

PRELIMINARY DEVELOPMENT AGREEMENT

THIS PRELIMINARY DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2023, by the City of Marshall, Minnesota, a Minnesota municipal corporation, the Economic Development Authority in and for the City of Marshall, Minnesota, a public body corporate and politic under the laws of Minnesota (the “EDA”), and Southwest West Central Services Cooperative., a public corporation and agency established under the laws of the State of Minnesota (the “Developer” or “SWWC”).

WITNESSETH:

WHEREAS, the Developer and the City have been engaged in informal discussions regarding the possible development of a portion of certain land owned by the City, including approximately five (5) acres of the parcel identified as 27-819005-0, located west of London Road and south of Channel Parkway in the City, as depicted in **Exhibit A** (the “Property”); and

WHEREAS, the Developer or its assigns proposes to acquire and develop the Property by constructing its corporate office facility thereon (the “Project”); and

WHEREAS, the City will convey the Property to the EDA, and the EDA intends to convey the Property to the Developer pursuant to Minnesota Statutes, Section 469.105, as amended; and

WHEREAS, the City, the EDA and the Developer desire to proceed with the development of the Property if: (i) satisfactory sources of funding can be secured by the Developer; (ii) the economic feasibility and soundness of the development of the Property and other necessary preconditions have been determined to the satisfaction of the parties; (iii) the financial risk to the City and the EDA, if any, is determined to be reasonable; and (iv) satisfactory resolution of land use and site design issues can be reached.

WHEREAS, the Developer is willing to undertake the activities described in this Agreement with reasonable assurance from the City and the EDA that each will support and cooperate with the Developer in its efforts to acquire the Property and construct the Project thereon (the “Development”); and

WHEREAS, the City and the EDA are willing to evaluate the proposed Development and work toward all necessary agreements with the Developer if the Developer agrees to makes the deposit described herein, which is intended to reimburse the City and the EDA for their actual out-of-pocket costs incurred in connection with this Agreement and the proposed Development; and

WHEREAS, the City Council of the City and the Board of Commissioners of the EDA have reviewed the Developer’s proposal and desires to enter into this Preliminary Development Agreement to provide the Developer with an exclusive period of negotiation which will allow the Developer to refine its proposal and give the City, EDA and the Developer an opportunity to negotiate the terms of a purchase contract (the “Contract”) containing various requirements necessary to facilitate conveyance of the Property by the City to the EDA and the Developer’s acquisition thereof and construction thereon of the Project, the specific terms and conditions of which are yet to be finalized.

NOW, THEREFORE, in consideration of the covenants and obligations of the parties hereto, the City and the Developer hereby agree as follows:

Section 1. Preliminary Nature of Agreement. The City, the EDA and the Developer agree that this Agreement is intended to be preliminary in nature. Before the City, the EDA and the Developer can decide on whether to proceed with the implementation of the Developer's proposal for the Property, it will be necessary to assemble and consider information relative to the design, economics and other aspects of the proposed Development. The purpose of this Agreement is to allow the Developer an exclusive opportunity to assemble such necessary information, to refine the above-referenced development proposal, and to negotiate with the City and the EDA concerning the execution of the Contract which, if executed, will set forth the rights and responsibilities of the City, the EDA and the Developer with respect to the Development.

Section 2. Present Intent of Parties. It is the intention of the parties that this Agreement memorialize their present understandings and commitments, and if the following conditions can be fulfilled to the satisfaction of the City, the EDA and the Developer, the parties may proceed to use their best efforts to negotiate a mutually satisfactory Contract, which Contract may include conveyance of the Property:

- (a) the Developer demonstrates the market-feasibility of the Development;
- (b) the Developer demonstrates that sources of financing for the Development are available to the Developer, and if Developer requests public financial assistance from the City or the EDA, such assistance is necessary to make Developer's development proposal financially feasible and Developer provides security adequate to reasonably justify the any such City or EDA investment in the Development;
- (c) the resolution of any land use and site design issues with respect to the Development; and
- (d) the satisfaction of such other reasonable and customary conditions as are determined to be appropriate by either party.

The Contract (together with any other agreements entered into between the parties hereto or contemporaneously therewith) when executed will supersede all obligations of the parties hereunder.

Section 3. Developer's Undertakings. As soon as practicable after the date of this Agreement, but in no event later than December 29, 2023 or as otherwise specified in this Section 3, the Developer shall submit to the City and EDA the following:

- (a) A completed application to the City for conduit revenue bonds (the "Conduit Bonds") to provide financing for the Development;
- (b) A preliminary plat to divide the parcel identified as 27-819005-0 and separate the Property therefrom, for approval by the City;
- (c) An over-all cost estimate for the design and construction of the Development and related machinery and equipment;
- (d) A proposed schedule for the starting and completion of all phases of the Development; and
- (e) A negotiated Contract in accordance with, and subject to, the terms hereof.

In addition, the Developer shall cooperate with the City and the EDA in meeting the requirements of any participating governmental entity with respect to the proposed public assistance.

The costs of all undertakings by the Developer under this Section 3 shall be borne solely by the Developer. All of the information and materials described in this Section 3 shall be the property of the Developer.

Section 4. City's and EDA's Undertakings. During the term of this Agreement, the City and/or the EDA will undertake the following:

- (a) Review the application for Conduit Bonds submitted by SWWC, and in the sole and absolute discretion of the City and/or EDA, commence activities to issue the Conduit Bonds to provide financing for the Development.
- (b) Commence activities to plat the Property creating a separate platted lot for that parcel;
- (c) Make available to the Developer all engineering drawing and other similar materials with respect to the Property, to assist Developer in its efforts under this Agreement;
- (d) Make available City/EDA staff for consultation with respect to the preparation and review of the items described in Section 3 of this Agreement; and
- (e) in the event the Developer requests public financial assistance in connection with the Development, the City will cause its fiscal and development consultant, Baker Tilly, to prepare a report for the City and the EDA, utilizing the documentation and information submitted by the Developer pursuant to Section 3, setting forth the following:
 - (i) Whether any public financial assistance requested by the Developer in connection with the Development is appropriate; and
 - (ii) Whether there is anticipated to be sufficient cash flow from the Development to pay all of the costs associated with the Development;
- (f) review zoning, planning and subdivision implications of the Development, as appropriate;
- (g) keep the Developer fully apprised of the status and substance of the foregoing undertakings, as well as the accrued amount of reimbursable expenses described in Section 9 of this Agreement;
- (h) negotiate the Contract in accordance with, and subject to, the terms hereof;

Section 5. Purchase from EDA. It is anticipated that upon conveyance by the City to the EDA, the EDA will convey the Property to SWWC for a purchase price of One Dollar (\$1.00). All other terms and conditions of the acquisition and sale shall be contained in the Contract and approval of the issuance of the Conduit Bonds by the City Council of the City shall be a condition thereof.

Section 6. Exclusive Development Rights. During the term of this Agreement, the City and the EDA each agree that it will not negotiate or contract with any other party concerning the sale or development of the Property. The Developer shall not assign or transfer its rights under this Agreement

in full or in part, or enter into any subcontracts to perform any of its obligations hereunder, without the prior written consent of the City and the EDA.

Section 7. Conveyance Subject to Right of Re-entry. As of the date of this Agreement, the City owns the Property. If a Contract is executed within the terms of this Agreement, the City will convey title to and possession of the Property to the EDA, and the EDA will simultaneously convey title to and possession of the Property to the Developer, subject to all the terms and conditions of the Contract. The EDA's conveyance of the EDA Property to the Developer pursuant to the Contract will be made in the form of a quit claim deed (the "Deed"). The Deed will include a right of re-entry for breach of a condition subsequent in favor of the EDA (the "Right of Re-entry") for the Development. The condition(s) subsequent will be determined by the EDA in accordance with Minnesota Statutes Section 469.105 and set forth in the Deed conveying the EDA Property to the Developer in the form attached to the Contract. If the Developer breaches such condition(s) subsequent with respect to the Development, the Developer shall re-convey the Property back to the EDA. If the Developer fails to re-convey the Property to the EDA, the EDA may elect to exercise its right of reentry by commencing an action in Lyon County District Court to establish the breach of the condition subsequent. If the EDA establishes a breach of the condition subsequent, title to and the right to possession of the Property and title to all improvements located thereon reverts to the EDA, and the Developer is not entitled to any compensation from the EDA for the Property or the value of any improvements the Developer has made to the Property. The Developer must record any certificate of completion or certificate of release of the Right of Re-entry in the proper County land records at its expense.

Section 8. Negotiation of Contract. If all parties have satisfied their obligations hereunder and have each determined that they desire to move forward with the Development, the City and EDA shall prepare a draft Contract for negotiation between the parties. Nothing herein shall bind the parties to approve a Contract.

Section 9. City and EDA Costs. The Developer agrees that it will pay all out-of-pocket costs incurred by the City and the EDA in relation to the negotiation and execution of this Agreement, including, without limitation, all fees owed to the traffic, development, fiscal, legal, engineering, environmental and other consultants of the City and EDA, as well as costs associated with any plat of the Property. The Developer shall also be responsible for reimbursing the City and the EDA for all costs associated with the drafting of the Contract, and any other activities which the City and the EDA undertake in furtherance of the Development. No later than on the Effective Date of this Agreement (as defined in Section 12), the Developer shall deposit \$750 with the City and the City shall use such amount to pay costs associated with the City's and EDA's review of the Development. The City and EDA shall have the right to draw upon amounts remaining on deposit with it to pay its costs. If on termination of this Agreement, the amounts held by the City are insufficient to pay the City's and EDA's costs, the Developer shall be liable for any deficiency. If this Agreement is terminated in accordance with the terms hereof, or it expires and the parties do not move forward with the Development, any sums remaining on deposit with the City, after the City pays or reimburses itself and the EDA for all costs incurred to the date of termination, shall be returned to the Developer. The Developer's obligations under this section shall survive termination of this Agreement to the extent costs were incurred prior to the date of termination or to the extent that costs are incurred to enforce the Developer's obligations under this section.

Section 10. Effect of Approvals. No approval given by the City and the EDA hereunder or in connection herewith shall be deemed to constitute an approval of the Development for any purpose other than as stated herein and the process outlined in this Agreement shall not be deemed to supersede any concept review, conditional use permit, vacation, subdivision, rezoning or other zoning or planning approval process of the City or the EDA relative to the development of real estate.

Section 11. Modifications. This Agreement may be modified and the term hereof may be extended only through written amendments hereto signed by all parties to this Agreement.

Section 12. Term of Agreement. (a) This Agreement shall be effective from the date of this Agreement (the “Effective Date”) through March 29, 2024, subject to earlier termination in accordance with this section. If for any reason a Contract has not been entered into by the parties within the term of this Agreement or any other mutually approved extension thereof, this Agreement shall be null and void and neither party thereafter shall have any liability or obligations to the other except as otherwise provided in Sections 5 and 9 hereof.

(b) This Agreement may be terminated by any party upon 30 days’ written notice to the other parties if:

(i) A party fails to perform any of its obligations hereunder, and fails to cure the default within 30 days after receipt of written notice thereof; or

(ii) An impasse has been reached in the negotiation of any material term of the Contract.

Upon termination under this section 12(b), neither party thereafter shall have any liability or obligations to the other except as otherwise provided in Sections 5 and 9 hereof.

Section 13. Indemnification. The Developer agrees to indemnify, defend and hold harmless the City and the EDA and their respective officers, employees, agents, members, officials and representatives from and against any claims, demands, suits, costs, expenses (including reasonable attorneys' fees) actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Development; including, without limitation, any claim by a land owner or tenant located on the Property to be entitled to relocation costs and related expenses.

Section 14. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of any remaining portion of this Agreement.

Section 15. Notices. Notice, demand, or other communication from one party to another party shall be deemed effective if sent by certified mail, postage prepaid, return receipt requested or delivered personally to a party at its address listed below, or at such other address as such party may designate in writing to the other party:

As to the City: City of Marshall
344 West Main St.
Marshall, MN 56258
Attn: City Administrator

As to the EDA: Marshall EDA
344 West Main St.
Marshall, MN 56258
Attn: Lauren Deutz, Economic Development Director

As to the Developer:

SWWC Services Cooperative
1420 East College Drive
Marshall, MN 56258
Attn:

Section 16. Effective Laws. This Agreement shall be construed in accordance with the laws of Minnesota, and any disputes shall be adjudicated in Lyon County district courts.

Section 17. Execution in Counterparts; Electronic Signatures. This Agreement may be executed in several counterparts, all of which shall constitute one and the same instrument. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means or a digital signature provided by DocuSign or other digital signature provider; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

IN WITNESS WHEREOF, the City, the EDA and the Developer have caused this Preliminary Development Agreement to be signed by their respective duly authorized representatives as of the date and year first written above.

CITY OF MARSHALL, MINNESOTA

By: _____
Its: Mayor

By: _____
Its: City Administrator

[Signature page to Preliminary Development Agreement]

**ECONOMIC DEVELOPMENT
AUTHORITY IN AND FOR THE CITY OF
MARSHALL, MINNESOTA**

By: _____
Its: President

By: _____
Its: Executive Director

[Signature page to Preliminary Development Agreement]

**SOUTHWEST WEST CENTRAL SERVICES
COOPERATIVE**

By: _____
Its: _____

[Signature page to Preliminary Development Agreement]

EXHIBIT A

Property

The Property covered by this Preliminary Development Agreement includes approximately five (5) acres of the parcel identified as 27-819005-0, as depicted below:

