

City Council Memorandum

To: Mayor Fasbender & City Council Members

From: Nick Egger – Public Works Director

Date: March 11, 2021

Item: Resolution - Approve Limited Use Permit No. 1926-0108 - Highway 316 Improvements

Council Action Requested:

Attached for Council consideration is a resolution to approve the attached Limited Use Permit (LUP) that will allow for the construction, operation, maintenance, and eventual replacement of a multi-use trail within MnDOT's right of way alongside Trunk Highway 316. Procedurally, the Council must adopt a resolution approving the permit, which MnDOT will then sign and forward to the City for the Mayor's and Clerk's signatures.

Background Information:

As shown in the attached exhibit, the trail covered under this permit will be on the eastern side of the highway, connecting the area immediately north of Hastings Civic Arena to existing trail systems just south of Malcolm Avenue. This trail will provide bicyclists and pedestrians a dedicated and continuous facility on which to move through the Highway 316 corridor within the City. This segment is being funded by a grant to the City from the 2020 Bonding Bill legislation. The City will have operations, maintenance, and replacement responsibility for this trail. Trail segments on the western side of the highway are not required to be covered under a permit, and although the City will be responsible for operations and routine minor maintenance, the City is not responsible for major maintenance or replacement.

Financial Impact:

The cost of the initial installation of this trail in 2021 is estimated to be \$525,000, and it is being funded by dollars from the 2020 Bonding Bill legislation. These costs will be reimbursed to the City as the trail is constructed this fall. Once completed, the City will have minor, routine maintenance efforts over time, and ultimately will need to incorporate major maintenance and replacement costs into the City's CIP as the trail nears the end of its useful life in 20-25 years.

Staff Recommendation:

Public Works staff and City Attorney Kori Land have reviewed the language of the permit and we are recommending that the City Council adopt the attached resolution to approve Limited Use Permit No. 1926-0108.

Attachments:

- Resolution
- Limited Use Permit 1926-0108 (includes Exhibit of Trail)

CITY OF HASTINGS

DAKOTA COUNTY, MINNESOTA

Resolution No.	

RESOLUTION FOR APPROVAL OF A LIMITED USE PERMIT FOR MULTI-USE TRAIL WITHIN MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY TRUNK HIGHWAY 316 IMPROVEMENTS PROJECT

WHEREAS, in the summer of 2021, the Minnesota Department of Transportation (MnDOT) will begin a project reconstruct Trunk Highway 316 from the eastern point of intersection with US Highway 61 to just past Tuttle Drive within the City of Hastings corporate limits, and

WHEREAS, this project will include the construction of a multi-use trail along the eastern side of the Trunk Highway to serve pedestrian and bicyclist transportation needs, and

WHEREAS, construction of said trail will be financed by funding provided in the 2020 Bonding Bill legislation through a grant to the City of Hastings, and

WHEREAS, the City of Hastings will be required to operate, maintain, and ultimately to replace said trail, and

WHEREAS, MnDOT requires a Limited Use Permit for the construction and utilization of said multi-use trail, and

WHEREAS, Limited Use Permit No. 1926-0108 has been assembled to provide the City of Hastings permission for said multi-use trail to be constructed and operated on MnDOT right of way, subject to terms and conditions as described in the permit document.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HASTINGS AS FOLLOWS; that

- The City Council hereby approves Limited Use Permit No. 1926-0108 for a multi-use trail to be constructed within the right of way of Trunk Highway 316, and to be operated, maintained, and replaced by the City of Hastings.
- 2. The Mayor and City Clerk are hereby authorized to sign said permit.

ADOPTED BY THE CITY COUNCIL OF HASTINGS, MINNESOTA, THIS 15TH DAY OF MARCH, 2021.

Ayes:	
Nays:	Mary D. Fasbender, Mayor
ATTEST:	
Erica Henderson, City Clerk	

STATE OF MINNESOTA DEPARTMENT OF TRANSPORTATION

LIMITED USE PERMIT

C.S. 1926 (T.H. 316) County of Dakota LUP # 1926-0108 Permittee: City of Hastings Expiration Date: 02/18/2042 Coop./Const. Agmt #1045012

In accordance with Minnesota Statutes Section 161.434, the State of Minnesota, through its Commissioner of Transportation, ("MnDOT"), hereby grants a Limited Use Permit (the "LUP") to City of Hastings, ("Permittee"), to use the area within the right of way of Trunk Highway No. 316 as shown in blue on Exhibit "A" (the "Area"). This Limited Use Permit is executed by the Permittee pursuant to resolution, a certified copy of which is attached hereto as Exhibit B.

Non-Motorized Trail

The Permittee's use of the Area is limited to only the constructing, maintaining and operating of a nonmotorized trail ("Facility") and the use thereof may be further limited by 23 C.F.R. 652 also published as the Federal-Aid Policy Guide.

Pursuant to a General Obligation Bond Proceeds Grant Agreement - Construction Grant ("Grant Agreement") to be entered into between the Permittee and MnDOT, authorized by Minnesota Laws 2020, 5th Special Session, Ch. 3, Art. 1, Sec. 16, Subd. 28, the Permittee is providing funding for the Facility within the Area using State of Minnesota general obligation bond proceeds issued under Article XI, Section 5 (a) of the Minnesota Constitution ("G.O. Bonds"). The use of the G.O. Bonds proceeds and the use of the Facility are further subject to the restrictions imposed under the Grant Agreement. Permittee and MnDOT acknowledge that due to the use of G.O. Bonds to fund the Facility, the Commissioner of Minnesota Management and Budget has certain rights in the Facility as set forth in the Grant Agreement.

In addition, the following special provisions shall apply:

SPECIAL PROVISIONS

1. TERM. This LUP terminates at 11:59PM on 02/18/2042 ("Expiration Date") subject to the right of cancellation by MnDOT, with or without cause, by giving the Permittee ninety (90) days written notice of such cancellation. This LUP will not be renewed except as provided below.

Provided this LUP has not expired or terminated, MnDOT may renew this LUP for a period of up to ten (10) years, provided Permittee delivers to MnDOT, not later than ninety (90) days prior to the Expiration Date, a written request to extend the term. Any extension of the LUP term will be under the same terms and conditions in this LUP, provided:

- (a) At the time of renewal, MnDOT will review the Facility and Area to ensure the Facility and Area are compatible with the safe and efficient operation of the highway and the Facility and Area are in good condition and repair. If, in MnDOT's sole determination, modifications and repairs to the Facility and Area are needed, Permittee will perform such work as outlined in writing in an amendment of this LUP; and
- (b) Permittee will provide to MnDOT a certified copy of the resolution from the applicable governmental body authorizing the Permittee's use of the Facility and Area for the additional term.
- (c) Any extension of the LUP will include a provision which permits MnDOT to cancel the LUP, with or without cause, by giving the Permittee ninety (90) days written notice of such cancellation; and
- (d) Any extension of this LUP will not be subject to any restriction imposed by the use of G.O. Bonds.

If Permittee's written request to extend the term is not timely given, the LUP will expire on the Expiration Date.

Permittee hereby voluntarily releases and waives any and all claims and causes of action for damages, costs, expenses, losses, fees and compensation arising from or related to any cancellation or termination of this LUP by MnDOT. Permittee agrees that it will not make or assert any claims for damages, costs, expenses, losses, fees and compensation based upon the existence, cancellation or termination of the LUP. Permittee agrees not to sue or institute any legal action against MnDOT based upon any of the claims released in this paragraph.

If MnDOT sells or transfers the Area pursuant to Minnesota Statutes Section 161.43 prior to February 18, 2042, the Permittee will pay Minnesota Management and Budget ("MMB") the bond financed share of the Facility sale as required by the Grant Agreement. If Permittee determines that the Facility no longer serves a government purpose, Permittee may cancel this LUP by: (1) providing ninety days (90) written notice of such cancellation to MnDOT; (2) removing the Facility pursuant to section 2 of this LUP; and (3) paying to MMB the bond financed share of the Facility as required by the Grant Agreement.

Notwithstanding anything to the contrary in this section, MNDOT agrees to provide at least ninety (90) days' notice to the Commissioner of Minnesota Management and Budget ("MMB"), consult with MMB, and make a good faith effort to obtain the Commissioner of MMB's consent before modifying, restating, amending, changing in any way, prematurely terminating, or cancelling this LUP, except in the case of an emergency as determined in MnDOT's sole discretion. Before MNDOT terminates or cancels this LUP due to Permittee's failure to perform any requirements or obligations under this LUP, MNDOT will give written notice of such failure

to Permittee and will allow Permittee thirty (30) days to cure such default to MNDOT's satisfaction. MnDOT will first demand specific performance by PERMITEE (for the avoidance of doubt, this provision does not require MNDOT to obtain a court order for specific performance).

MNDOT acknowledges that it has no current plans in the (i) Minnesota State Highway Investment Plan, (ii) Minnesota Capital Highway Investment Plan, and (iii) Minnesota State Transportation Investment Plan that would affect the intended long term use of the Facility or require the cancellation of this LUP.

MNDOT will give Permittee and MMB notice of any foreclosure by a third party of a voluntary or involuntary lien or encumbrance relating to the Facility for which MNDOT has knowledge. MNDOT shall make a good faith effort to obtain the Commissioner of MMB's consent to any mortgage or voluntary lien on its interest in this Permit before creating such an interest.

- 2. REMOVAL. Upon the Expiration Date or earlier termination, at the Permittee's sole cost and expense Permittee will:
 - (a) Remove the Facility and restore the Area to a condition satisfactory to the MnDOT District Engineer; and
 - (b) Surrender possession of the Area to MnDOT.

If, without MnDOT's written consent, Permittee continues to occupy the Area after the Expiration Date or earlier termination, Permittee will remain subject to all conditions, provisions, and obligations of this LUP, and further, Permittee will pay all costs and expenses, including attorney's fees, in any action brought by MnDOT to remove the Facility and the Permittee from the Area.

3. CONSTRUCTION. The construction and supervision of the Facility will be addressed in Cooperative Construction Agreement No. 1045012 between the parties and shall be at no cost or expense to MnDOT.

Before construction of any kind, the plans for such construction shall be approved in writing by the MnDOT's District Engineer. Approval in writing from MnDOT District Engineer shall be required for any changes from the approved plan.

The Permittee will construct the Facility at the location shown in the attached Exhibit "A", and in accordance with MnDOT-approved plans and specifications. Further, Permittee will construct the Facility using construction procedures compatible with the safe and efficient operation of the highway.

Upon completion of the construction of the Facility, the Permittee shall restore all disturbed slopes and ditches in such manner that drainage, erosion control and aesthetics are perpetuated.

The Permittee shall preserve and protect all utilities located on the lands covered by this LUP at no expense to MnDOT and it shall be the responsibility of the Permittee to call the Gopher State One Call System at 1-800-252-1166 at least 48 hours prior to performing any excavation.

Any crossings of the Facility over the trunk highway shall be perpendicular to the centerline of the highway and shall provide and ensure reasonable and adequate stopping sight distance.

- 4. MAINTENANCE. Any and all maintenance of the Facility shall be provided by the Permittee at its sole cost and expense, including, but not limited to, plowing and removal of snow and installation and removal of regulatory signs. Permittee may place trail identification and demarcation signs on the Area with the written pre-approval of MnDOT, which approval will be in MnDOT's sole discretion. No signs shall be placed on any MnDOT or other governmental agency signpost within the Area. MnDOT will not mark obstacles for users on trunk highway right of way.
- 5. USE. Other than as identified and approved by MnDOT, no permanent structures or no advertising devices in any manner, form or size shall be allowed on the Area. No commercial activities shall be allowed to operate upon the Area.

Any use permitted by this LUP shall remain subordinate to the right of MnDOT to use the property for highway and transportation purposes. The Facility is funded by G.O. Bonds, is not needed for the trunk highway, and is therefore not part of the MnDOT's trunk highway system. This LUP does not grant any interest whatsoever in land, nor does it establish a permanent park, recreation area or wildlife or waterfowl refuge. No rights to relocation benefits are established by this LUP.

This LUP is non-exclusive and is granted subject to the rights of others, including, but not limited to public utilities which may occupy the Area.

6. APPLICABLE LAWS. This LUP does not release the Permittee from any liability or obligation imposed by federal law, Minnesota Statutes, local ordinances, or other agency regulations relating thereto and any necessary permits relating thereto shall be applied for and obtained by the Permittee.

Permittee at its sole cost and expense, agrees to comply with, and provide and maintain the Area, Facilities in compliance with all applicable laws, rules, ordinances and regulations issued by any federal, state or local political subdivision having jurisdiction and authority in connection with said Area including the Americans with Disabilities Act ("ADA"). If the Area and Facilities are not in compliance with the ADA or other applicable laws MnDOT may enter the Area and perform such obligation without liability to Permittee for any loss or damage to Permittee thereby incurred, and Permittee shall reimburse MnDOT for the cost thereof, plus 10% of such cost for overhead and supervision within 30 days of receipt of MnDOT's invoice.

7. CIVIL RIGHTS. The Permittee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event improvements are

constructed, maintained, or otherwise operated on the Property described in this Limited Use Permit for a purpose for which a MnDOT activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Permittee will maintain and operate such improvements and services in compliance with all requirements imposed by the Acts and Regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation, Federal Highway Administration, (as may be amended) such that no person on the grounds of race, color, national origin, sex, age, disability, incomelevel, or limited English proficiency will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said improvements.

- 8. SAFETY. MnDOT shall retain the right to limit and/or restrict any activity, including the parking of vehicles and assemblage of Facility users, on the highway right of way over which this LUP is granted, so as to maintain the safety of both the motoring public and Facility users.
- 9. ASSIGNMENT. No assignment of this LUP is allowed.
- 10. IN WRITING. Except for those which are set forth in this LUP, no representations, warranties, or agreements have been made by MnDOT or Permittee to one another with respect to this LUP.
- 11. ENVIRONMENTAL. The Permittee shall not dispose of any materials regulated by any governmental or regulatory agency onto the ground, or into any body of water, or into any container on the State's right of way. In the event of spillage of regulated materials, the Permittee shall notify in writing MnDOT's District Engineer and shall provide for cleanup of the spilled material and of materials contaminated by the spillage in accordance with all applicable federal, state and local laws and regulations, at the sole expense of the Permittee.
- 12. MECHANIC'S LIENS. The Permittee (for itself, its contractors, subcontractors, its materialmen, and all other persons acting for, through or under it or any of them), covenants that no laborers', mechanics', or materialmens' liens or other liens or claims of any kind whatsoever shall be filed or maintained by it or by any subcontractor, materialmen or other person or persons acting for, through or under it or any of them against the work and/or against said lands, for or on account of any work done or materials furnished by it or any of them under any agreement or any amendment or supplement thereto.
- 13. NOTICES. All notices which may be given, by either party to the other, will be deemed to have been fully given when served personally on MnDOT or Permittee or when made in writing addressed as follows: to Permittee at:

Mayor Hastings City Hall 101 E 4th Str Hastings, MN 55033

and to MnDOT at:

State of Minnesota Department of Transportation Metro District Right of Way 1500 W. County Road B2 Roseville, MN 55113

The address to which notices are mailed may be changed by written notice given by either party to the other.

- 14. INDEMNITY. Permittee shall indemnify, defend to the extent authorized by the Minnesota Attorney General's Office, hold harmless and release the State of Minnesota, its Commissioner of Transportation and employees and any successors and assigns of the foregoing, from and against:
 - (a) all claims, demands, and causes of action for injury to or death of persons or loss of or damages to property (including Permittee's property) occurring on the Facility or connected with Permittee's use and occupancy of the Area, except when such injury, death, loss or damage is caused solely by the negligence of State of Minnesota, but including those instances where the State of Minnesota is deemed to be negligent because of its failure to supervise, inspect or control the operations of Permittee or otherwise discover or prevent actions or operations of Permittee giving rise to liability to any person;
 - (b) claims arising or resulting from the temporary or permanent termination of Facility user rights on any portion of highway right of way over which this LUP is granted;
 - (c) claims resulting from temporary or permanent changes in drainage patterns resulting in flood damages;
 - (d) any laborers', mechanics', or materialmens' liens or other liens or claims of any kind whatsoever filed or maintained for or on account of any work done or materials furnished; and
 - (e) any damages, testing costs and clean-up costs arising from spillage of regulated materials attributable to the construction, maintenance or operation of the Facility.

MINNESOTA DEPARTMENT	CITY OF HASTINGS
OF TRANSPORTATION	By
RECOMMENDED FOR APPROVAL By:	Its
District Engineer	Date
	Duto
Date	
	And
APPROVED BY:	Its
COMMISSIONER OF TRANSPORTATION	
	Date
By: Director, Office of Land Management	
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The Commissioner of Transportation by the execution of this permit certifies that this permit is necessary in the public interest and that the use intended is for public purposes.





