

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT made and entered into as of this ____ day of ____ 2026, by and between the City of Marshall, a Minnesota municipal corporation (the "City"), and Marshall Municipal Utilities, ("MMU") together with the City (the "Parties") or each (a "Party").

RECITALS

- A. City is the fee owner of the following described real property (the "Property"):

See attached Exhibit A.
- B. The Property is adjacent to property owned by MMU and identified with the PID number of 27-159008-0.
- C. The Parties previously agreed that City would offer MMU the property in the future to benefit the public in the City of Marshall for use of the Property for the City's municipal utility.
- D. MMU has requested permission from the City to install driveway access into the property and to maintain and use the Property for stockpiling and storage of construction materials, including but not limited to, topsoil, aggregate base, and rock ballast ("Encroachment").
- E. The City is willing to allow the Encroachment of the Property subject to the terms and conditions of this Agreement, and subject to City review of driveway location and MMU receiving a driveway permit from the City.

AGREEMENT

In consideration of each Party's mutual covenants, terms, and conditions outlined in this Agreement, the Parties mutually agree to the following:

- 1. **Incorporation of Recitals.** The recitals and exhibits in this Agreement are integral to this Agreement.
- 2. **Limited Use.** The City warrants that it has the right to grant this limited use interest affecting the Encroachment of the Property. Per the terms and conditions of this Agreement, the City grants MMU the right to encroach into the Encroachment Area for the sole purpose of utilizing the property for storage of construction materials and for the maintenance of the property. MMU must not alter the grade or permit alterations on the Property, including but not limited to, planting trees or shrubs, without the City's prior express written consent. MMU must conduct all of its activities on the Property in a manner that does not interfere with the operation and maintenance of the public infrastructure on the property.
- 3. **Maintenance and Repair of the Encroachment.** MMU agrees to repair and maintain the Property in a manner consistent with the City's ordinances. If MMU fails to repair

or maintain the Property during the term of this Agreement, the City may revoke the limited use granted by this Agreement.

4. **City's Right to Use the Property.** The City reserves the right to use the Property during the term of this Agreement for its purposes. Nothing in this Agreement prevents the City from taking any action necessary to exercise its interest on the Property, including excavation that may render the Property unusable. MMU shall have no claim against the City if the Encroachment Area becomes unusable for the use contemplated in this Agreement.
5. **Assumption of Risk.** MMU assumes all risks for damages, injuries, or loss to either property or persons that MMU or its respective agents, invitees, or licensees may incur in or near the Property in any way associated with the Encroachment.
6. **Hold Harmless; Indemnification.** Any and all claims that arise or may arise against MMU, its officers, employees, agents or contractors while engaged in its use of the Encroachment Area shall in no way be the obligation of the City. Furthermore, MMU must indemnify, hold harmless and defend the City, their officials, employees, contractors, and agents from and against any and all liability, loss, costs, damages, expenses, claims, actions, or judgments, including reasonable attorneys' fees which the City, its officers, employees, agents or contractors may sustain, incur, or be required to pay, arising out of by reason of any act or failure to act by MMU, its officers, employees, agents or contractors or arising out of or by reason of this Agreement. Nothing in this Agreement shall be construed as a waiver by the City of any immunity, defenses, or other limitations on liability to which the either party is entitled by law.
7. **Insurance.** During the term of this Agreement, MMU must procure and keep in force a general property casualty insurance policy that includes the area designated within the Encroachment Area. Any claims for damages based upon MMU's use of the Encroachment Agreement shall be submitted to MMU's insurance policy.
8. **Term.** This Agreement shall be effective upon execution and shall terminate when MMU removes the Encroachment from the Property, or the City vacates the portion of the Property within the Encroachment Area.
9. **Termination.** MMU or City may terminate this Agreement at any time by giving the other Party 30 days' written notice. Unless the City vacates the, upon termination of this Agreement, MMU shall immediately remove the Encroachment from the Encroachment Area and return the Encroachment Area to the condition it was in before MMU's use at MMU's sole cost.
10. **Notices.** Any notice, demand, or other communication under this Agreement by either Party to the other shall be sufficiently given or delivered if it is dispatched by certified or registered mail or delivered personally to the respective address of each Party as outlined as follows:

As to MMU:

Marshall Municipal Utilities

Attn: Pete Wyffels, General Manager
113 South 4th Street
Marshall, MN 56258

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

with a copy to: Kennedy & Graven Chartered
Faribault City Attorney
150 South Fifth Street, Suite 700
Minneapolis, MN 55402

11. **Entire Agreement; Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes any other written or oral agreements between the Parties related to the Encroachment and the Encroachment Area. Any modification of this Agreement or additional obligation assumed by any Party in connection with this Agreement shall be binding only if evidenced in writing signed by the Parties to be affected by said modification or additional obligation.
12. **Assignment.** MMU shall not have the right to assign any rights under this Agreement except with the City's prior, express, and written consent and the entering of a new Agreement with any new MMU of the Property.

IN WITNESS WHEREOF, MMU and City have executed this Agreement this ____day of _____ 202____.

MARSHALL MUNICIPAL UTILITIES

By: _____

Its: _____

CITY OF MARSHALL

By: _____

Robert Byrnes, Mayor

ATTEST:

Steven Anderson, City Clerk

Document Number: 1102300

EXHIBIT A

Legal Description of the Property

Lot 2, Block Seven, Commerce Industrial Park Addition
City of Marshall, County of Lyon, State of Minnesota

EXHIBIT B

Driveway Installation Locations

