



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: Kori Land, City Attorney
Date: July 31, 2023
Item: Utility Abandonment Agreement

Council Action Requested:

Approve Utility Abandonment Agreement with KFC

Background Information:

BP Argonaut RE LLC, doing business as KFC, is constructing a restaurant at 1726 Vermillion Street and during the engineering process, they discovered that there is the curb box for the original water service line that will not be used but will remain in place. In addition, the original sanitary sewer service line in the driveway off Highway 61 will also remain in place.

The City typically requires owners to disconnect any abandoned water service line and sewer line from the water main and sanitary sewer main, which may result in minor damage and loss of integrity to the surface and base of Highway 61 and may also result in unwanted traffic interruptions; however failure to disconnect may lead to conditions such as leaking pipes, surface settlement resulting from broken pipes, or interference with other construction projects.

The City is willing to waive the requirement that the owner disconnect and remove the lines completely, on the conditions that the owner agrees to remove the lines later, if the City requires it later, to repair and remedy any unwanted conditions caused by the lines remaining connected and in place, and to indemnify and hold harmless City for any resulting damage or claims. In addition, if the owner fails to do the work, the City can perform and assess the costs. KFC has agreed to the terms and conditions of the agreement.

Financial Impact:

N/A

Advisory Commission Discussion:

N/A

Council Committee Discussion:

N/A

Attachments:

Utility Abandonment Agreement

UTILITY ABANDONMENT AGREEMENT

THIS UTILITY ABANDONMENT AGREEMENT (“Agreement”) is made, entered into and effective this _____day of _____, 2023, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and BP Argonaut RE LLC, a Minnesota limited liability company (“Owner”).

RECITALS

WHEREAS, Owner is the fee owner of real property generally located at 1726 Vermillion Street, Hastings, Minnesota 55033 and legally described as follows:

Parcel 1:

Lots 21 and 22, Block 7, William G. Le Duc’s Addition to the Town of Hastings.

Parcel 2:

Lots Twenty-three (23) and Twenty-four (24) in Block Seven (7) of Wm. G. Le Duc’s Addition to the Town of Hastings.

Also that parcel of land commencing at the Southwest corner of Lot 24, in said Block 7, running thence South perpendicular to the South line of said Lot 24 a distance of 34 feet; thence East parallel to the South line of said Lot 24 a distance to the West line of Vermillion Street; thence North along the West line of Vermillion Street a distance of 34 feet to the Southeast corner of said Lot 24; thence West along the South line of said Lot 24 to place of beginning.

Abstract Property

PIDs: 19-44700-07-210, 19-44700-07-220, 19-44700-07-230 and 19-44700-07-240

(the “Property”); and

WHEREAS, a restaurant and related improvements are being constructed on the Property (“Redevelopment Project”); and

WHEREAS, the curb box in the driveway off of Highway 61 as depicted on Exhibit A as Inset A, attached hereto and incorporated herein, will remain in place (“Original Water Service Line”); and

WHEREAS, the sanitary sewer service line in the driveway off of Highway 61 as depicted on Exhibit A as Inset B, attached hereto and incorporated herein, will remain in place (“Original Sewer Line”); and

WHEREAS, the Owner does not intend to utilize the Original Water Service Line nor the Original Sewer Line on the Property and they will be abandoned, and instead, Owner will make a new connection to the water main and sanitary sewer main at a different location as approved by the City; and

WHEREAS, as a result of the foregoing, the Original Water Service Line and Original Sewer Line will be abandoned and will not be used for the Redevelopment Project or any other purpose on the Property; and

WHEREAS, municipal regulations require Owner to disconnect, at its expense, the abandoned Original Water Service Line and Original Sewer Line from the water main and sanitary sewer main; and

WHEREAS, disconnection of the Original Water Service Line and Original Sewer Line may result in minor damage and loss of integrity to the surface and base of Highway 61 and may also result in unwanted traffic interruptions; and

WHEREAS, failure to disconnect the Original Water Service Line and Original Sewer Line may lead to conditions requiring corrective action in the future which may include, but are not limited to, leaking pipes, surface settlement resulting from broken pipes, or interference with other construction projects; and

WHEREAS, City is willing to waive the requirement that Owner disconnect and remove the Original Water Service Line and Original Sewer Line completely, on the conditions that Owner, its successors and assigns agree: (1) if reasonably deemed necessary by City, to remove the Original Water Service Line and Original Sewer Line at its cost; (2) to repair and remedy any unwanted conditions caused by the Original Water Service Line and Original Sewer Line remaining connected and in place at its cost and to indemnify and hold harmless City for any resulting damage or claims; (3) that if Owner fails to perform removal or repair work in a timely manner, City may complete the needed work; and (4) that City may assess the cost of any such work against the Property as provided in this Agreement; and

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

NOW THEREFORE, in consideration of the City’s willingness to waive the current requirement that Owner disconnect and remove the Original Water Service Line and Original Sewer Line completely to the water main and sanitary sewer main, the parties make the following agreement:

- A. City waives the current requirement that Owner disconnect and remove the Original Water Service Line and Original Sewer Line completely to the water main and sanitary sewer main beneath Highway 61, subject to the conditions and requirements set forth herein and in the Recitals above.
- B. In the event there is leakage from the Original Water Service Line and Original Sewer Line or disturbance to the ground above the Original Water Service Line and Original Sewer Line that the City reasonably determines has been caused by a breakage or other issue with the Original Water Service Line and Original Sewer Line (a "Removal Event"), then, upon written demand by City, Owner at its cost shall disconnect and remove the Original Water Service Line and Original Sewer Line completely to the water main and sanitary sewer main beneath Highway 61 and reasonably restore any disturbed areas to their original conditions. If Owner fails to perform the removal or repair work as required herein within a reasonable time period after the occurrence of a Removal Event and the City's delivery of written notice as required hereunder, City may undertake all work necessary to disconnect and remove the Original Water Service Line and Original Sewer Line, and Owner shall immediately reimburse City for all costs actually incurred by the City in connection with removal of the Original Water Service Line and Original Sewer Line (the "Removal Expense").
- C. If Owner fails to timely reimburse City for all of the Removal Expense, Owner, for itself, its successors and assigns, agrees that the City may assess the costs against the Property in the amount of the Removal Expense plus a \$25.00 fee (if the Removal Expense is \$10,000.00 or less) or a \$50.00 fee (if the removal expense is greater than \$10,000.00).
- D. If the Removal Expense is \$10,000.00 or less, the resulting assessments shall be paid over a period of five years, but if the Removal Expense 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 for other assessments in the year the work is performed. If no such assessments are certified for other properties in the City during that year, the interest rate shall be equal to the interest rate imposed on the most recent assessment certified by the City.
- E. Where reference is made herein to Owner, reference shall be to Owner, 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.
- F. Owner shall indemnify and hold harmless City for any damages or claims resulting from the Original Water Service Line and Original Sewer Line remaining connected and in place pursuant to this Agreement except to the extent such damages or claims result from the gross negligence or willful misconduct of the City or its employees, agents, officers, officials, or contractors.

- G. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota and any dispute shall be venued in the Dakota County District Court. Owner consents to the jurisdiction of the Minnesota state courts.
- H. Notice. Notice shall mean notices given by one party to the other if in writing and if and when delivered or tendered: (i) in person; (ii) by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, or (iii) by proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended addressed as follows:

If to City: City of Hastings
Attention: City Administrator
101 4th Street East
Hastings, MN 55033

If to Owner: BP Argonaut RE LLC
Attn: Phil Atteberry
P.O. Box 2650
Klamath Falls, OR 97601

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, on the third day after mailing if mailed by United States postal service as provided above, or within twenty-four (24) hours if sent via overnight courier service provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the day and year first above written.

**CITY:
CITY OF HASTINGS**

By: _____
Mary Fasbender
Its Mayor

By: _____
Kelly Murtaugh
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this ___ day of _____, 2023, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Hastings, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

EXHIBIT A

DEPICTION OF ORIGINAL WATER SERVICE LINE AND ORIGINAL SEWER LINE

