



City Council Memorandum

To: Mayor Hicks and City Council
From: Justin Fortney, City Planner
Date: September 19, 2016
Item: Authorize Signature: Utility Disconnection Agreement – Artspace Hastings Lofts

Council Action Requested:

Authorize signature of a Utility Disconnection Agreement between the City and Artspace Hastings Lofts. The final executed agreement may contain minor adjustments to the attached agreement.

A simple majority vote is required.

Background Information:

The Utility Disconnection Agreement is necessary for final approval of the project per City Council approval of the revised plat and site plan on July 18, 2016. The Agreement allows Artspace to remove only a portion of a storm sewer service line necessary for the project, as opposed to the full removal per City Policy. Removal of the entire unused line would require excavation within the newly constructed concrete surface of Tyler Street causing damage and loss of integrity to the surface and base of Tyler Street in addition to unwanted traffic interruptions. City Staff supports the partial disconnection.

Financial Impact:

Potential future cost savings for the maintenance of Tyler Street by reducing the risk of degradation to the roadway.

Advisory Commission Discussion:

N\A

Council Committee Discussion:

N\A

Attachments:

- Utility Disconnection Agreement

**AGREEMENT REGARDING DISCONNECTION OF
STORMWATER SEWER SERVICE LINE AND WAIVER OF
PROCEDURAL IRREGULARITY AND ASSESSMENT APPEAL**

THIS AGREEMENT is made on _____, 2016, by and between the City of Hastings, a Minnesota Municipal Corporation with a business address of 101 East 4th Street, Hastings, MN 55033 (“City”), and Artspace Hastings Lofts LLLP, a Minnesota limited liability limited partnership, having its principal office at 250 3rd Avenue North, Suite 400, Minneapolis, Minnesota 55401, their successors and assigns (“Developer”).

RECITALS.

WHEREAS, Developer has platted certain property in the City of Hastings, Dakota County, Minnesota, as **Riverfront 2nd Addition**, hereafter referred to as the “Property”.

WHEREAS, Developer intends to undertake the development and construction of a mixed use development on the Property.

WHEREAS, an existing service level storm sewer line (“Storm Sewer Service Line”) depicted on the attached Exhibit A currently services the Property and connects to a stormwater main located beneath Tyler Street to the west of the Property. The Storm Sewer Service Line will not be utilized as part of Developer’s development on the Property and will be removed by Developer.

WHEREAS, City policy requires that the unused Storm Sewer Service Line be

disconnected at Developer's expense from the main beneath Tyler Street. However, such removal would require excavation within the newly constructed concrete surface of Tyler Street, causing damage and loss of integrity to the surface and base of Tyler Street in addition to unwanted traffic interruptions.

WHEREAS, failure to disconnect the Storm Sewer Service Line from the stormwater main beneath Tyler Street may lead to conditions requiring corrective action in the future which may include, but are not limited to, a leaking pipe, surface settlement resulting from a broken pipe, or interference with other construction projects.

WHEREAS, to avoid damage to the concrete surface and base of Tyler Street, the City is willing to waive the current requirement that Developer disconnect, at Developer's expense, the Storm Sewer Service Line all the way to the main in Tyler Street, on the condition Developer agrees (in accordance with the terms hereof): (1) to remove at its cost in the future the Storm Sewer Service Line if reasonably deemed necessary by City; (2) to repair and remedy at its cost any structural damage to the public infrastructure directly above or adjacent to the Storm Sewer Service Line for which it can be reasonably determined that the damage was caused by the Storm Sewer Service Line remaining connected and in place (such repairs may include concrete pavement replacement, curb and gutter replacement, or repair of settled surfaces); (3) to indemnify and hold harmless City for any damage or claims resulting from the Storm Sewer Service Line remaining connected and in place pursuant to this Agreement; and (4) that if after written notice from City and the Developer fails to perform removal or repair work in a timely manner, as provided in this Agreement, the City may complete the needed work and may assess the cost of any such work against the Property.

WHEREAS, Developer understands that the conditions and potential problems which may result from the Storm Sewer Service Line remaining connected and in place are not certain and cannot be fully identified or described with certainty but Developer desires to assume all future responsibility and costs of correcting such conditions and damage (in accordance with the terms hereof).

NOW THEREFORE IN CONSIDERATION of the City's willingness to waive the current requirement that Developer disconnect and remove the Storm Sewer Service Line, the parties make the following agreement:

- A. City waives the current requirement that Developer disconnects and removes the Storm Sewer Service Line from the stormwater main beneath Tyler Street, subject to the conditions and requirements set forth herein.
- B. Upon written demand by City as provided herein, Developer at its cost shall disconnect and remove the Storm Sewer Service Line and reasonably restore any disturbed areas to a condition commercially and reasonably similar to their original conditions. If the damage or condition resulting from the failure of the Storm Sewer Service Line creates a hazardous condition as reasonably determined by the City's Public Works Director and communicated in the notice to Developer, then Developer shall commence the removal or repair work within ten (10) days after issuance of the notice by City but if no such hazard is identified or communicated in the notice to Developer, then Developer shall commence the removal or repair work within sixty (60) days after issuance of the notice by the City. Should winter conditions, as determined by the City's Public Works

Director, prevent commencement of the repair work within the 60 day deadline, then all restoration work shall be completed by June 1st of the following construction season.

- C. If Developer fails to perform the removal or repair work as required herein, City may undertake all reasonable work necessary to disconnect and remove the Storm Sewer Service Line in a commercially reasonable manner consistent with work of a similar type undertaken by or for the City and Developer shall immediately reimburse City for all reasonable costs actually incurred. Developer hereby grants to City an irrevocable license to enter upon the Property, subject to rights of tenants in possession of any portion of the Property, as reasonably necessary to undertake the work to disconnect and remove the Storm Sewer Service Line. Any extraordinary damage caused by City's exercise of this self-help remedy and resulting from the negligence or misconduct of the City or its contractor shall not be borne by the Developer.
- D. If Developer fails to timely reimburse City for all such costs, Developer, for itself, its successors and assigns, agrees to have the Property assessed for the full amount reasonably and actually expended by City to disconnect and remove the Storm Sewer Service Line and to restore the area to a condition commercially and reasonably similar to its original condition. The exact amount of this assessment is unknown at this time but will be determined by City in its reasonable discretion and shall be consistent with amounts expended for similar removal or restoration work performed by or for the City.

- E. If the full amount expended by City to disconnect and remove the Storm Sewer Service Line and to restore the area to its original condition is \$10,000.00 or less, the resulting assessments shall be paid over a period of five years but if the amount to be assessed is over \$10,000.00, the assessment shall be paid over a ten year period. In addition, interest shall accrue on the unpaid assessment at a rate equal to the interest rate applied by the City of Hastings for other real property assessments for City initiated public improvement street reconstruction projects in the year the work is performed. If no such assessments are certified for other properties in the City of Hastings during that year, the interest rate shall be equal to the interest rate imposed on the most recent assessment certified by the City of Hastings. Developer, for itself, its successors and assigns, agrees that City can assess an additional \$5.00 per year (\$25.00 for a five year assessment period or \$50.00 for a ten year assessment) which represents the annual assessment fee imposed by Dakota County for this assessment.
- F. Developer, for itself, its successors and assigns, agrees that City can certify this assessment to Dakota County for collection with the real estate taxes without the necessity of City complying with any of the procedural or notice requirements outlined in Minnesota Statutes Chapter 429, or amendments thereto.
- G. In further consideration of City's agreement to forbear the current requirement that the Storm Sewer Service Line be removed, Developer, for itself, its successors and assigns, also agrees to waive any right to appeal the amount assessed against the Property for these removal and repair costs (other than any

appeal based on the City's failure to act in accordance with this Agreement), whether the basis for the appeal is that the assessment exceeds the benefits to the Property or on any other basis whatsoever.

- H. Where reference is made herein to Developer, reference shall be to Developer, its successors and assigns as to the Property and the rights and obligations hereunder shall run with the land and shall burden the Property and all subsequent owners thereof and City shall record this Agreement on the public property records to provide notice of this Agreement and all obligations hereunder to subsequent owners of the Property.
- I. Any notices required by this Agreement shall be sent to the parties as follows:

TO THE CITY:

City of Hastings
Attn: City Administrator
101 E. Fourth Street
Hastings, MN 55033

TO THE DEVELOPER:

Artspace Hastings Lofts LLLP
250 3rd Avenue North, Suite 400
Minneapolis, MN 55401

WITH COPIES TO:

Cannon Heyman & Weiss, LLP
726 Exchange Street, Suite 500
Buffalo, New York, 14210
Attn: Steven J. Weiss, Esq.

AND

RBC Tax Credit Equity, LLC
600 Superior Avenue, Suite 2300
Cleveland, OH 44114
Attn: President and General Counsel

J. Except for damages or claims caused by the willful or negligent actions of the City, its employees or agents, Developer shall indemnify and hold harmless City for any damages or claims resulting from the work necessary to disconnect and remove the Storm Sewer Service Line remaining connected and in place pursuant to this Agreement.

The City and Developer enter and sign this agreement with full understanding of their legal rights and acknowledge they have had sufficient opportunity to discuss this matter with an attorney of their choosing.

Dated this ___ day of _____, 2016.

**CITY OF HASTINGS, A MINNESOTA
MUNICIPAL CORPORATION**

By: _____
Paul J. Hicks, Mayor

(SEAL)

By: _____
Julie A. Flaten, City Clerk

ACKNOWLEDGMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ___ day of _____, 2016 by Paul J. Hicks and Julie A. Flaten the Mayor and City Clerk of the City of Hastings, Minnesota.

NOTARY PUBLIC

Dated this ___ day of _____, 2016.

DEVELOPER

ARTSPACE HASTINGS LOFTS, LLLP,
a Minnesota limited liability limited partnership
By: Artspace Hastings Lofts, LLC,
its general partner
By: Artspace Projects, Inc.,
its sole member

By: _____
Name:
Title:

ARTSPACE HASTINGS LOFTS, LLC,
a Minnesota limited liability company
By: Artspace Projects, Inc.,
its sole member

By: _____
Name:
Title:

ARTSPACE PROJECTS, INC.,
a Minnesota nonprofit corporation

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

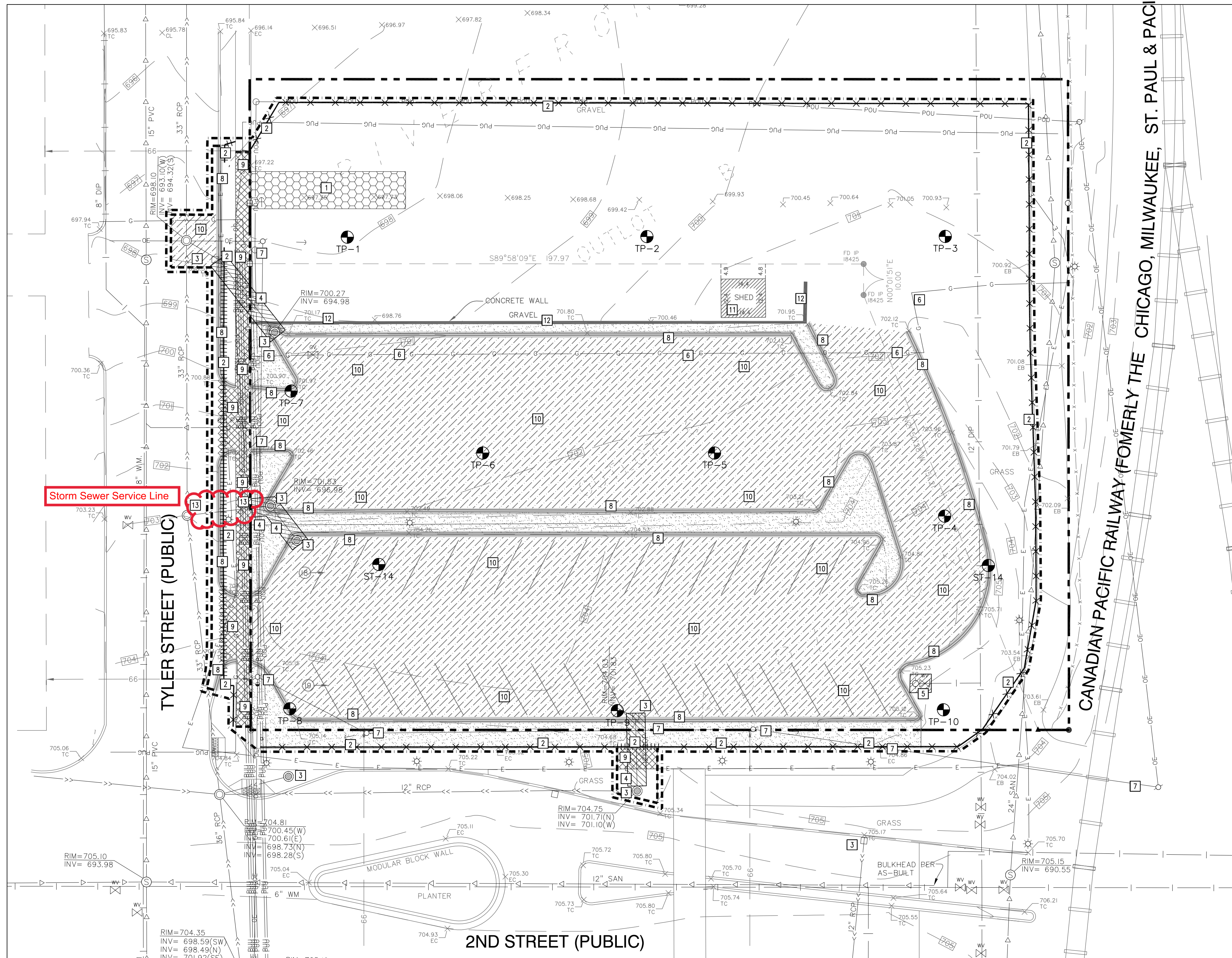
The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____, as _____ of Artspace Projects, Inc. a Minnesota nonprofit corporation, as sole member of Artspace Hastings Lofts LLC, a Minnesota limited liability company, as General Partner of Artspace Hastings Lofts LLLP, a Minnesota limited liability limited partnership.

NOTARY PUBLIC

THIS INSTRUMENT DRAFTED BY:

FLUEGEL LAW FIRM P.A.
999 Westview Drive, Suite #1
Hastings MN 55033
651-438-9777
(DAN/has)

EXHIBIT A
Storm Sewer Service Line Depiction



PROPOSED PLAN SYMBOLS

CONSTRUCTION LIMITS	---
PERIMETER SEDIMENT CONTROL (SILT FENCE)	---X---
PERIMETER SEDIMENT CONTROL (BIO ROLL)	
PROPERTY LINE	---
SAWCUT LINE (APPROX.)	---
ROCK CONSTRUCTION ENTRANCE	XXXXXX
BITUMINOUS REMOVAL	XXXXXX
CONCRETE REMOVAL	XXXXXX
CURB REMOVAL	---
PIPE REMOVAL	---
SOIL BORING	TP-1
TEST PIT	TP-1

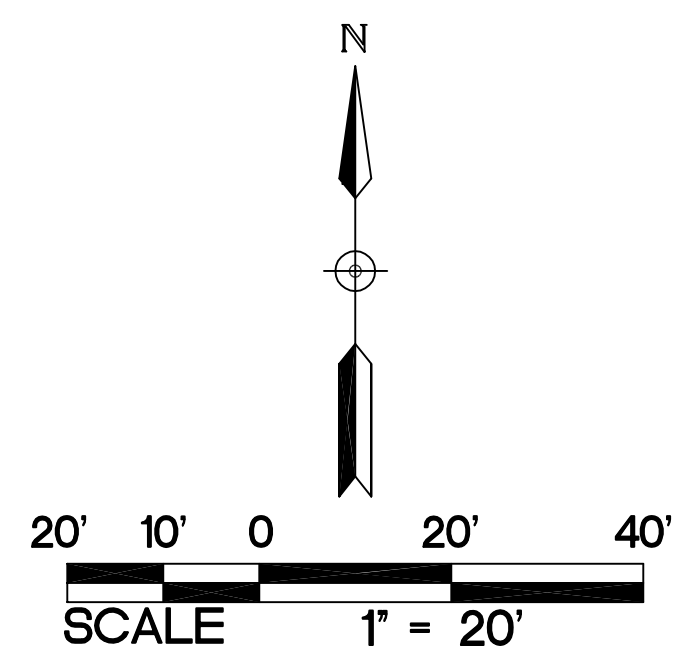
ABBREVIATIONS

BLDG	Building
BM	Bench Mark
CB	Catch Basin
CONC	Concrete
DIP	Ductile Iron Pipe
ELEV	Elevation
EX	Existing
FFE	Finished Floor Elevation
INV	Invert
MAX	Maximum
MH	Manhole
MIN	Minimum
PVC	Polyvinyl Chloride
RCP	Reinforced Concrete Pipe

APPROXIMATE DISTURBED AREA IS
1.28 ACRES

NOTE:
STORM SEWER INLETS NOT SHOWN ON PLAN MAY RECEIVE RUNOFF FROM CONSTRUCTION ACTIVITIES. INSTALL INLET SEDIMENT PROTECTION PER DETAIL 2/C5.0 ON ALL STORM INLETS THAT MAY RECEIVE RUNOFF.

NOTE: CITY RIVERFRONT RENAISSANCE IMPROVEMENTS WITHIN RIGHT OF WAY MAY HAVE BEEN CONSTRUCTED PRIOR TO CONSTRUCTION OF ARTSPACE. CONTRACTOR IS TO VERIFY BEFORE START OF CONSTRUCTION.



KEYED NOTES

- KEYED NOTES ARE DENOTED BY [NO] ON PLAN.
- INSTALL ROCK CONSTRUCTION ENTRANCE. REFER TO DETAIL 1/C5.0.
 - INSTALL PERIMETER SEDIMENT CONTROL. REFER TO DETAIL 2/C5.0 AND 4/C5.1.
 - INSTALL INLET SEDIMENT PROTECTION. REFER TO DETAIL 2/C5.0.
 - REMOVE STORM SEWER IN ITS ENTIRETY TO THE EXTENTS SHOWN. FOLLOW ALL CITY OF HASTINGS STANDARDS AND SPECIFICATIONS.
 - REMOVE HYDRANTS AND VALVES IN THEIR ENTIRETY TO THE EXTENTS SHOWN. FOLLOW ALL CITY OF HASTINGS STANDARDS AND SPECIFICATIONS.
 - REMOVE GAS LINE AND VALVE IN THEIR ENTIRETY. COORDINATE RELOCATION WITH NEW BUILDING AND UTILITY LAYOUT PER SHEET C3.0.
 - REMOVE OVERHEAD POWER LINE, POWER POLES, AND GUY WIRES IN THEIR ENTIRETY. COORDINATE RELOCATION WITH NEW BUILDING AND UTILITY LAYOUT PER SHEET C3.0.
 - REMOVE CURB AND GUTTER IN ITS ENTIRETY TO THE EXTENT SHOWN. SAWCUT AND REMOVE AT NEAREST JOINT.
 - REMOVE CONCRETE PAVEMENT IN ITS ENTIRETY TO THE EXTENTS SHOWN.
 - REMOVE BITUMINOUS PAVEMENT IN ITS ENTIRETY TO THE EXTENTS SHOWN.
 - REMOVE SHED IN ITS ENTIRETY..
 - REMOVE CONCRETE WALL IN ITS ENTIRETY TO THE EXTENTS SHOWN.
 - BULKHEAD EXISTING STORM SEWER PIPE. FOLLOW ALL CITY OF HASTINGS STANDARDS AND SPECIFICATIONS.

DEMOLITION AND REMOVAL NOTES:

- PRIOR TO START OF DEMOLITION, ALL EROSION AND SEDIMENT CONTROL MEASURES ARE TO BE INSTALLED BY THE CONTRACTOR AND INSPECTED BY THE CITY OF HASTINGS AND DAKOTA COUNTY. ALL SILT FENCES SHALL BE INSTALLED AND INSPECTED PRIOR TO ANY CONSTRUCTION ACTIVITY. SILT FENCES SHALL BE INSTALLED ALONG THE CONTOUR.
- IT IS THE CONTRACTOR'S RESPONSIBILITY TO ASCERTAIN THE LOCATION OF ALL EXISTING UTILITIES. THE CONTRACTOR SHALL VERIFY THE LOCATION, ELEVATION AND MARK ALL EXISTING UTILITIES 48 HOURS BEFORE CONSTRUCTION STARTS. THE ENGINEER, ARCHITECT OR OWNER DOES NOT GUARANTEE THAT ALL THE UTILITIES ARE MAPPED, OR IF MAPPED, ARE SHOWN CORRECTLY. CONTACT GOPHER STATE ONE CALL AT 651-454-0002 FOR FIELD LOCATING EXISTING UTILITIES. CONTACT UTILITY OWNER IF DAMAGE OCCURS DUE TO CONSTRUCTION.
- THERE MAY BE MISCELLANEOUS ITEMS TO BE REMOVED THAT ARE NOT IDENTIFIED ON THESE PLANS. THE CONTRACTOR SHALL VISIT THE SITE AND REVIEW THE DOCUMENTS TO OBTAIN A CLEAR UNDERSTANDING OF THE INTENDED SCOPE OF WORK.
- PRIOR TO START OF CONSTRUCTION, DISCONNECT ALL GAS AND ELECTRIC SERVICES. COORDINATE DISCONNECTION OF EACH UTILITY WITH THE UTILITY OWNER. REMOVE ALL GAS AND ELECTRIC LINES UNDER PROPOSED BUILDING FOOTPRINT.
- ANY UTILITIES NOT INDICATED FOR REMOVAL OR ABANDONMENT, ARE TO BE PROTECTED AT ALL TIMES.
- ALL EXISTING CURB AND GUTTER IS TO BE REMOVED WITHIN THE SCOPE OF THE PROJECT FROM THE SAW CUT LINES TO THE NEAREST JOINT.
- THE BACKGROUND INFORMATION WAS PREPARED BY ALLIANT ENGINEERING, (612) 758-3080.
- ALL WORK IN THE PUBLIC RIGHT OF WAY IS TO BE COORDINATED WITH THE CITY OF HASTINGS. ROADWAY REPAIRS, BOULEVARD REPAIRS, AND TRAFFIC CONTROL ARE TO BE PER CITY OF HASTINGS STANDARDS AND SPECIFICATIONS.

GENERAL NOTES:

- CONCRETE CURB AND GUTTER REMOVAL, PAVEMENT REMOVAL, AND UTILITY REMOVAL LIMITS ARE TO BE COORDINATED THE CITY OF HASTINGS AND UTILITY OWNER. REFER TO ALL CONSTRUCTION DOCUMENTS.
- THE CONTRACTOR SHALL DEVELOP AND IMPLEMENT A TRAFFIC CONTROL PLAN WHILE WORKING WITHIN THE RIGHT-OF-WAY. THE TRAFFIC CONTROL PLAN SHALL BE APPROVED BY THE CITY ENGINEERING DEPARTMENT PRIOR TO STREET ENCROACHMENT.
- CONTRACTOR SHALL VISIT THE SITE PRIOR TO BIDDING AND REVIEW ALL CONSTRUCTION DOCUMENTS AND GEOTECHNICAL REPORTS. NO ADDITIONAL COMPENSATION WILL BE ALLOWED FOR ITEMS THAT SHOULD HAVE BEEN ANTICIPATED BY PERFORMING THE ABOVE.
- THE ROCK CONSTRUCTION ENTRANCE INDICATED ON THE PLAN IS SHOWN IN AN APPROXIMATE LOCATION. PRIOR TO START OF CONSTRUCTION, THE CONTRACTOR IS TO COORDINATE WITH THE CITY OF HASTINGS FOR THE EXACT ROCK CONSTRUCTION ENTRANCE LOCATION.

1 DEMOLITION AND EROSION CONTROL PLAN
C1.0 1"=20'

Artspace Hastings

Tyler St. & 2nd Street E Hastings, MN



901 NORTH THIRD STREET, SUITE 145
MINNEAPOLIS, MN 55401
612.455.3100

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I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the state of Minnesota.

Keith Matthe
KEITH MATTE Lic. No. 46674

REVISIONS

#	Date	Description

DATE	7/29/2016
BKBM PROJECT #	16215.00
PHASE	PERMIT

CHECKED BY	KAM
DRAWN BY	SJH

Demolition and Erosion Control Plan



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