



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: John Hinzman, Community Development Director
Date: September 5, 2023
Item: Authorize Signature: Assessment Appeal Waiver Agreement – Hastings Creamery

Council Action Requested: Authorize signature of the attached Assessment Appeal Waiver Agreement between the City of Hastings and 3D LLC for sanitary sewer cleaning and gate valve replacement at the Hastings Co-op Creamery located at 1701 Vermillion Street. A simple majority of Council is necessary for action.

Background Information: The City would clean the private sewer line and replace the water gate valve and 3D LLC agrees to authorize the City to certify the cost of work completed as a Special Assessment against the property and to waive appeal of the assessment.

Financial Impact: The City would recoup expenses upon sale of the property.

Advisory Commission Discussion: N/A

Council Commission Discussion: N/A

Attachments:

- Assessment Waiver Appeal Agreement

**CITY OF HASTINGS
ASSESSMENT APPEAL WAIVER AGREEMENT
FOR 1701 VERMILLION STREET**

THIS AGREEMENT FOR AN ASSESSMENT APPEAL WAIVER (“Agreement”) is entered into and effective as of the ____ day of _____, 2023 (“Agreement Date”), by and between the City of Hastings, a Minnesota municipal corporation (“City”), and 3D LLC, a Minnesota limited liability company (“Owner”).

WITNESSETH:

WHEREAS, the Owner is the fee simple Owner of property located at 1701 Vermillion Street, Hastings, Dakota County, Minnesota, legally described on the attached Exhibit A (“Property”); and

WHEREAS, the Owner has been cited by the City for City Code violations involving its defective gate valve and sanitary sewer line at the Property; and

WHEREAS, the City Code violations impact the public health, safety and general welfare of the public, such that the expediency of correcting the violations is in the best interest of the City; and

WHEREAS, the Owner is not in a financial position to pay for the corrections necessary at this time but is willing to enter into this Agreement to reimburse the City for the costs of the corrections over a period of time; and

WHEREAS, the City has agreed to directly contract with a contractor who will correct the City Code violations; and

WHEREAS, in an effort to remove the blight, the City is willing to pay the contractor directly and levy the costs against the Property as provided herein; and

WHEREAS, the Owner is willing to agree to the levy of the costs against the Property, in an amount that equals the Assessment Waiver Amount for the Assessment Term with interest accrual at the Assessment Interest Rate to pay for the cost of the Project; and

WHEREAS, the Owner is willing to waive his assessment appeal rights up to the Assessment Waiver Amount which constitutes an estimated benefit pursuant to Minnesota Statutes, Chapter 429 in the manner authorized by Minnesota Statutes § 462.3531 in return for the City’s agreement to pay for the costs of the Project.

NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

ARTICLE I
THE AGREEMENT

Section 1.01 Purpose. The purpose of this Agreement is to memorialize the covenants and agreements between the Owner and the City with regard to the Property and the Project including the Owner’s waiver of assessment appeal rights up to the Assessment Waiver Amount which constitutes an estimated benefit pursuant to Minnesota Statutes, Chapter 429 in the manner authorized by Minnesota Statutes § 462.3531 in return for the City’s efforts to facilitate the collection of funding for the Project.

Section 1.02 Term. The term of this Agreement shall commence on the Agreement Date and shall terminate upon the expiration of the Assessment Term (or upon prepayment of the levied assessment).

ARTICLE II
DEFINITIONS

Section 2.01 Definitions. The following are terms used in this Agreement. His meanings as used in this Agreement shall be expressly indicated below, unless the context of this Agreement requires otherwise:

- (a) **Agreement**: This Agreement to memorialize the covenants and agreements between the Owner and the City with regard to the Property and the Project including the assessment appeal waiver provided herein pursuant to Minnesota Statutes, Chapter 429 in the manner authorized by Minnesota Statutes § 462.3531.
- (b) **Agreement Date**: The date written in the first paragraph of the Agreement.
- (c) **Assessment Interest Rate**: The special assessment levied against the Property shall accrue interest at a rate of three percent (3.00%) per year for the Assessment Term.
- (d) **Assessment Term**: The term of the special assessment levied against the Property shall be five (5) years.
- (e) **Assessment Waiver Amount**: The total Assessment Amount is \$16,258.88, which is commensurate with the estimated special benefit of the Project to the Property.

- (f) City: The City of Hastings, a Minnesota municipal corporation.
- (g) Project: The removal and replacement of the gate valve and cleaning of sanitary sewer line located on the Property.
- (h) Owner: 3D LLC, a Minnesota limited liability company.
- (i) Property: The property located at 1701 Vermillion Street, Hastings, MN 55033, (Dakota County Property Identification Number 19-03700-05-011) as legally described in Exhibit A which is attached hereto and made a part hereof.

ARTICLE III **COVENANTS AND AGREEMENTS**

Section 3.01 Covenants and Agreements of the Owner. The Owner covenants and agrees with the City that:

- (a) Assessment Appeal Waiver: Owner hereby authorizes the City to certify to the Dakota County Auditor/Property Tax Assessor a special assessment against the Property up to the Assessment Waiver Amount for Project.

The Owner hereby waives all rights to assessment notices, hearings and appeals, and all other rights pursuant to Minnesota Statutes § 429.061, § 429.071 and § 429.081 for the special assessment against the Property up to the Assessment Waiver Amount, except as modified pursuant to Section 3.02(a). The Owner hereby waives any and all procedural and substantive objections to the special assessment up to the Assessment Waiver Amount against the Property, including, but not limited to, notice and hearing requirements and any claim that any or all of the Assessment Waiver Amount against the Property exceeds the benefit to the Property for the Project. The Owner acknowledges and agrees that the benefit of the Project to the Property does in fact equal or exceed the Assessment Waiver Amount. The Owner also acknowledges and agrees that the Property receives a special benefit equal to or exceeding the Assessment Waiver Amount.

The City and the Owner acknowledge and agree that the Owner's waiver of assessment appeal rights pursuant to Minnesota Statutes, Chapter 429, is capped at the Assessment Waiver Amount by operation of Minnesota Statutes § 462.3531, except as provided herein. The City and the Owner acknowledge and agree that the Owner may appeal any special assessment above the Assessment Waiver Amount.

- (b) Owner's Covenant Not to Sue the City: Owner hereby covenants with the City not to appeal or sue the City for a court to set aside, reduce, repeal, or invalidate the levied

assessment, or for other relief from the payment of the City's levy of a special assessment up to the Assessment Waiver Amount against the Property.

- (c) Owner's Covenant that Owner is the Fee Owner of the Property: Owner hereby covenants and warrants with the City that Owner is seized in fee of the Property and has good right to enter into this Agreement with the City.

Section 3.02 Covenants and Agreements of the City. The City covenants and agrees with the Owner that:

- (a) City to Pay for Project: The City agrees to pay for the costs of the Project directly to the contractor upon proof of invoices from the contractor based on a pre-approved amount that is no greater than the Assessment Waiver Amount. If the amount of the invoices from the contractor is more or less than the Assessment Waiver Amount, then the Assessment Waiver Amount shall be increased or reduced accordingly and the parties agree that the Section 3.01(a) still applies, in that the Property receives a special benefit equal to or exceeding the revised Assessment Waiver Amount.
- (b) Assessment Waiver Amount: The City agrees that the City will certify/levy a special assessment against the Property only up to the Assessment Waiver Amount for the Project pursuant to this Agreement.
- (c) City's Covenant to Construct the Project: City hereby covenants and warrants with the Owner that City will contract directly with a contractor to construct the Project . Owner shall coordinate all permits for the Project with the City.
- (d) City Recording of this Agreement: The City will record this Agreement against the Property and the costs of recording shall be included in the Assessment Waiver Amount.
- (e) Prepayment of Assessment: The City agrees that the Owner may prepay some or all of the City's assessment levy against the Property for the Project with no penalty and only with interest accrual pursuant to Minnesota Statutes § 429.061.

ARTICLE IV **DEFAULT**

Section 4.01 Default. If a party to this Agreement materially defaults in the due and timely performance of any of its covenants, or agreements hereunder, the other party may give notice of default of this Agreement. The notice shall specify with particularity the default or defaults on which the notice is based. The notice shall specify a ten (10) day cure period within which the specified default or defaults must be cured. If the specified defaults are not cured within the cure period, the other party may pursue all remedies and sanctions available at law and in equity, including specific performance.

Section 4.02 Attorneys' Fees, Costs and Expenses. The Owner agrees to pay the City the amount of the City's assessment levy up to the Assessment Waiver Amount with accrued interest together with the City's attorneys' fees, costs and expenses to defend the special assessment levy by the City pursuant to this Agreement. The Owner acknowledges and agrees that the Owner would be unjustly enriched if the City's assessment levy pursuant to this Agreement was set aside, reduced, repealed or invalidated by a court with jurisdiction over the Property since the Owner requested the Project and this assessment financing for the Project. The Owner agrees that the court with jurisdiction over the Property shall award the City the assessment levy up to the Assessment Waiver Amount with accrued interest together with the City's attorneys' fees, costs and expenses for breach of the Owner's covenant not to appeal or sue the City pursuant to Article III, Section 3.01(b).

ARTICLE V
GENERAL PROVISIONS

Section 5.01 Notices. All notices, requests, demands or other communications required or permitted by this Agreement shall be in writing and delivery shall be deemed to be sufficient if delivered personally or by registered or certified mail, return receipt accepted, postage prepaid, addressed as follows:

If to the City:	City of Hastings Attn: City Administrator 101 4 th Street East Hastings, MN 55033
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If to the Owner:	3D LLC 1702 Vermillion St. Hastings, MN 55033
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Section 5.02 Non-Assignability. Neither the City nor the Owner shall assign any interest in this Agreement nor shall either party transfer any interest in the same without the prior written consent of the other party.

Section 5.03 Binding Effect. This Agreement and the terms, conditions and covenants contained herein and the transaction contemplated hereunder shall be binding upon and inure to the benefit of the parties hereto and his respective successors, heirs, personal representatives, and permitted assigns. This Agreement shall further be binding on subsequent purchasers of the Property and shall run with the Property herein described.

Section 5.04 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 5.05 Amendments, Changes and Modifications. This Agreement may be amended

or any of its terms modified or changed only by a written amendment authorized and executed by the City and the Owner.

Section 5.06 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.07 Entire Agreement. This Agreement shall constitute the entire agreement between the parties and shall supersede all prior oral or written negotiations.

Section 5.08 Notice To Buyers. The Owner agrees to notify and provide any buyer of the Property with an executed copy of this Agreement if the Owner sells any interest in the Property following the execution of this Agreement by both the Owner and the City, but before the recording of this Agreement with Washington County Recorder and/or Registrar of Titles.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, the City and the Owner have caused this Agreement to be executed by his duly authorized representatives.

CITY OF HASTINGS

By: _____
Mary Fasbender
Mayor

By: _____
Kelly Murtaugh
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 the City Clerk of the City of Hastings, the Minnesota municipal corporation named in the foregoing instrument, and was signed on behalf of said municipal corporation by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipal corporation.

Notary Public

OWNER

Chris Opitz

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this ____ day of _____, 2023, before me a Notary Public within and for said County, personally appeared _____, the _____ of 3D LLC, the Minnesota limited liability company named in the foregoing instrument, and was signed on behalf of said company by its authority and said instrument to be the free act and deed of said company.

Notary Public

This instrument drafted by and after recording please return to:
Korine L. Land, #262432
LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, Minnesota 55121

EXHIBIT A
LEGAL DESCRIPTION

Legal description to be confirmed:

North 150 feet of the west 330 feet of Lot 5, Block 5, Auditor's Subdivision No. 9, Dakota County, Hastings, Minnesota

PID: 19-03700-05-011

Torrens Property