

TO: MAYOR AND CITY COUNCIL

FROM: JON RADERMACHER, City Administrator

SUBJECT: Responsible Governmental Unit (RGU) Agreement – Alternative Urban Areawide Review (AUAR), Randolph Township and City of Cannon Falls

MEETING DATE: January 21, 2025

BACKGROUND

The City of Cannon Falls has been working with a Developer (Tract, or MNLCO Dakota County in the agreement) and Randolph Township for the development of a project that intends to become a data center. In the process the State of Minnesota requirement and environmental review called the Alternative Urban Areawide Review (AUAR), and as part of that review process, only one governmental unit can be the responsible authority in conducting the AUAR. In our meetings with Randolph Township and Tract, because the land is intended to be fully annexed into the City of Cannon Falls, it was agreed upon that the City would be the designated RGU.

The agreement before you addresses the terms of the determination of the RGU, and proposed schedule of actions related to the AUAR. Be aware that some of the preliminary work to prepare for and start the AUAR information gathering has already been completed. Public information, input sessions, and comment periods are planned in the near future.

STAFF RECOMMENDATION

Approve the RGU Agreement between the City and Randolph Township relating to the AUAR environmental review as presented. The document has been reviewed by the City Attorney, City Engineer, and Township consultants.

REQUESTED COUNCIL ACTION

Approve the Responsible Governmental Unit Agreement between the City of Cannon Falls and Randolph Township relating to the Environmental Review

**RESPONSIBLE GOVERNMENTAL UNIT AGREEMENT BETWEEN THE
CITY OF CANNON FALLS AND RANDOLPH TOWNSHIP
RELATING TO ENVIRONMENTAL REVIEW**

THIS AGREEMENT is entered into and effective on the ____ day of _____, 2025 (“Effective Date”), by and between the City of Cannon Falls, a Minnesota municipal corporation, hereinafter referred to as the “City,” and Randolph Township, a Minnesota municipal corporation, hereinafter referred to as the “Township.” The City and Township are each a “Party” and collectively the “Parties” to this Agreement.

WHEREAS, MNLCO Dakota County Two, LLC, a Delaware limited liability company, and MNLCO Dakota County Three, LLC, a Delaware limited liability company (collectively, “Developer”) is proposing a data center project (“Project”) concept located on the border of the City and Township with land located in both municipalities; and

WHEREAS, development of the Project requires environmental review under Minnesota Rules, Chapter 4410; and

WHEREAS, the preferred method of the Parties for environmental review of the Project is to prepare an Alternative Urban Areawide Review (“AUAR”), as provided in Minnesota Rules, Chapter 4410; and

WHEREAS, Minnesota Rules, Chapter 4410 requires that only one unit of government may act as the Responsible Governmental Unit (“RGU”) in conducting an AUAR; and

WHEREAS, the Project is located within both the City and the Township, on land that Developer seeks to be annexed into the City; and

WHEREAS, the Parties agree that under the circumstances, that the City would be the appropriate RGU.

NOW, THEREFORE, in consideration of the mutual promises and benefits that each Party shall derive herefrom, the City and Township hereby enter into this Agreement.

ARTICLE 1. – GENERAL TERMS

1.1) **Geographic Area.** All of the Project located in the City and Township as depicted on Exhibit A (“Project Area”), which is attached hereto and made a part of this Agreement.

1.2) **Term.** This Agreement shall remain in effect from the Effective Date until the completion and adoption of the AUAR.

1.3) **Notices.** All notices relating to this Agreement shall be in writing and provided to:

To the City:

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

To the Township:

Randolph Township
Attn: Township Clerk
P.O. Box 87
Randolph, MN 55065

With a copy to:
Couri & Ruppe, P.L.L.P.
Attn: Robert Ruppe
705 Central Avenue East
PO Box 369
St. Michael, MN 55376

ARTICLE 2.– RESPONSIBLE GOVERNMENTAL UNIT AND COOPERATION

2.1) **Responsible Governmental Unit Authority.** Consistent with Minnesota Rules Chapter 4410, Section 4410.0500, only one jurisdiction may act as the RGU for the proposed Project AUAR. The Parties agree that one AUAR will be performed for the entire Project. The Parties further agree, subject to the terms and conditions of this Agreement, that the City shall act as the RGU for the Project AUAR, as the portion of the Project Area that is currently located in the Township is anticipated to be annexed into Cannon Falls.

2.2) **Coordinated Environmental Review.** In consideration of the assignment of RGU authority by the Township to the City for preparation of the Project AUAR, the Parties agree to the following:

- (a) The City shall be responsible for the preparation, publication, distribution, and decision-making of the Project AUAR.
- (b) The City and Township shall convene a joint work session and informational session to discuss the AUAR process and timeline in accordance with the dates set forth in Exhibit B.

(c) The Township shall be given the opportunity to review and comment on the Draft AUAR Order and Scoping Document prior to its publication in the EQB Monitor in accordance with the dates set forth in Exhibit B.

(d) The Township shall be given the opportunity to review and comment on the Draft AUAR and Mitigation Plan in accordance with the dates set forth in Exhibit B.

2.3) **Submittal of AUAR Comments.** The Parties recognize and agree that in preparing, publishing, distributing, and approving the AUAR, time is of the essence. The City agrees to provide the Township the draft documents for the Township’s review and comment on or about the “start date” shown in Exhibit B. The Township agrees to provide written comments electronically to the City in a timely manner, and no later than fifteen (15) days following electronic transmission of the AUAR documents to the Township, to the following addresses:

Bill Angerman, City Engineer: bangerman@whks.com

Shelley Ryan, City Attorney: sryan@hoffbarry.com

Jon Radermacher, City Administrator: cityadmin@cannonfallsmn.gov

Tom Krauter, Township Board Chair: Krauter50@yahoo.com

Brenda Taylor, Township Clerk: Clerk@randolph-township.com

John Wiik, Township Planning Commission Chair:
Randolphmntownship@gmail.com

Bob Ruppe, Township Attorney: Bob@couriruppe.com

Jane Kansier, Township Planner: jane.kansier@bolton-menk.com

Brad Fisher, Township Engineer: bradley.fisher@bolton-menk.com

2.4) **Concurrent Review of Applications.** The Parties recognize that during the Term of the Agreement that Developer may submit subdivision or land use applications or other requests relating to the Project for all or portions of the Project Area to either Party. The Parties recognize and agree that the subdivision of land in the Project Area can be processed during the pendency of the AUAR and shall not constitute a final governmental decision under Minnesota Rules Part 4410.3100.

ARTICLE 3.– DATA PRACTICES

All data collected, created, received, maintained, or disseminated for any purpose by the Parties because of this Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended, the Minnesota rules implementing such act now in force or as amended as well as federal regulations on data privacy.

ARTICLE 4.– INDEPENDENT CONTRACTORS

The Parties acknowledge that each Party is solely responsible for payment of all wages, benefits, taxes, and insurance on behalf of its employees or agents relating to planning and environmental review in the Geographic Area. It is expressly understood that neither Party can compel the other to perform work, nor shall one Party be obligated to reimburse the other, without mutual consent. Nothing contained in this Agreement can or shall be interpreted as creating an employee relationship between the Parties and no employee of either party shall be considered an employee of the other party.

ARTICLE 5. – INDEMNIFICATION AND INSURANCE

5.1) **Indemnification.** Each Party (hereinafter referred to as the Indemnifying Party) agrees to defend, indemnify, and hold harmless the other Parties against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of the Indemnifying Party and/or those of the Indemnifying Parties' employees or agents. Under no circumstances, however, shall an Indemnifying Party be required to pay on behalf of itself and the other party any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for all Parties may not be added together to determine the maximum amount of liability for either Party. The intent of this paragraph is to impose on each Party a limited duty to defend and indemnify each other subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts among the Parties and to permit liability claims against both Parties from a single occurrence to be defended by a single attorney.

5.2) **Insurance.** The Parties subject to Minnesota Statutes Chapter 466 shall maintain insurance in an amount no less than the limits of liability under Minnesota Statutes Section 466.04, Subd 1 (7) and (8).

ARTICLE 6. – MERGER, MODIFICATION, AND SEVERABILITY

6.1) **Merger.** The entire Agreement between the Parties is contained here and this Agreement supersedes all oral agreements and negotiations between the Parties relating to the subject matter.

6.2) **Modification.** This Agreement may be modified or amended only in writing and upon signatures by the Parties.

6.3) **Severability.** The provisions of this Agreement are deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such finding shall have no effect on any other portion of this Agreement.

ARTICLE 7. – MISCELLANEOUS

7.1) **Headings and Captions.** The Parties agree that the headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement.

7.2) **Controlling Law.** The laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this agreement and the legal relations between the Parties and performance under it. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located with the County of Dakota, State of Minnesota. Litigation, however, in the federal courts involving the Parties will be in the appropriate federal court within the State of Minnesota.

7.3) **Third Parties.** This Agreement is between the Township and the City as the only Parties and no provision of this Agreement shall in anyway inure to the benefit of any third person (including the public at large and any property owner, tenant or resident within the Geographic Area) so as to constitute any such person as a third party beneficiary of the Agreement or of anyone or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

CITY OF CANNON FALLS:

By: _____

By: _____

RANDOLPH TOWNSHIP

By: _____

By: _____

EXHIBIT A
MAP OF PROJECT AREA

EXHIBIT B

AUAR TIMELINE

NOTE: Schedule is subject to change.

| TASK | START | END |
|---|--------------|------------|
| AUAR Order | | |
| KH Prepares Draft AUAR Order and Scoping EAW | 10/23/2024 | 12/17/2024 |
| <i>Anticipated Joint Workshop with Township</i> | 12/3/2024 | |
| Developer Reviews Draft Order and Scoping EAW | 12/18/2024 | 12/20/2024 |
| KH Revises Draft Order and Scoping EAW | 12/23/2024 | 12/27/2024 |
| City Reviews Draft AUAR Order and Scoping EAW | 1/16/2025 | 2/10/2025 |
| <i>Township Review of Draft AUAR Order and Scoping EAW*</i> | 1/22/2025 | 2/6/2025 |
| KH Revises Draft AUAR Order and Scoping EAW | 2/11/2025 | 2/14/2025 |
| City Reviews Final Draft AUAR Order and Scoping EAW | 2/17/2025 | 2/19/2025 |
| Draft Order and Scoping EAW Submitted to EQB | 2/25/2025 | |
| Draft Order and Scoping EAW Published in EQB Monitor | 3/4/2025 | |
| Draft Order and Scoping EAW Comment Period | 3/4/2025 | 4/3/2025 |
| KH Revises the Draft Order and Scoping EAW (Responds to Comments) | 4/4/2025 | 4/8/2025 |
| City Reviews Final Order and Scoping EAW | 4/9/2025 | 4/15/2025 |
| City Council Adopts Final Order | 4/15/2024 | |
| Final Order Submitted to the EQB Monitor | 4/22/2024 | |
| Final Order Published in the EQB Monitor | 4/29/2024 | |
| AUAR and Mitigation Plan | | |
| 120-day AUAR preparation process | 4/15/2024 | 9/3/2024 |
| KH Prepares Draft AUAR | 1/15/2024 | 2/21/2025 |
| Developer Reviews Draft AUAR | 2/21/2025 | 2/28/2025 |
| KH Revises the Draft AUAR | 3/3/2025 | 3/25/2025 |
| City Reviews Draft AUAR | 4/4/2025 | 4/24/2025 |
| <i>Township Review of Draft AUAR and Mitigation Plan*</i> | 4/8/2025 | 4/23/2025 |
| KH Revises Draft AUAR | 4/25/2025 | 5/2/2025 |
| City Reviews Draft AUAR | 5/5/2025 | 5/12/2025 |
| KH Revises Draft AUAR | 5/13/2025 | 5/20/2025 |
| Draft AUAR is submitted to EQB | 5/20/2025 | |
| Draft AUAR published in EQB Monitor | 5/27/2025 | |

| 30-day public comment period | 5/27/2025 | 6/26/2025 |
|--|------------------|------------------|
| KH prepares Final AUAR and responses to comments | 6/26/2025 | 7/6/2025 |
| City/Developer review of Final AUAR | 7/6/2025 | 7/14/2025 |
| KH revises Final AUAR | 7/14/2025 | 7/19/2025 |
| Final AUAR submitted to EQB Monitor | 7/22/2025 | |
| Final AUAR Published in EQB Monitor | 7/29/2025 | |
| 10-business day Final AUAR objection period (state agencies and the Met Council) | 7/29/2025 | 8/12/2025 |
| City adopts the Final AUAR at City Council meeting | 8/19/2025 | |
| City submits notice of adoption of Final AUAR to EQB and EQB distribution list | 8/26/2025 | |
| Notice of adoption of Final AUAR published in EQB Monitor | 9/2/2025 | |
| <i>*-City to coordinate the TWP review of the documents</i> | | |