

TO: MAYOR AND CITY COUNCIL

FROM: JON RADERMACHER, City Administrator

SUBJECT: Amendment to Escrow Agreement with Tract

MEETING DATE: May 20, 2025

BACKGROUND

At the December 3rd, 2024 Council Meeting, the Council approved an escrow agreement with Tract to cover consultant expenses related to the work with the AUAR, land use, infrastructure, and development agreement planning. The original agreement set a cap of \$30,000, which is nearly spent. Additionally, we are requesting the agreement also allow for the coverage of expenses incur by City related to the costs associated with our Development Applications, which is allowable within the application to recover costs to the City for review that exceed the application fees.

Both attorneys for Tract and the City have reviewed the escrow agreement, and it is recommended for Council 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.

FIRST AMENDMENT TO ESCROW AGREEMENT

This First Amendment to Escrow Agreement (“Amendment”) is entered into and effective on the ____ day of May, 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, the City and Developer are parties to that certain Escrow Agreement dated December 3, 2024 (the “Agreement”); and

WHEREAS, the Parties have agreed to amend certain terms of the Escrow Agreement as set forth in this Amendment.

NOW, THEREFORE, the Parties agree as follows:

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

2. **Terms.** All capitalized terms used herein shall have the meaning ascribed to them in the Agreement unless otherwise specifically defined herein.

3. **Amendment.** The Parties hereby amend the Agreement as follows:

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

Escrow Deposit; Draws. The Parties acknowledge and agree that Developer deposited \$15,000 with the City on December 11, 2024, and \$15,000 in May 2025 (collectively, the “Escrow Deposit”). The City may continue to 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 \$100,000 under this Agreement without written authorization from Developer in advance of incurring such costs.

4. **Entire Agreement; Amendment.** The Agreement, as amended by this Amendment, reflects the full and complete agreement of the Parties and supersedes any and all previous agreements, oral and written. This Amendment may be amended only by a writing signed by both Parties. The terms and conditions of the Agreement not expressly modified by this Amendment remain in full force and effect.

5. **Counterparts.** This Amendment 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