



CITY OF MARSHALL
Housing and Redevelopment Authority
Meeting
Agenda
Tuesday, May 25, 2021 at 5:15 PM
Minnesota Emergency Response and Industrial
Training (MERIT) Center, 1001 Erie Road

NOTICE: Pursuant to Minnesota State Statute 13D.021

Some or all members of the Housing and Redevelopment Authority may participate by telephone or other electronic means. Regular attendance and meeting location are not feasible due to the Coronavirus Disease (COVID-19) pandemic.

CALL TO ORDER

APPROVAL OF MINUTES

- [1.](#) Consider approval of the minutes from the special meeting held on December 22, 2020 and January 12, 2021.

NEW BUSINESS

- [2.](#) Call for A Public Hearing to Consider Approval of a Land Sale.
- [3.](#) Approve Amendment to Border States Purchase Agreement

ADJOURN

Disclaimer: These agendas have been prepared to provide information regarding an upcoming meeting of the Common Council of the City of Marshall. This document does not claim to be complete and is subject to change.



CITY OF MARSHALL AGENDA ITEM REPORT

| | |
|-------------------------------------|---|
| Meeting Date: | Tuesday, May 25, 2021 |
| Category: | APPROVAL OF MINUTES |
| Type: | ACTION |
| Subject: | Consider approval of the minutes from the special meeting held on December 22, 2020 and January 12, 2021. |
| Background Information: | |
| Fiscal Impact: | |
| Alternative/ Variations: | Staff encourages HRA Members to provide any suggested corrections to the minutes in writing to City Clerk, Kyle Box, prior to the meeting. We then could potentially incorporate proposed amended minutes at the meeting. |
| Recommendations: | that the minutes of the special meeting held on December 22, 2020 and January 12, 2021, be approved as filed with each member and that the reading of the same be waived. |

**CITY OF MARSHALL
HOUSING AND REDEVELOPMENT AUTHORITY MEETING
M I N U T E S
Tuesday, December 22, 2020**

The special meeting of the Housing and Redevelopment Authority was held on December 22, 2020 in the Minnesota Emergency Response and Industrial Training (MERIT) Center, 1001 Erie Road. The meeting was called to order at 5:15 P.M. by Chairman Robert Byrnes. In addition to Byrnes the following members were present: Craig Schafer, Steve Meister, Glenn Bayerkohler, John DeCramer, Russ Labat, James Lozinski. Absent: None. Staff present included: Sharon Hanson, Executive Director; Dennis Simpson, City Attorney; Jason Anderson, Director of Public Works/ City Engineer and Jasmine DeSmet, MERIT Center Facility Coordinator.

Consider approval of the minutes from the special meeting held on October 13 & 27, 2020.

Motion made by Board Member DeCramer, Seconded by Board Member Meister that the minutes of the special meeting held on October 13 & 27, 2020, be approved as filed with each member and that the reading of the same be waived. Voting Yea: Chairman Byrnes, Board Member Schafer, Board Member Meister, Board Member Bayerkohler, Board Member DeCramer, Board Member Labat, Board Member Lozinski. The motion **Carried. 7-0**

Call for a Public Hearing to Consider Approval of a Land Sale.

Staff has received a building plans from BSE to develop a 13,200 sq. ft facility on approximately 2.5 acres of land located on the corner of London Road and Channel Parkway. The construction of the new facility would provide an increase in EMV of approximately \$620,000 and the retention of 12 employees. A Land Sale Proposal is included for the sale of land from the Marshall Housing and Redevelopment Authority to Border States Electric. Land Proposal includes: 2.5 acres of Lot 2 Block 1, McLaughlin Industrial Park 2nd Addition (Parcel 27-538002-0) for \$15,000 per acre for a total of \$37,500.

Motion made by Board Member Lozinski, Seconded by Board Member Meister to call for Public Hearing on Tuesday, January 12 at 5:15 P.M. at the Minnesota Emergency Response and Industrial Training (MERIT) Center, 1001 Erie Road. Voting Yea: Chairman Byrnes, Board Member Schafer, Board Member Meister, Board Member Bayerkohler, Board Member DeCramer, Board Member Labat, Board Member Lozinski

Adjournment

Motion made by Board Member Schafer, Seconded by Board Member Lozinski to adjourn. Voting Yea: Chairman Byrnes, Board Member Schafer, Board Member Meister, Board Member Bayerkohler, Board Member DeCramer, Board Member Labat, Board Member Lozinski. The motion **Carried. 7-0**

Robert J. Byrnes
Chairman

ATTEST:

Sharon Hanson
Executive Director

**CITY OF MARSHALL
HOUSING AND REDEVELOPMENT AUTHORITY MEETING
M I N U T E S
Tuesday, January 12, 2021**

The special meeting of the Housing and Redevelopment Authority was held on October 27, 2020 in the Minnesota Emergency Response and Industrial Training (MERIT) Center, 1001 Erie Road. The meeting was called to order at 5:15 P.M. by Chairman Robert Byrnes. In addition to Byrnes the following members were present: Craig Schafer, Steve Meister, Don Edblom, John DeCramer, Russ Labat, James Lozinski. Absent: None. Staff present included: Sharon Hanson, Executive Director; Dennis Simpson, City Attorney; Lauren Deutz, Economic Development Director and Kyle Box City Clerk.

Consider approval of the Mayoral appointment to the Housing and Redevelopment Authority.

69.003 CITY HOUSING AND REDEVELOPMENT AUTHORITY. Subd. 6. Appointment; approval; term; vacancy. The commissioners shall be appointed by the mayor, with the approval of the governing body. Those initially appointed shall be appointed for terms of one, two, three, four, and five years, respectively. Thereafter all commissioners shall be appointed for five-year terms. Each vacancy in an unexpired term shall be filled for the remainder of the term for which the original appointment was made. Any member of the governing body of a city may be appointed and may serve as a commissioner of the authority for the city. The council of any city which appoints members of the city council as commissioners may set the terms of office of a commissioner to coincide with the commissioner's term of office as a council member.

Motion made by Board Member Meister, Seconded by Board Member Lozinski to approve the Mayoral appointment of commissioner Donald Edblom to the Housing and Redevelopment Authority for a term to coincide with the term of office as a council member. Voting Yea: Chairman Byrnes, Board Member Schafer, Board Member Meister, Board Member Edblom, Board Member DeCramer, Board Member Labat, Board Member Lozinski. The motion **Carried. 7-0**

Consider Approval of a Land Sale to Border States Industries, Inc.

Staff has received a building plans from BSE to develop a 13,200 sq. ft facility on approximately 2.5 acres of land located on the corner of London Road and Channel Parkway. The construction of the new facility would provide an increase in EMV of approximately \$620,000 and the retention of 12 employees.

A Land Sale Proposal is included for the sale of land from the Marshall Housing and Redevelopment Authority to Border States Electric.

Land Proposal includes:

2.5 acres of Lot 2 Block 1, McLaughlin Industrial Park 2nd Addition (Parcel 27-538002-0) for \$15,000 per acre for a total of \$37,500.

Motion made by Board Member Schafer, Seconded by Board Member DeCramer to close the public hearing. Voting Yea: Chairman Byrnes, Board Member Schafer, Board Member Meister, Board Member Edblom, Board Member DeCramer, Board Member Labat, Board Member Lozinski. Th motion **Carried. 7-0**

Motion made by Board Member Lozinski, Seconded by Board Member Schafer To Approve the Land Sale between the City of Marshall and Border States Industries, Inc. Voting Yea: Chairman Byrnes, Board Member Schafer, Board Member Meister, Board Member Edblom, Board Member DeCramer, Board Member Labat, Board Member Lozinski. The motion **Carried. 7-0**

Adjournment

Motion made by Board Member DeCramer, Seconded by Board Member Lozinski to adjourn. Voting Yea: Chairman Byrnes, Board Member Schafer, Board Member Meister, Board Member Bayerkohler, Board Member DeCramer, Board Member Labat, Board Member Lozinski. The motion **Carried. 7-0**

Robert J. Byrnes
Chairman

ATTEST:

Sharon Hanson
Executive Director

HRA CITY OF MARSHALL AGENDA ITEM REPORT

| | |
|---------------------------------|---|
| Meeting Date: | Tuesday, May 25, 2021 |
| Category: | NEW BUSINESS |
| Type: | INFO/ACTION |
| Subject: | Call for A Public Hearing to Consider Approval of a Land Sale. |
| Background Information: | <p>Earlier this year, Jim Swenson, doing business as BEST TOPSOIL LLC purchased property from HRA. A portion of the previously purchased property included 1.8 acres of property identified as part of Lot 3, Block 1 of McLaughlin Industrial Park II Addition to the City of Marshall. (Parcel 27-538-003-0)</p> <p>Mr. Swenson, on behalf of BEST TOPSOIL LLC has now offered to purchase the remaining 4.84 acres of that parcel from the HRA. Attached is a purchase agreement as signed by Jim Swenson, Managing Member of BEST TOPSOIL LLC. Purchase price is \$25,000.00 per acre, total purchase price \$121,000.00. Mr. Swenson has provided the City with BEST TOPSOIL LLC's earnest money check in the amount of \$1,000.00.</p> <p>This proposed purchase will be presented to the EDA for consideration at its meeting on Wednesday, May 26, 2021. Staff is recommending that EDA approve the proposed sale of property and recommend to HRA that HRA approve the sale.</p> <p>Minnesota Statutes require that a public hearing be held to consider the sale of public property. Therefore, it is recommended that HRA call for a public hearing to be held on Tuesday, June 8, 2021 at 5:15 P.M.</p> |
| Fiscal Impact: | HRA would approve the sale of property for a total of \$121,000.00. |
| Alternative/ Variations: | No alternative action recommended. |
| Recommendations: | That the HRA call for public hearing regarding the sale of publicly owned property. |

MINNESOTA STANDARD PURCHASE AGREEMENT

(BEFORE YOU USE OR SIGN THIS CONTRACT, YOU SHOULD CONSULT WITH AN ATTORNEY TO DETERMINE THAT THIS CONTRACT ADEQUATELY PROTECTS YOUR LEGAL RIGHTS)

1. **PARTIES.** This purchase agreement is made on May ____, 2021, by and between Housing and Redevelopment Authority in and for the City of Marshall, Minnesota, a Municipal Corporation, as SELLER, and BEST TOPSOIL LLC a Minnesota Limited Liability Company as BUYER.
2. **OFFER/ACCEPTANCE.** Buyer offers to purchase, and Seller agrees to sell property legally described as:

See attached Exhibit A for legal description of property to be purchased. Land purchase consists of 4.84 acres.

Said tract is subject to any existing roadways or easements.

3. **PRICE AND TERMS.** The total purchase price for the real property included in this sale is One hundred twenty-one thousand and no/100 (\$121,000.00) Dollars, which Buyer shall pay as follows: Earnest money of \$1,000.00 upon the execution of this agreement, receipt of which is hereby acknowledged and the remaining purchase price of \$120,000.00 to be paid at the closing date to be agreed upon by the parties.
4. **BUYER.** Purchaser will obtain and pay for platting costs incurred for the re-platting of the property. Purchaser shall construct and pay for a ditch drainage system to be installed on the property, which system is to be designed and approved by engineering staff at the City of Marshall.
5. **DEED/MARKETABLE TITLE.** Upon performance by Buyer, Seller shall execute and deliver a Warranty Deed conveying marketable title, subject to:
 - (A) Building and zoning laws, ordinances, state, and federal regulations;
 - (B) Restrictions relating to use or improvement of the property without effective forfeiture provisions;
 - (C) Reservation of any mineral rights by the State of Minnesota;
 - (D) Utility and drainage easements which do not interfere with existing improvements;
 - (E) Exceptions to title which constitute encumbrances, restrictions or easements which have been disclosed to Buyer and accepted by Buyer in this Purchase Agreement; (MUST BE SPECIFIED IN WRITING).

6. **REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** The real estate is exempt from taxes due and payable in the year of closing. Buyer shall be responsible for payment of real estate taxes in subsequent years.
7. **DAMAGES TO REAL PROPERTY.** If the Real Property is substantially damaged prior to closing, this Purchase Agreement shall terminate, and the Earnest Money shall be refunded to Buyer. If the Real Property is damaged materially but less than substantially prior to closing, Buyer may rescind this Purchase Agreement by notice to Seller within twenty-one (21) days after Seller notifies Buyer of such damage, during which 21-day period Buyer may inspect the Real Property, and in the event of such rescission, the Earnest Money shall be refunded by Buyer.
8. **OTHER TERMS.** Buyer shall acquire property subject to all existing easements of record. Buyer shall honor all existing easements.
9. **SELLER'S BOUNDARY LINE, ACCESS, RESTRICTIONS AND LIEN WARRANTIES.** Seller warrants that buildings, if any, are entirely within the boundary lines of the Real Property. Seller warrants that there is a right of access to the Real Property from the public right of way. Seller warrants that there has been no labor or material furnished to the Real Property for which payment has not been made. Seller warrants that there are no present violations of any restrictions relating to the use or improvement of the property. These warranties shall survive the delivery of the deed or contract for deed.
10. **DISCLOSURE OF NOTICES.** Seller has not received any notice from any governmental authority as to violation of any law, ordinance, or regulation. If the Real Property is subject to restrictive covenants, Seller has not received any notice from any person as to a breach of the covenants.
11. **POSSESSION.** Seller shall deliver possession of the property not later than Closing. All interest, fuel oil, liquid petroleum gas, and all charges for city water, city sewer, electricity and natural gas shall be prorated between Buyer and Seller as of the date of Closing.
12. **EXAMINATION OF TITLE.** Seller shall, within ten (10) days of this Agreement, furnish Buyer with an abstract of title or a registered property abstract certified to date including proper searches covering bankruptcies and state and federal judgments, liens and levied and pending special assessments. Buyer shall have ten (10) business days after receipt of the abstract of title or registered property abstract either to have Buyer's attorney examine the title and provide Seller with written objections ("Objections") or, at Buyer's own expense, to make an application for a title insurance policy and notify seller of the application. Buyer shall have ten (10) business days after receipt of the commitment for title insurance to provide Seller with a copy of the commitment and written Objections. Buyer shall be deemed to have waived any title Objections not made within the applicable ten (10) day period for above, except that this shall not operate as a waiver of Seller's covenant to deliver a statutory warranty deed, unless a warranty deed is not specified above.

13. TITLE CORRECTIONS AND REMEDIES. Seller shall have 90 days from receipt of Buyer's written title objections to make title marketable. Upon receipt of Buyer's title objections, Seller shall within ten (10) business days, notify Buyer of Seller's intention to make title marketable within the 90-day period. Liens or encumbrances for liquidated amounts which can be released by payment or escrow from proceeds of closing shall not delay the closing. Cure of the defects by Seller shall be reasonable, diligent, and prompt. Pending correction of title, all payments required herein, and the closing shall be postponed.

- A. If notice is given and Seller makes marketable title, then upon presentation to Buyer and proposed lender of documentation establishing that title has been made marketable, and if not objected to in the same time and manner as the original title objections, the closing shall take place within ten (10) business days or on the scheduled closing date, whichever is later.
- B. If notice is given and Seller proceeds in good faith to make title marketable but the 90 day period expires without title being made marketable, Buyer may declare this Purchase Agreement null and void by notice to Seller, neither party shall be liable for damages hereunder to the other, and Earnest Money shall be refunded to Buyer.
- C. If Seller does not give notice of intention to make title marketable, or if notice is given but the 90 day period expires without title being made marketable due to Seller's failure to proceed in good faith, Buyer may seek, as permitted by law, any one or more of the following:
 - 1. Proceed to closing without waiver or merger in the deed of the objections to title and without waiver of any remedies, and may:
 - (a) Seek damages, costs and reasonable attorney's fees from seller as permitted by law (damages under this subparagraph (a) shall be limited to the cost of curing objections to title and consequential damages are excluded); or
 - (b) Undertake proceedings to correct the objections to title;
 - 2. Rescission of this Agreement by notice as provided herein, in which case the Agreement shall be null and void and all Earnest Money paid hereunder shall be refunded to Buyer;
 - 3. Damages from Seller including costs and reasonable attorney's fees, as permitted by law;
 - 4. Specific performance within six months after such right of action arises.
- D. If title is marketable, or is made marketable as provided herein, and Buyer defaults in any of the agreements herein, Seller may elect either of the following options as permitted by law:

1. Cancel this Agreement as provided by statute and retain all payments made hereunder as liquidated damages. The parties acknowledge their intention that any note given pursuant to this Agreement is a down payment note, and may be presented for payment notwithstanding cancellation;
- E. If title is marketable or is made marketable as provided herein, and Seller defaults in any of the agreements herein, Buyer may, as permitted by law:
1. Seek damages from Seller including costs and reasonable attorney's fees;
 2. Seek specific performance within six months after such right of action arises.

TIME IS OF THE ESSENCE FOR ALL PROVISIONS OF THIS CONTRACT.

14. **NOTICES.** All notices required herein shall be in writing and delivered personally or mailed to the address as shown at Paragraph 1, above and if mailed are effective as of the date of mailing.
15. **MINNESOTA LAW.** This contract shall be governed by the laws of the State of Minnesota.
16. **ADDITIONAL TERMS.** This transaction is subject to and contingent upon public hearing to be conducted by Seller and approval of this form by the Housing and Redevelopment Authority in and for the City of Marshall. Buyer shall be responsible for erosion control and weed control for the property described herein. Buyer shall plant a "cover crop" on said premises upon the execution and approval of this agreement.

THIS IS A LEGALLY BINDING CONTRACT. BEFORE SIGNING, CONSULT A LAWYER. Minnesota Law permits licensed real estate brokers and sales agents to prepare purchase agreements. No recommendation or representation is made by either the listing broker or selling broker as to the legal sufficiency, the legal effect or the tax consequences of this contract. These are questions for your lawyer.

The Housing and Redevelopment Authority in and for the City of Marshall hereby agrees to sell the property for the price and terms and conditions set forth above.

Exhibit A

Lot 3, Block 1 of McLaughlin Industrial Park II Second Addition, in the City of Marshall, as filed and recorded in the office of the County Recorder in and for Lyon County, Minnesota, EXCEPTING therefrom the following:

All that part of Lot 3, Block 1 of McLaughlin Industrial Park II Second Addition, in the City of Marshall, as filed and recorded in the office of the County Recorder in and for Lyon County, Minnesota, being more particularly described as follows:

Beginning at the southeast corner of Lot 2 of said Block 1; thence South 45 degrees 40 minutes 37 seconds East, bearing based on Lyon County Coordinate System (1996 Adj.), a distance of 429.46 feet, to a point on the southeasterly line of said Lot 3; thence North 44 degrees 19 minutes 23 seconds East, along said southeasterly line, a distance of 164.10 feet, to a corner of said Lot 3; thence North 45 degrees 40 minutes 37 seconds West, along the northeasterly line of said Lot 3, a distance of 498.31 feet, to a corner of said Lot 3; thence South 44 degrees 19 minutes 23 seconds West, along the northwesterly line of said Lot 3, a distance of 94.50 feet, to a corner of said Lot 3; thence South 00 degrees 22 minutes 00 seconds East, along the westerly line of said Lot 3, a distance of 97.90 feet, to the point of beginning.

**CITY OF MARSHALL
AGENDA ITEM REPORT**

| | |
|---------------------------------|--|
| Meeting Date: | Tuesday, May 25, 2021 |
| Category: | NEW BUSINESS |
| Type: | ACTION |
| Subject: | Approve Amendment to Border States Purchase Agreement |
| Background Information: | <p>In January 2021, the City of Marshall approved the sale of 2.5 acres of land to Border States Electric (BSE) for the construction of an approximately 13,000 square foot warehouse. The purchase agreement did include a 150-day due diligence period that includes site assessment includes soil borings. Subsequent soil borings from BSE indicated the need for soil correction. City Engineer Jason Anderson verified that the soils did need soil correction. The initial value of soil correction was substantial, approximately \$100,000. Since that time, further discussions between BSE and the city have occurred and the new anticipated cost of soil correction is \$50,000. BSE has indicated to the city that this was an unforeseen cost, and even though readying the site is inevitable no matter where you locate a building, these soils were considerably fraught for construction. The added costs to an already thin project budget have forced BSE to consider no longer moving forward with construction. Thus, after further discussions, the city and BSE have agreed to cost-share 50/50 on the soil correction costs, with the funds from the city's cost share portion to come from the sale of the property.</p> <p>BSE representatives will be present during the discussion to aid in this decision to grant the amendment.</p> |
| Fiscal Impact: | Up to \$25,000 |
| Alternative/ Variations: | Do not approve the amendment, the original purchase agreement could then expire, and the purchase is not completed. |
| Recommendations: | Approve Amendment to Border States Purchase Agreement |

FIRST AMENDMENT TO PURCHASE AGREEMENT

This First Amendment to Purchase Agreement (the “First Amendment”), has been made and entered into effective as of this _____ day of _____, 2021, by and between Border States Industries, Inc., a North Dakota corporation (“Buyer”) and the Housing and Redevelopment Authority in and for the City of Marshall, a body corporate and politic in the state of Minnesota (“Seller”).

RECITALS

WHEREAS, Buyer and Seller are parties to that certain Purchase Agreement, dated January 12, 2021 (the “Purchase Agreement”); and

WHEREAS, upon its investigation of the Property, Buyer has encountered soils on the Property that are in need of correction (the “Soil Correction Work”); and

WHEREAS, the Soil Correction Work is an unanticipated expense; and

WHEREAS, Buyer has requested, and Seller has agreed to share equally in the cost of the Soil Correction Work with Buyer in an amount not to exceed \$25,000; and

WHEREAS, Buyer and Seller hereby wish to further amend the Purchase Agreement as hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. The Purchase Agreement is hereby amended to include a new paragraph 26 which shall read as follows:

26. **SOIL CORRECTION WORK.** It has been determined by Buyer upon its investigation of the Property that the Property is in need of soil correction work in order to make the Property buildable for Buyer’s intended use. Buyer has requested and Seller has agreed to share equally in the cost of the soil correction work with Buyer. Seller’s share of the cost of the soil correction work shall not exceed \$25,000. Seller shall deposit in escrow with the Title Company, at Closing, the sum of \$25,000 for its share of the soil correction work on the Property. The soil correction work will be completed by Buyer after Closing. Seller’s liability for the soil correction work shall be limited to \$25,000. Buyer shall submit copies of receipts for its expenses that it incurred for the soil correction work to the title company for reimbursement. The title company may reimburse Buyer for 50 percent of each receipt from the Seller’s escrowed funds in an amount not to exceed \$25,000. Any amount in the escrow that is not used by the title company to

reimburse Buyer for Seller's share of the soil correction work shall be refunded to Seller by the title company. The soil correction work must be completed by Buyer and the receipts for the soil correction work must be submitted to the title company by the Buyer no later than _____, 20____. After this date, any remaining amount in the escrow shall be refunded by the title company to Seller. Buyer and Seller shall equally share in any fees charged by the title company for holding the escrowed funds. This paragraph shall survive closing.

2. Except with regard to the amendment set forth above, all other provisions of the Purchase Agreement shall remain unchanged.

[Remainder of Page Intentionally Left Blank — Signature Page Follows]

IN WITNESS WHEREOF, Buyer and Seller have caused this First Amendment to be signed and executed on their behalf as of the day and year first written above.

BUYER:

Border States Industries, Inc.
a North Dakota corporation

By: _____

Its: _____

SELLER:

**Housing and Redevelopment Authority in and
for the City of Marshall**

By: _____

Its: President

By: _____
Sharon Hanson

Its: Executive Director

PURCHASE AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this 12th day of January, 2021 (the "Effective Date"), by and between **Border States Industries, Inc.**, a North Dakota corporation ("Buyer") and **the Housing and Redevelopment Authority in and for the City of Marshall**, ("Seller").

1. **PROPERTY TO BE PURCHASED.** Seller agrees to sell and Buyer agrees to purchase, upon the terms and conditions and subject to the contingencies hereinafter set forth, the real property, and all other rights, privileges, easements, licenses and appurtenances, thereunto belonging, owned by Seller consisting of approximately 2.5 acres of Lot 2 Block 1, McLaughlin Industrial Park 2nd Addition to the City of Marshall, Lyon County, as legally described on Exhibit A and visually depicted on Exhibit B attached hereto (the "Property").

2. **PURCHASE PRICE.** The purchase price will be the sum of Thirty-Seven Thousand and Five Hundred Dollars and 00/100 cents (\$37,500.00).

3. **EXCLUSIVITY.** Until such time, if any, as this Agreement is terminated, Seller will not, directly, or indirectly, solicit, initiate, entertain, or accept any inquiries or proposals from, discuss or negotiate with, provide any information to, or consider the merits of any unsolicited inquiries or proposals from any person or entity relating to any transaction involving the sale or acquisition of the Property. A violation of this paragraph is a material breach of this Agreement.

4. **CONVEYANCE OF MARKETABLE TITLE; POSSESSION.** Seller shall convey the Property to Buyer or its assigns at Closing by General Warranty Deed. Notwithstanding the foregoing, any and all liens or encumbrances, such as mortgages, and construction liens, must be satisfied by Seller prior to or at Closing, and marketable title shall be conveyed to Buyer at Closing. Possession of the Property shall be delivered to Buyer immediately after the Closing. Seller will deliver possession of the Property to Buyer zoned appropriately to accommodate Buyer's planned development, with utilities stubbed to the edge of the site in a mutually agreeable location, the site rough graded, ready for Buyer to secure a building permit.

5. **SELLER DELIVERABLES.** Seller agrees to deliver to Buyer, within fifteen (15) days of the Effective Date, copies of (i) any existing surveys or plat documents in Seller's possession; (ii) any unrecorded leases, agreements or covenants that restrict the Property; (iii) any geotechnical, environmental, wetland delineation information, warranties, or maintenance documents or other property condition reports or letters in Seller's possession; (iv) any correspondence, notices, letters or development agreements from either the City of Marshall or Lyon County related to zoning, permitted uses, assessments or future plans for the Property; (v) any covenants, codes, restrictions, declarations, conditional use permits, variances, easements, licenses or other conditions or restrictions affecting the Property (collectively, the "Seller Deliverables").

Within fifteen (15) days after the Effective Date, Seller, at its expense, shall furnish Buyer with a title insurance commitment ("Title Commitment") from a national title insurance company, for issuance to Buyer of an ALTA Owner's Policy of Title Insurance without standard exceptions,

with respect to the Property, in the amount of the Purchase Price, showing Seller to be the sole owner of marketable and insurable title to the Property, free and clear of any liens and encumbrances, certified to the date of the filing of the warranty deed (the "Title Policy"). The Title Company shall also deliver to Buyer copies of all instruments or exception documents referenced in the Title Commitment.

The date of Buyer's receipt of both the Title Commitment and all Seller Deliverables will be memorialized as the "Seller Deliverable Date".

6. **DUE DILIGENCE CONTINGENCIES.** The obligation of Buyer to conclude the transaction for the purchase of the Property as contemplated by this Agreement is expressly made contingent upon the provisions of this section.

- (a) Within one hundred fifty (150) days from the Seller Deliverable Date (the "Due Diligence Period"), Buyer, at Buyer's expense, shall have determined in its sole discretion that Buyer is satisfied with the title, survey, and physical condition of the Property and Buyer has obtained all due diligence and feasibility inspection reports deemed necessary by Buyer (including, but not limited to, site assessments, engineering assessments, environmental site assessments, soils tests, well tests, agreement on tax abatement, building inspections, and review of documents, permits, licenses and special assessments), the results of which due diligence inspections must be satisfactory to Buyer in all respects.
- (b) Buyer shall have one hundred fifty (150) days from the Seller Deliverable Date, in which to provide Seller with any written objections to the status of title. Buyer shall be deemed to have waived any title objections not made within the applicable period provided for above, except that this shall not operate as a waiver of Seller's covenant to deliver a warranty deed. Objection to liens shall be presumed. Seller shall have a period of thirty (30) days in which to correct the title and make it marketable and insurable. If title to the Property cannot be made marketable and insurable within said period of time or such further time as may be granted by Buyer, Buyer may, in its sole discretion, proceed with the Closing without waiving any claim Buyer may have against Seller for said title objections, and/or seek any other remedy provided herein or by law, or may cancel the purchase contemplated by this Agreement, in which case Buyer shall have no further liability to Seller. If applicable, the Title Policy shall be issued as soon as possible after Closing.
- (c) From the Effective Date through the date of Closing, there shall not have occurred any material adverse changes in the condition of the Property or the title thereto, except as may have been requested, caused or suffered by Buyer.

- (d) No action, suit, or proceeding before any court or any governmental body or authority, pertaining to the transaction shall have been instituted or threatened by Closing.
- (e) As of date and hour of Closing, title to the Property shall be marketable, insurable to the extent of the Purchase Price and subject to no easements, reservations, restrictions, encroachments or other matters, except for those that are deemed acceptable by Buyer.
- (f) Buyer's ability to obtain city/government approvals for its intended use and satisfaction with related requirements, including two (2) ingress/egress points on London Road as shown on Exhibit B.
- (g) Buyer's satisfaction that it's intended use including bulk outside storage of material will be allowable without undue burden.
- (h) Upon the date of Closing, at Seller's expense, the Property will be platted as a separate tax parcel in accordance with Exhibit B, zoned appropriately for Buyer's intended use, with all platting/subdivision/development fees paid by Buyer including any sewer or water access fees or sewer line cost recovery fees.

Buyer shall give notice to Seller, on or before the dates set forth above, if a contingency has not been satisfied by such date. If any contingency has not been satisfied to Buyer's satisfaction, Buyer may elect to terminate this Agreement and the parties shall have no further obligations to each other. Alternatively, Buyer may waive any one or all of the contingencies described above and close the transaction pursuant to the terms of this Agreement.

7. **PROPERTY TAXES.** The general real estate taxes due and payable in the year of Closing, regardless of when payable, shall be prorated to the date of Closing, with Buyer being responsible for such taxes beginning the day after Closing. Other taxes and balances of any special assessments, whether for prior years or pending, planned, or levied, shall be paid by Seller on or before Closing.

8. **REPRESENTATION AND WARRANTIES.** As a material inducement to cause Buyer to enter into this Agreement, Seller warrants and represents to Buyer, with respect to the Property as follows (Seller's warranties and representations are true and correct in all material respects on the Effective Date and shall be true and correct in all material respects on the Closing date and shall survive the Closing of the transaction contemplated hereby):

- (a) There are no actions, lawsuits, judgments, liens, suits, claims, investigations or other proceedings pending or threatened against Seller or the Property which relates to Seller or the ownership, maintenance, or operation of the Property or might in any way affect the Property or this transaction.

(b) To Seller's knowledge, there is no environmental condition, situation or incident that could in any manner give rise to any action or liability under any environmental law, and Seller is not subject to and is not currently operating under any compliance or consent order, schedule, decree or agreement issued or entered into under any environmental law. The Property has never been used as a landfill or as a garbage dump.

(c) No building or other improvement encroaches on the Property, nor does any improvement which is part of the Property encroach on lands of others or on any public or private road or right of way.

(d) Seller is not a foreign person within the meaning of § 1445 of the Internal Revenue Code of 1986, as amended. Seller shall complete an appropriate Certificate of Non-Foreign Status at Closing confirming the accuracy of this representation.

(e) Seller has good and marketable title to the Property. Seller has the full right, power and authority to sell, convey and transfer the Property herein and to execute, deliver and carry out the provisions of this Agreement. No leases or right of possession affect the Property. Seller is not aware of any unrecorded contracts, options, easements or other arrangements or interests relating to the Property. No person or entity has provided labor or materials to the Property within six (6) months prior to closing whose claim for such labor or material has not been fully paid.

(f) Each individual executing this Agreement on behalf of Seller is duly authorized to execute and deliver the same on behalf of Seller, and the members, managers, or governors, as applicable, of Seller have executed proper resolutions authorizing this transaction.

(g) There are no water wells, septic systems, or underground or above-ground storage tanks located in or on the Property.

(h) Seller and any occupant of the Property have complied in all material respects with, and are not in violation in any material respect of, any applicable federal, state, or local statutes, laws, and regulations (including, without limitation, any applicable building, zoning, or other law, ordinance, or regulation) affecting the Property, including any requirements of the State of Minnesota.

(i) Seller has not received any notice of the creation of any special assessment district for future improvements for which the property may be assessed. To the best of Seller's knowledge, there are no proceedings in which special assessment districts affecting the property are currently under consideration for future improvements to be made by Lyon County or the City of Marshall.

(j) Seller has not: (i) made a general assignment for the benefit of its creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an

involuntary petition in bankruptcy; (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets; (iv) suffered the attachment or other judicial seizure of all or substantially all of Seller's assets; (v) admitted in writing its inability to pay the estate's debts as they become due; or (vi) made an offer of settlement, extension or composition to its creditors generally.

(k) To the best of Seller's knowledge, the Property has not been contaminated with any Hazardous Substances; the Property is not subject to any federal, state, or local lien or proceedings, any claim, liability, action, or threat of remediation, respecting any Hazardous Substances allegedly impacting the Property or adjacent real estate; Seller has not received any written notice from any governmental body of the presence or release of any hazardous substances that would cause the Property, or any portion thereof, to be in violation of any applicable environmental laws, nor has Seller received written notice from any applicable governmental body or has any actual knowledge that the Property is not in compliance with applicable environmental laws; and to the best of Seller's knowledge, no Hazardous Substances have leaked, escaped or been discharged, emitted or otherwise released from the Property onto any adjoining properties or from any adjoining property onto the Property. For purposes of this Agreement, the term "Hazardous Substance" shall mean any hazardous waste, toxic substances, polychlorinated biphenyls, asbestos, petroleum products, and any element, compound, mixture, or substance regulated by any federal, state, or local law, rule, or regulation because of its toxicity, corrosiveness, reactivity, or carcinogenic effect, and also includes, but is not limited to substances defined as "hazardous substances" or "toxic substance" in the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended 32 U.S.C. §9601, et seq., Hazardous Materials Transportation Act, 49 U.S.C. Appx. or as "hazardous substance," "hazardous waste" or "pollutant or contaminate" under Minnesota law.

(l) There are no underground or above-ground storage tanks located in or on the Property.

(m) There is a right of access to the Property from a public right-of-way.

(n) There is no present violation of any restrictions relating to the use or condition of the Property.

(o) The Property does not lay in a 100-year flood plain area.

9. **RISK OF LOSS.** The risk of loss or damage to the Property or for any liability relating to the Property shall remain with Seller until Closing. If prior to closing, any substantial portion of the Property is damaged by fire or other casualty or taken or threatened by condemnation or eminent domain, the Buyer, at its sole discretion, may terminate this Agreement through written notice to Seller.

10. **BROKERAGE.** No real estate brokers were involved in the negotiation of this Agreement, other than Dialect, Inc., a licensed real estate broker in Minnesota, representing Buyer. No brokerage fees will be due by either party as part of this Agreement.

11. **CLOSING DATE; CLOSING COSTS.** The closing ("Closing") of the transaction contemplated by this Agreement shall occur within thirty (30) days after the date that the Due Diligence Period lapses or is earlier waived in writing by Buyer, or on such other date and at a reasonable time as may be agreed to by both Buyer and Seller. The location of the closing shall be at the Title Company, unless the parties mutually agree to another location. Seller shall be responsible for the payment of the following Closing costs: (i) preparation of the Warranty Deed (ii) preparation of and recording expense of all releases, satisfactions and corrective documents, (iii) any transfer fees and/or taxes assessed or to be assessed in connection with the conveyance of the Property, (iv) one-half (1/2) of the closing fees, (v) Seller's attorney fees, (vi) the cost of issuing the Title Commitment, and (vii) Buyer shall be responsible for the payment of the following Closing costs: (i) costs for recording the Warranty Deed, (ii) one-half (1/2) of the closing fees, (iii) the title insurance premium, for an owner's policy of title insurance in an amount equal to the Purchase Price; (iv) Buyer's attorney fees.

12. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement by and between the parties and any other prior representations or agreements are deemed merged herein and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.

13. **AMENDMENTS, MODIFICATIONS OR WAIVERS.** No amendment, modification or waiver of any condition, provision or term shall be valid or of any effect unless made in writing signed by the party or parties to be bound or a duly authorized representative and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein shall limit the remedies and rights of the parties thereto under and pursuant to this Agreement.

14. **CONSTRUCTION OF AGREEMENT.** Whenever the singular number is used herein, the same shall include the plural where appropriate, and the words of any gender shall include any other genders where appropriate. Captions contained herein are inserted only for the purpose of convenient reference, and in no way define, limit or describe the scope of this Agreement or any part thereof.

15. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

16. **COUNTERPARTS; FACSIMILE AND E-MAILED SIGNATURES.** This Agreement may be executed in two (2) or more counterparts each of which, upon execution and delivery as prescribed, shall be deemed to be an original for all purposes. In proving this Agreement, it shall be necessary to account for only one such counterpart. Buyer and Seller agree that e-mailed (.pdf) signatures will be binding on the parties.

17. **TIME IS OF THE ESSENCE.** Time is of the essence of each provision of this Agreement and of all the conditions thereof.

18. **REMEDIES.** Subject to the contingencies provided in this Agreement, if Buyer defaults and fails to carry out its obligations pursuant to the terms of this Agreement, the Seller shall have the right to terminate this Agreement and neither party to this Agreement shall have any further right or obligation to the other. If Seller defaults and fails to carry out its obligations pursuant to the terms of this Agreement, Buyer shall have all rights and remedies available at law or in equity, including the right to seek specific performance of this Agreement.

19. **MUTUAL COOPERATION.** Buyer and Seller will, in good faith, mutually cooperate with one another to the extent reasonably necessary to facilitate the consummation of the transactions described in this Agreement. From time to time after the Closing, Buyer and Seller will execute, deliver and acknowledge such further documents or instruments, and perform such further acts or deeds, as may be reasonably necessary to consummate the transactions described in this Agreement and carry out the purposes and intent of this Agreement.

20. **INTERPRETATION AND SEVERABILITY.** The provisions of this Agreement will be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the parties. If, for any reason, any provision of this Agreement is determined to be unenforceable or invalid, that provision (or such part thereof as may be unenforceable or invalid) will be deemed severed from this Agreement, and the remaining provisions of this Agreement will be carried out with the same force and effect as if that provision (or such part thereof) had not been a part of this Agreement.

21. **BENEFIT.** This Agreement will inure to the benefit of and will be binding upon each of the parties and their respective successors and assigns.

22. **ASSIGNMENT.** Upon written notice to Seller, Buyer may assign this Agreement and its rights hereunder to any person or entity that is affiliated or associated with Buyer.

23. **GOVERNING LAW.** This Agreement will be construed and enforced in accordance with the laws of the State of Minnesota without regard to conflicts-of-laws principles that would require the application of any other law.

24. **ATTORNEY FEES.** If either party defaults in its performance hereunder and the other party employs an attorney because of such default, the parties agree to pay, on demand, all costs, charges and expenses, including reasonable attorney and paralegal fees, incurred at any time by the prevailing party because of the default.

25. **NOTICES.** All notices, demands and communications provided for herein or made hereunder shall be deemed effective upon delivery by the other party, either by electronic mail, personal delivery or upon receipt if mailed first class with postage prepaid, addressed in each case as follows, until some other addresses shall have been designated in a written notice given in a like manner, and shall be deemed to have been given or made when emailed or mailed to the following addresses:

Buyer: Border States Industries, Inc.
2400 38th St. S
Fargo, ND 58104
c/o James Sipe, Vice President of Operations
jsipe@borderstates.com

COPY: Dialect, Inc.
441 2nd St
Excelsior, MN 55331
c/o Dan Johnson
djohnson@dialectRE.com

Seller: City of Marshall, HRA
Attn: Sharon Hanson, Executive Director
344 W. Main Street
Marshall, MN 56258

[the rest of this page intentionally left blank]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

BUYER:

Border States Industries, Inc.

a North Dakota corporation

Signed: James C. Sipe

Printed: James C. Sipe

Title: Senior VP Supply Chain

SELLER:

**Housing and Redevelopment Authority in
and for the City of Marshall**

Signed: Sharon Hanson

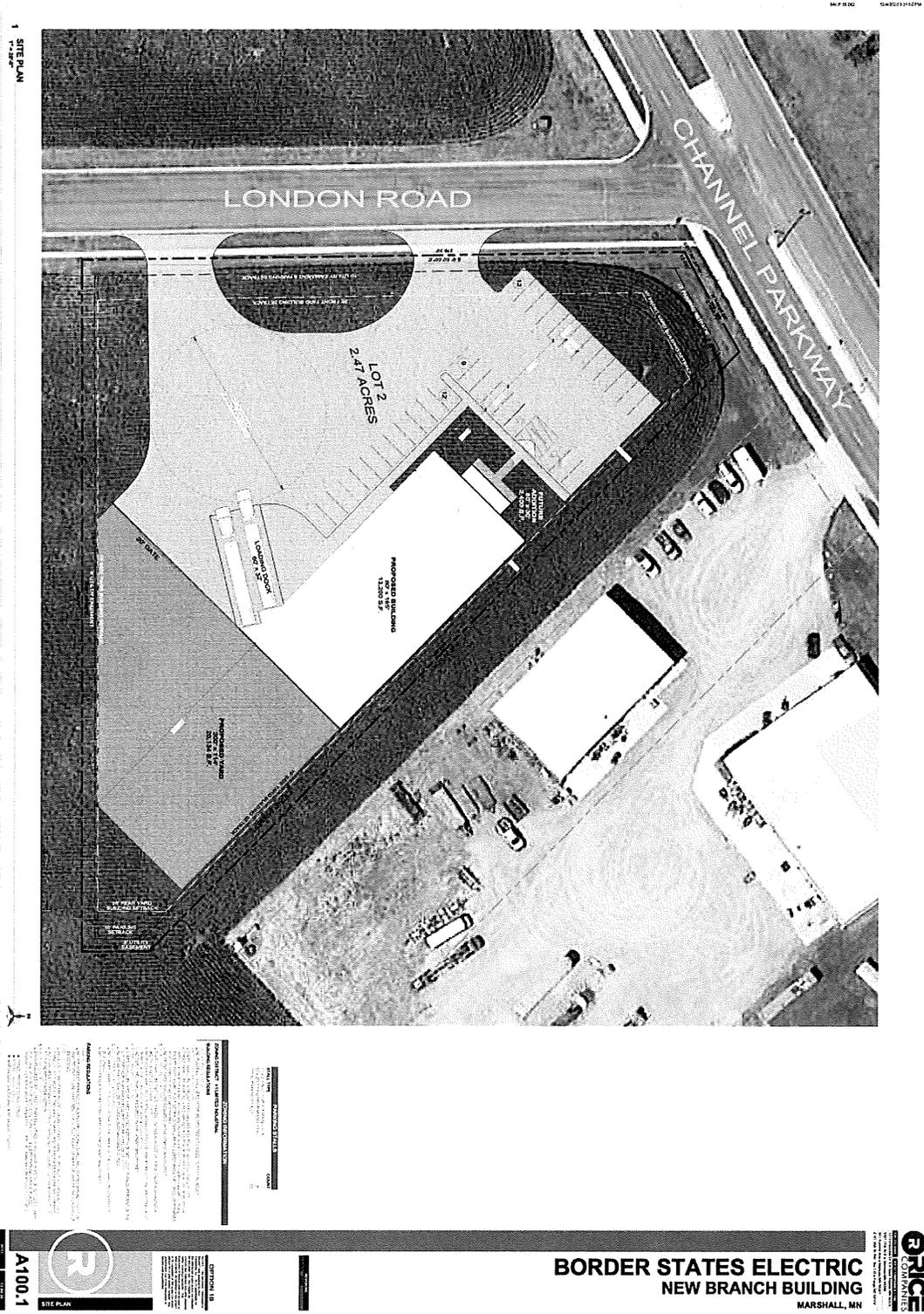
Printed: Sharon Hanson

Title: Executive Director

Exhibit A

Lot Two (2) of Block One (1), McLaughlin Industrial Park Second Addition EXCEPT the
Northeasterly 40 feet thereof according to the recorded plan thereof, City of Marshall, Lyon
County, Minnesota

Exhibit B



NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. THE PROPOSED BUILDING IS TO BE CONSTRUCTED ON LOT 2.
3. THE PARKING LOT IS TO BE CONSTRUCTED TO THE WEST OF THE BUILDING.
4. THE SITE IS TO BE GRADED AND PAVED AS SHOWN.
5. THE PROPOSED BUILDING IS TO BE CONSTRUCTED TO THE SOUTH OF THE PARKING LOT.
6. THE PROPOSED BUILDING IS TO BE CONSTRUCTED TO THE WEST OF CHANNEL PARKWAY.
7. THE PROPOSED BUILDING IS TO BE CONSTRUCTED TO THE WEST OF LONDON ROAD.
8. THE PROPOSED BUILDING IS TO BE CONSTRUCTED TO THE WEST OF THE EXISTING BUILDING.
9. THE PROPOSED BUILDING IS TO BE CONSTRUCTED TO THE WEST OF THE EXISTING BUILDING.
10. THE PROPOSED BUILDING IS TO BE CONSTRUCTED TO THE WEST OF THE EXISTING BUILDING.

LEGEND

PROPOSED BUILDING

PARKING LOT

LOT 2

PROPOSED DRIVEWAY

PROPOSED SIDEWALK

PROPOSED CURB

PROPOSED LANDSCAPING

PROPOSED LIGHT FIXTURES

PROPOSED SIGNAGE

PROPOSED UTILITY LINES

PROPOSED FENCE

PROPOSED DRIVEWAY

PROPOSED SIDEWALK

PROPOSED CURB

PROPOSED LANDSCAPING

PROPOSED LIGHT FIXTURES

PROPOSED SIGNAGE

PROPOSED UTILITY LINES

PROPOSED FENCE

BORDER STATES ELECTRIC
NEW BRANCH BUILDING
 MARSHALL, MN

