

TO: MAYOR AND CITY COUNCIL
FROM: Neil Jensen City Administrator
SUBJECT: Tract Escrow Agreement

MEETING DATE: December 3, 2024

BACKGROUND;

Tract (MNLCO Dakota County Two LLC) introduced their development to the city council a few weeks back and want to proceed with the entitlement work on the property. With this they will need assistance from the city's consultants for the review and processing stage. To protect the city from any expenses incurred during this process staff has requested an escrow agreement from the developer. The city will draw on the funds when needed during this time. The limit is \$30,000 and if additional funds are needed, we will reach out to Tract.

STAFF RECOMMENDATION

Please make a motion to approve the Escrow Agreement with Tract (MNLCO Dakota County Two LLC)

REQUESTED COUNCIL ACTION

Please make a motion to approve the Escrow Agreement with Tract (MNLCO Dakota County Two LLC)

ESCROW AGREEMENT

This Escrow Agreement (“Agreement”) is entered into and effective on the ___ day of _____, 2024 (“Effective Date”), by and between the City of Cannon Falls (“City”) and MNLCO Dakota County Two, LLC, a Delaware limited liability company, and MNLCO Dakota County Three, LLC, a Delaware limited liability company (“Developer”). The City and Developer are each a “Party” and collectively the “Parties” to this Agreement.

WHEREAS, Developer seeks to annex into the City and develop certain property (the “Property”) for industrial purposes (the “Project”);

WHEREAS, Developer has agreed to reimburse the City for the actual reasonable costs it incurs in relation to the City’s costs of reviewing the Project according to the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Incorporation.** The foregoing recitals are incorporated into and made a part of this Agreement.

2. **Term.** This Agreement shall be effective until the Project entitlements are issued, including Alternative Urban Areawide Review (AUAR), subdivision, rezoning, and planned unit development (collectively, “Entitlements”)(the “Term”). Developer shall have the right to terminate the Agreement upon fifteen (15) days written notice, provided, however, that Developer shall be responsible for all Professional Costs (defined below) incurred through the date of termination.

3. **Escrow Expenses.** This Agreement shall cover the City’s actual reasonable expenses necessary for the City’s third-party engineering, legal, and financial consultants necessary to review the Entitlements (collectively, “Professional Costs”).

Escrow Deposit; Draws. Developer shall deposit \$15,000 (the “Escrow Deposit”) with the City no later than December 12, 2024. The City may draw on the Escrow Deposit as costs are incurred for the Professional Costs. Developer shall deposit with the City, within 30 days of notice by the City, an amount necessary to maintain the Escrow Deposit balance at \$15,000 (“Escrow Conditions”). The Parties agree that Developer shall have no obligation to pay, deposit or reimburse any Professional Costs, funds or amounts other than, and/or in excess of \$30,000 under this Agreement without written authorization from Developer in advance of incurring such costs.

4. **Default.** In the event Developer fails to fulfill the Escrow Conditions, the City shall provide Developer with notice of the default and Developer shall have 30 days from the date of the notice to cure the default. If Developer fails to cure the default, the City may exercise all available remedies, which may include the issuance of a stop work order.

5. **Escrow Disposition.** The City shall refund the amount, if any, of Escrow Deposit remaining after completion of the Project or upon termination of the Agreement under Paragraph 2.

6. **Right of Inspection.** Developer may, at any time during normal business hours and as often as reasonably necessary, examine, audit, excerpt and transcribe the City's non-privileged public records relating to this Agreement. The City agrees to provide reasonable detailed and itemized descriptions necessary to determine the scope and extent of the Professional Costs allocated to the Project on a monthly basis and upon request from Developer.

7. **Notices.** Any required notices hereunder shall be provided to:

The City of Cannon Falls:

City of Cannon Falls
Attn: City Administrator
918 River Road
Cannon Falls, MN 55009
With a copy to:

Hoff Barry, P.A.
Attn: Shelley M. Ryan
100 Prairie Center Drive, Suite 200
Eden Prairie, MN 55344

Developer:

8. **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

9. **Modification.** Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.

10. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

11. **Time of the Essence.** Time is of the essence in the performance of the terms and obligations of this Agreement.

12. **Governing Law.** It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota. Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in state court located in Goodhue County, Minnesota, and each Party irrevocably submits to the exclusive jurisdiction of

such court in any such suit, action, or proceeding. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the Parties have signed and sealed this Agreement on the Effective Date.

MNLCO Dakota County Two, LLC, a Delaware limited liability company, and MNLCO Dakota County Three, LLC, a Delaware limited liability company

By: Name and Title

City of Cannon Falls, a Minnesota municipal corporation

By: _____
Matt Montgomery, Mayor

By: _____
City Administrator