

TO: MAYOR AND CITY COUNCIL

FROM: JON RADERMACHER City Administrator

SUBJECT: Amendment to Escrow Agreement with Tract

MEETING DATE: March 18, 2025

BACKGROUND

On March 4th, the City met with Tract and a team of consultants to discuss the data center project. During the discussions, the City informed the team that it needed to conduct a Water Distribution Analysis model and an evaluation of the equipment needs for the wastewater treatment facility. The City received quotes for these projects from our engineers, WHKS, for professional services that do not require competitive bidding, totaling \$33,000. The City requested that Tract cover this expense because the needs of the proposed development would expedite the timeline for completing these evaluations. Tract agreed to cover the costs up to \$40,000 through an amendment to our existing escrow agreement, which has been used to fund City consultant expenses. Additionally, Tract requested that if the project is developed, and they connect to City infrastructure, the City credit back the cost of these studies back in the capital recovery fees. These fees will be substantially higher than the cost of these study, and should be considered in the amendment.

The City Attorney and City Engineer have reviewed the escrow agreement, and it is recommended that it be presented to the Council for approval.

STAFF RECOMMENDATION

Staff recommends the approval of the amendment of the escrow agreement

REQUESTED COUNCIL ACTION

Approve the Amendment to the Escrow Agreement that is presented.

ESCROW AGREEMENT

This Escrow Agreement (“Agreement”) is entered into and effective on the ___ day of _____, 2025 (“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, the City has requested that WHKS & Co. (“WHKS”) evaluate its existing water distribution system and wastewater treatment facility equipment pursuant to the Professional Services Agreements attached hereto as Exhibit A (collectively, the “WHKS Agreements”); and

WHEREAS, Developer has agreed to reimburse the City for the actual reasonable costs it incurs for all services to be provided under the WHKS Agreements according to the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Incorporation.** The foregoing recitals and all Exhibits are incorporated into and made a part of this Agreement.
2. **Term.** This Agreement shall be effective until all services have been provided and fees paid under the WHKS Agreements (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 incurred under, and in connection with WHKS providing the services set forth in and under, the WHKS Agreements (collectively, “Professional Costs”).
4. **Escrow Deposit; Draws.** Developer shall deposit \$33,000 (the “Escrow Deposit”) with the City no later than April 1, 2025. The City may draw on the Escrow Deposit as costs are incurred for the Professional Costs. Upon the City’s request after the Escrow Deposit is depleted, Developer shall deposit additional funds to pay Professional Costs as they are incurred through the end of the Term, subject to the last and final sentence of this Paragraph 4 below (“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 \$40,000 under this Agreement without written authorization from Developer in advance of incurring such costs.
5. **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.

6. **Escrow Disposition.** The City shall refund the amount, if any, of Escrow Deposit remaining at the end of the Term or upon termination of the Agreement under Paragraph 2.

7. **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.

8. **Relationship to Existing Escrow Agreement.** City and Developer are parties to that certain Escrow Agreement dated December 3, 2024 (the "Existing Escrow Agreement"). City and Developer acknowledge and agree that "Professional Costs" as defined in and under the Existing Escrow Agreement expressly exclude the Professional Costs as defined in and under this Agreement. Without limiting, altering, waiving or modifying, and in addition to, the foregoing, for the avoidance of doubt, in no event shall Developer have any obligation to fund, pay for, and/or reimburse the City for, any Professional Costs (as defined in and under this Agreement) under the Existing Escrow Agreement.

9. **Fee Reduction/Offset.** If Developer submits and receives City approval of a subdivision and/or planned unit development for the Project and, in connection therewith, Developer and City enter into a development or PUD agreement, such agreement shall provide and require that the total amount of all Escrow Deposit funds withdrawn from the Escrow Deposit (which, for the avoidance of doubt, includes the initial Escrow Deposit in the amount of \$33,000.00 and any additional Escrow Deposit amounts pursuant to Paragraph 4 above) shall be applied (i) to reduce and offset any capital recovery fees payable by Developer or any other developer of the Project in connection with the development and construction of the Project and (ii) at the time Developer starts paying for the capital recovery costs of the City bringing infrastructure to serve the Project.

10. **Diligence/Change Orders.** The City acknowledges and agrees that neither the City nor WHKS shall amend, modify, change, assign or terminate, in whole or in part, the WHKS Agreements, or any one of them, without Developer's prior written consent, not to be unreasonably withheld, conditioned or delayed. As soon as reasonably possible after the Effective Date, the City shall use good faith efforts to commence, pursue and complete, and cause WHKS to commence, pursue and complete, the work and services under the WHKS Agreements in a timely manner.

11. **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:

MNLCO Dakota County Two, LLC
MNLCO Dakota County Three, LLC
3200 Cherry Creek S. Drive, Suite 700
Denver, Colorado 80209
Attn: Kate Siegel
Email: kate.siegel@tract.com

12. **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.

13. **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.

14. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. This Agreement is for the sole and exclusive benefit of, and not intended to give any benefits, rights, claims, actions or remedies to any person or entity other than, the City and Developer.

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

16. **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.

17. **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

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

City of Cannon Falls, a Minnesota municipal corporation

By: _____
Matt Montgomery, Mayor

By: _____
City Administrator