



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: John Hinzman, Community Development Director
Date: August 7, 2023
Item: Authorize Signature – Escrow Agreement – Augustine Family Farms

Council Action Requested:

Authorize signature of the attached Escrow Agreement between the City and Augustine Farms LLC for completion of a utility study to determine feasibility for potential utility capacity for future annexation and development. Augustine farms would deposit \$10,000 in escrow funds for the City to conduct the investigation. Agreement would be subject to minor modifications of the agreement by Staff. A simple majority is necessary for action.

Background:

Augustine Family Farms owns property directly west of the City limits, north of 15th Street (150th Street) to past Jacob Avenue. The property is designated within the exiting Comprehensive Plan for future development. The Comprehensive sewer and water plan had identified the property to be accessed with utilities through property that currently has no plans for development. The developer seeks to determine if existing utilities directly east of the development has the capacity to serve the development.

Financial Impact:

All costs for the study would be the responsibility of Augustine Farms.

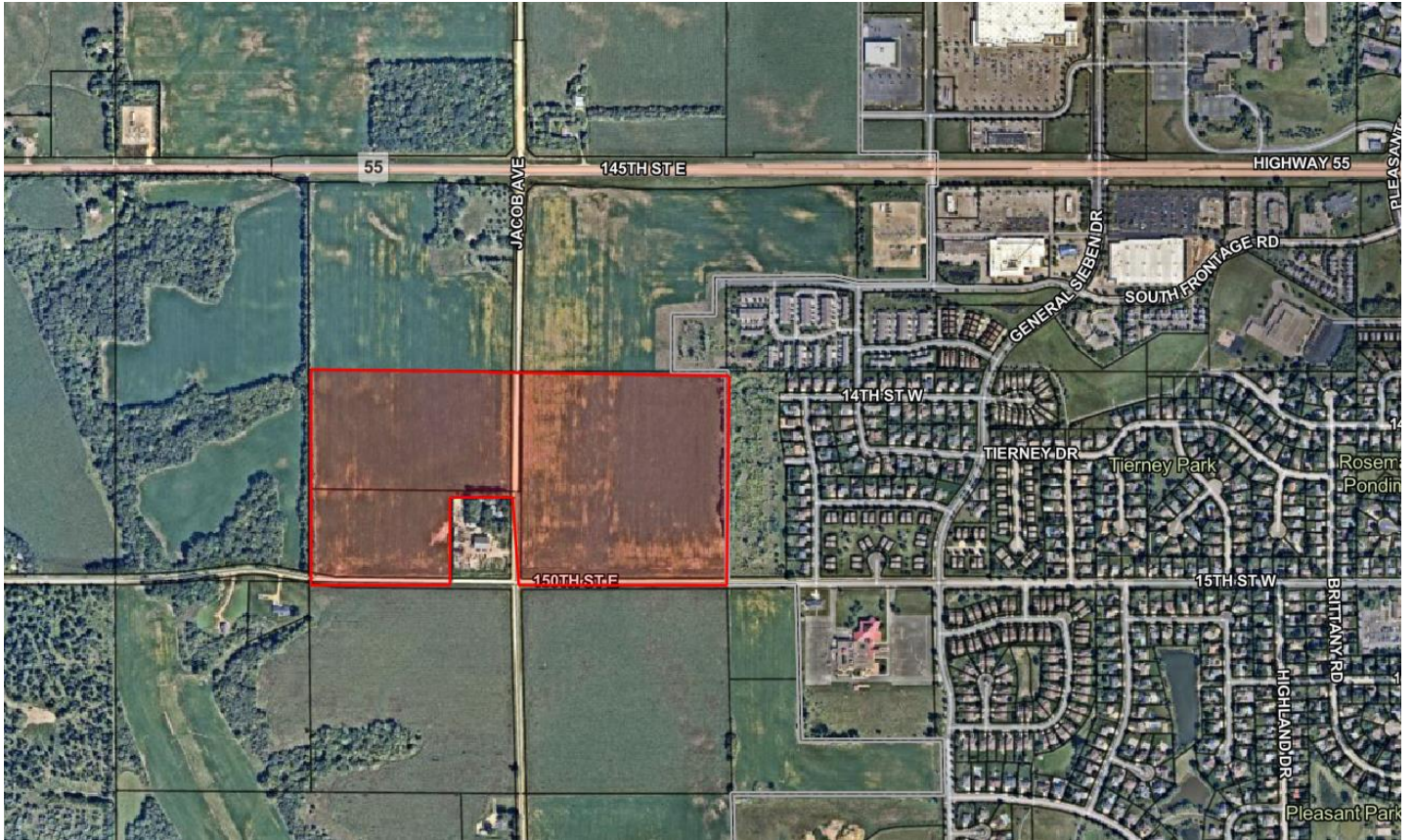
Advisory Commission Discussion:

N/A

Attachments:

- Location Map
- Escrow Agreement

LOCATION MAP



ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the “Agreement”) made and entered into as of _____, 2023, (“Effective Date”) by and between the City of Hastings, a Minnesota municipal corporation (“City” and “Escrow Agent”), and Augustine Family Farm, LLC, a Minnesota limited liability company (“Developer”).

RECITALS

WHEREAS, Developer has requested that the City conduct an analysis of the capacity of trunk sanitary sewer and water lines to serve certain property in the City that is within the City’s planned growth and Metropolitan Urban Service Area, identified as Parcels A, B and C on Exhibit A, attached hereto (“the Property”); and

WHEREAS, the Property is currently undeveloped, and the City intended to serve the area surrounding the Property through trunk sewer and water lines to the south and east but the timeline for development is uncertain; and

WHEREAS, the City is willing to engage and undertake a study now to determine the capacity and costs of trunk sanitary sewer and waterlines to serve the Property by connecting into existing trunk lines (“the Study”); and

WHEREAS, the costs of such a Study is anticipated to be up to \$10,000, which Developer is willing to pay into escrow with the City, as a not to exceed amount; and

WHEREAS, City is willing to escrow the costs for the Study in the amount of \$10,000.00 (the “Escrow Funds”), acting as the Escrow Agent, and shall use the Escrow Funds to pay for the costs of the Study; and

WHEREAS, the parties desire to evidence their agreement with respect to the holding and disbursement of the Escrow Funds as described herein.

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Escrow Fund Custody. Within four (4) days of the Effective Date, Developer shall pay the City the Escrow Funds. Upon receipt, the City does hereby agree to hold and disburse the same in accordance with this Agreement.

2. Obligation of City and Developer Regarding the Study. The City shall be solely responsible for the oversight and review of the Study, entering into any contracts necessary to complete the Study. Developer shall cooperate with the City and with any consultants engaged to conduct the Study in order to assist with the completion of the Study. Upon completion, the Study shall be provided to the Developer.

3. Disbursement of Escrow Funds. City shall use the Escrow Funds to directly pay for the costs of all consultants, experts, and contracted engineering services who expend services directly attributable for the Study, up to the amount of the Escrow Funds.

4. Costs Exceeding Escrow Funds. If the costs of the Study will exceed the amount of the Escrow Funds, the City and Developer shall meet and discuss how to cover the overage. Any mutual agreement to address the overage shall be memorialized in writing. Failure to agree on the excess fees necessary to complete the Study may result in termination of this Agreement, as well as termination of the Study.

5. Final Release of Escrow Funds; Termination. Upon completion of the Study, if there are excess Escrow Funds remaining, the City shall release of the remaining balance of the Escrow Funds to Developer. This Agreement shall terminate on the date upon which the Escrow Funds are totally depleted by disbursements (referred to as the “Termination Date”). The responsibility of the City shall terminate on the Termination Date.

6. Escrow Agent. In order to induce the City to hold and disburse the Escrow Funds as required by this Agreement, the City and Developer do hereby agree that:

a. The City, as the Escrow Agent, is acting as a depository only and shall not be liable for loss or damage resulting from:

i. any good faith act or forbearance of Escrow Agent;

ii. any default, error, action or omission of any party, other than Escrow Agent;

iii. any loss or damage which arises after the Escrow Funds have been disbursed in accordance with the terms of this Agreement.

7. Amendments. This Agreement is irrevocable and may be amended only by a written amendment executed by all the parties hereto.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF HASTINGS

By _____
Mary Fasbender
Its Mayor

By _____
Kelly Murtaugh
Its City Clerk

DEVELOPER:

Augustine Family Farm, LLC

By _____
Robert P. Sieben
Its: Chief Manager

