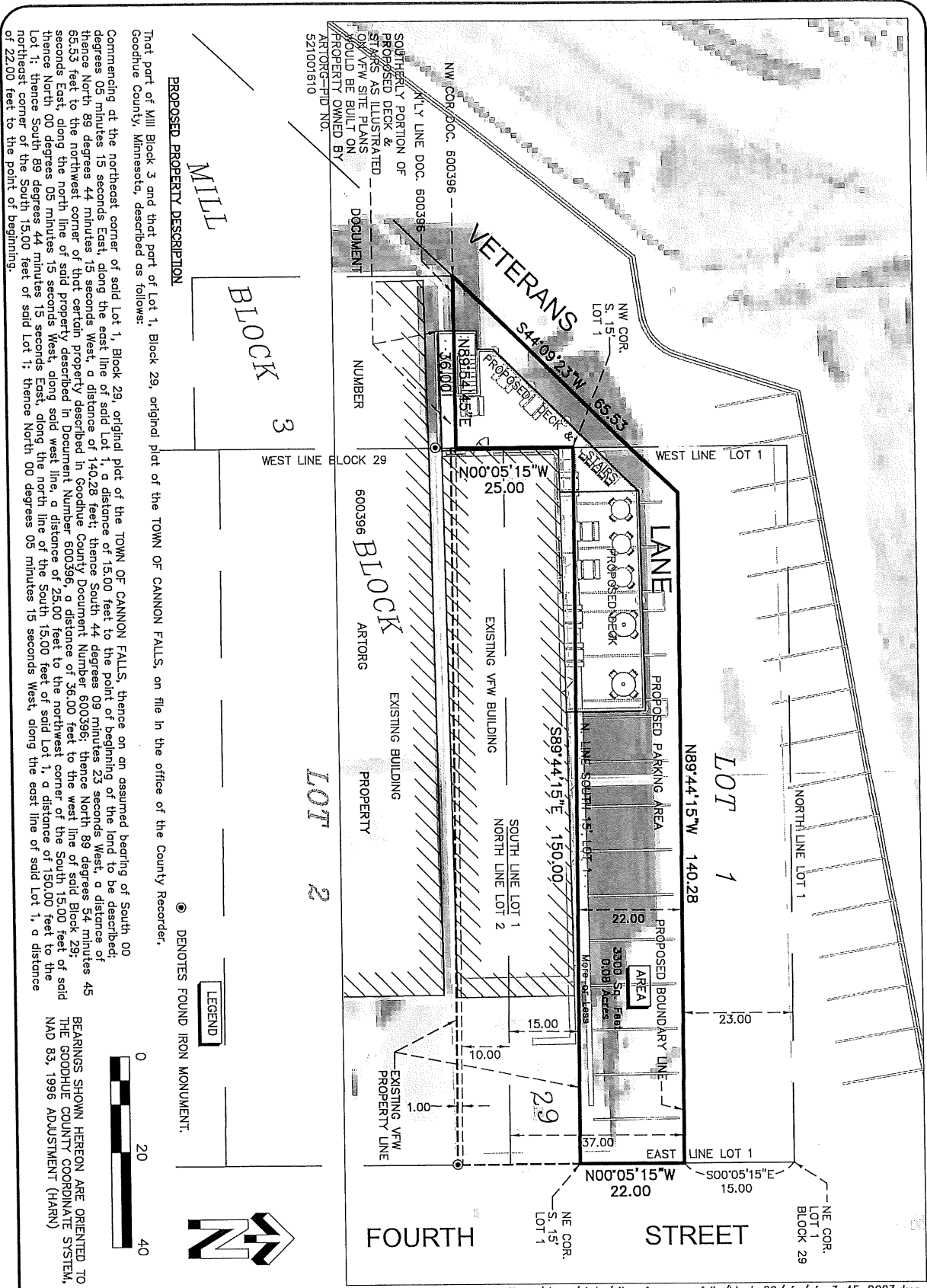
CERTIFICATE OF DESCRIPTION FOR:
CANNON FALLS VFW
 c/o DAN PERRY

JOHNSON & SCOFIELD INC.
SURVEYING AND ENGINEERING
 1203 MAIN STREET, RED WING, MN 55066
 (651) 388-1558

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.

Marcus S. Johnson
 Marcus S. Johnson
 Minnesota License No. 47460
 Date: February 1, 2023

REVISD 3/15/2023			
BK. NA	PG. NA	W.O.#	DRAWING NUMBER
SHEET 1 OF 1 SHEETS		22-1024	S-10569



path: s:/share/plate/city of cannon falls/block 29/vfw/vfw 3-15-2023.dwg

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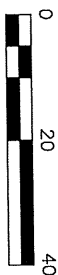
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ARCHITECTS

