

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made by and between the City of Marshall, a Minnesota municipal corporation (“**City**”) and Hisken Construction, Inc., a Minnesota business corporation (“**Owner**”). The City and the Owner may hereinafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS

- A. The Owner is the owner of the property (PID 27-542002-0) located at 200 South 8th Street within the City and legally described as Outlot B, Moore Addition, Lyon County, Minnesota (“**Property**”).
- B. The Owner requests City’s permission to have its contractor, Towne & Country Excavating LLC (“**Contractor**”), extend the City’s sanitary sewer line approximately 305 feet within the right-of-way of South 8th Street from the current end of the line at manhole ID 5NE38 to the Property to provide service to the Owner’s shop building (“**Project**”).
- C. The City is willing to allow the Owner to construct the Project and take over the extended sanitary sewer line, but only in accordance with the terms and conditions of this Agreement.

AGREEMENT

In consideration of the mutual promises and obligations contained herein, and intending to be legally bound, the parties hereby agree as follows:

1. Permission. The City grants the Owner permission to, at the Owner’s sole cost, have its Contractor construct the Project, provided all work is done in accordance with the terms and conditions of this Agreement.
2. Design Plan. The City agrees to prepare a design for the extension of the sanitary sewer system (“**Design**”) and provide it to the Owner. The Project must be constructed in accordance with the Design. The Design prepared by the City is incorporated in and made part of this Agreement. The Owner shall be responsible for reimbursing the City for its costs to prepare the Design. The City makes no guarantees or warranties regarding the Design other than it deems the Design it prepares as being sufficient for the City’s purposes of allowing an extension of its sanitary sewer pipe.
3. Standards. The Project must be constructed in accordance with the Design and the following:
 - (a) The approximately 305-foot extension to be placed within the City’s right-of-way shall be an 8” SDR 35 PVC sanitary sewer pipe.
 - (b) A 48” diameter concrete manhole shall be placed at the end of the extension, within the City’s right-of-way, to allow the City future access to the pipe for inspections and maintenance.

- (c) Install and maintain such traffic control devices as may be needed to warn the traveling public of the work being done within the City's right-of-way.
- (d) [do they need to pull a ROW permit?]
- (e) Restore the right-of-way by _____.
- (f) The Project must be completed, and the right-of-way fully restored, by December 1, 2023. The City may grant an extension in writing if it determines the Owner, for reasons out of the Owner's control, could not reasonably complete the Project by that date.
- (g) The lateral to be installed on the Property to connect the Owner's shop to the extended sanitary sewer line must comply with the City's regulations regarding such connections and shall be done solely at the Owner's cost. The Owner, not the City, is responsible for maintaining, repairing, or replacing the lateral in the future as may be needed.
- (h) All work and materials must comply with the City's standards, specifications, and policies as determined by the City's engineering staff.

No modifications to the Design, or the standards set out in this section, may occur unless the City approves them in advance in writing.

4. Inspections. The Owner shall have the City inspect the Project during construction and upon completion of the work. The Owner must have its Contractor notify the City prior to the start of work to arrange for inspections by the City. The Owner is responsible for having its Contractor make any repairs or take any corrective actions identified by the City to make the Project comply with the City's standards and the requirements of this Agreement.
5. Warranty. The Owner shall require the Contractor to warrant its work for at least one year from completion of the Project. The Owner is responsible for working with the Contractor to ensure the Contractor performs any needed warranty work, as determined by the City, that arises during the warranty period.
6. Acceptance of Improvements. The City agrees to accept the sanitary sewer extension and the manhole (collectively, the "**Improvements**") once the City determines the Project was completed in accordance with the terms and conditions of this Agreement. The Owner agrees to transfer the Improvements to the City at no cost to the City. The City will notify the Owner in writing of its acceptance. The Improvements shall be deemed transferred to the City upon the City's written acceptance. The City will thereafter inspect, maintain, and repair the Improvements in accordance with its usual practices and policies. Nothing in this Agreement shall limit the City's authority to impose special assessments on the Property related to any further projects within the right-of-way in accordance with its usual procedures.
7. Costs. The Owner is responsible for all costs to construct the Project and for reimbursing the City for its costs to prepare the Design, conduct inspections, and for preparing this Agreement (collectively, "**City Costs**"). To ensure the City is fully reimbursed for the City Costs, the Owner

shall be required to provide \$3,000 (“**Escrow**”) to the City to be used to reimburse the City Costs. The Escrow must be provided to the City prior to undertaking the Project. The City will draw upon the Escrow as needed to fully reimburse itself for the City Costs it incurs. If the Escrow is not sufficient to fully reimburse the City Costs, the City will provide the Owner an invoice for such additional amounts. The Owner shall pay the City such invoiced amounts within 20 days. If the City Costs do not exceed the Escrow, the City shall reimburse any remaining amount to the Owner, without interest, within 30 days of the final inspection and acceptance of the Improvements. If the Owner fails to fully reimburse the City for the City Costs, the parties agree such unpaid amounts constitute a service charge the City may collect on the taxes of the Property pursuant to Minnesota Statutes, sections 415.01 and 366.012, or pursuant to any other authority under law.

8. Term and Termination. This Agreement is effective as of the date of the last party to execute it and shall terminate upon the City’s acceptance of the improvements, the reimbursement in full of the City Costs, and the return of any remaining portion of the Escrow (if any). The indemnification and warranty obligations shall survive termination of this Agreement.
9. Entire Agreement. This Agreement, which includes the recitals and any incorporated documents, constitutes the entire agreement between the parties regarding this matter and it may not be amended except by a writing authorized and executed by both parties.
10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the City and Owner have caused this Agreement to be executed in their names and on their behalf by their duly authorized representatives:

OWNER

By: _____

Dated: _____

CITY OF MARSHALL

By: _____
Robert Byrnes, Mayor

Dated: _____

By: _____
Sharon Hanson, City Administrator

Dated: _____