



City Council Memorandum

To: Mayor Fasbender & City Council Members
From: John Caven
Date: October 9, 2023
Item: Utility Abandonment Agreement: 1801 Chantry Tr

Council Action Requested:

The City Council is requested to approve the enclosed Utility Abandonment Agreement for 1801 Chantry Trail.

Background Information:

Gregory and Deborah Wagner are currently building one single family home on two combined parcels located at Lots 3-4, Block 1, Wallin 14th Addition. A water service and sanitary sewer service are stubbed to the property line for both Lots 3 and 4. The new construction will utilize the stub for Lot 4 leaving an unused set of services on Lot 3. It is City policy to remove the unused services to the main. A Utility Abandonment Agreement was alternatively signed to protect the newly constructed private road, Chantry Trail, from patchwork. The Agreement memorializes the Owners responsibility to undertake any work, at their expense, necessary in the future to repair or modify the unused water and sewer service lines. Any failure to undertake the work, at their expense, would allow the City to undertake the work and assess the cost against the property. The enclosed agreement imposes those obligations on the property owner.

Financial Impact:

There should be no financial impact to the City unless some repair or reconstruction work is required in the future and the property owners refuse to undertake that work, in which case, the City would undertake that work and assess those costs against the property.

Staff Recommendation:

Staff is recommending approval of the enclosed Utility Abandonment Agreement for 1801 Chantry Trail.

Attachments:

Utility Abandonment Agreement

UTILITY ABANDONMENT AGREEMENT

THIS UTILITY ABANDONMENT AGREEMENT (“Agreement”) is made, entered into and effective this 3 day of OCTOBER, 2023, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Gregory Wagner and Deborah Wagner, husband and wife (“Owner”).

RECITALS

WHEREAS, Owner is the fee owner of real property generally located at 1801 Chantrey Trail, Hastings, MN 55033 and legally described as follows:

Lots 3 and 4, Block 1, Wallin 14th Addition, Dakota County, Minnesota

Abstract Property

PIDs: 19-83243-01-030 and 19-83243-01-040

WHEREAS, Owner purchased Lots 3 and 4, Block 1, Wallin 14th Addition, (which shall be individually referred to as “Lot 3” or “Lot 4,” but collectively as “the Property”), for the purpose of constructing one residential structure upon the Property; and

WHEREAS, Lot 3 and Lot 4 each had a dedicated Water Service Line and dedicated Sewer Service Line, designed and installed to service each lot; and

WHEREAS, Owner intends to utilize the Water Service Line and Sewer Service Line for Lot 4 to serve the Property; and

WHEREAS, municipal regulations require Owner to disconnect, at its expense, any

unused Water Service Line and Sewer Service Line from the water main and sanitary sewer main;
and

WHEREAS, failure to disconnect a Water Service Line and Sewer Service 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, due to the potential damage to the recently constructed Chantry Trail, a private road, the City will not require the disconnection of the original Water Service Line and original Sewer Service Line for Lot 3 (hereinafter “Original Water Service Line” and “Original Sewer Service Line”); and

WHEREAS, City is willing to waive the requirement that Owner disconnect and remove the Original Water Service Line and Original Sewer Service 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 Service Line at its cost; (2) to repair and remedy any unwanted conditions caused by the Original Water Service Line and Original Sewer Service 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 Service 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 Service 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 Service Line (for Lot 3) completely to the main, 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 Service Line or disturbance to the ground above the Original Water Service Line and Original Sewer Service Line that the City reasonably determines has been caused by a breakage or other issue with the Original Water Service Line and Original Sewer Service 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 Service Line completely to the water main and sanitary sewer main 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 Service 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 Service 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 Service 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:

Gregory Wagner and Deborah Wagner
10 Valley Lane
Hastings, MN 55033

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

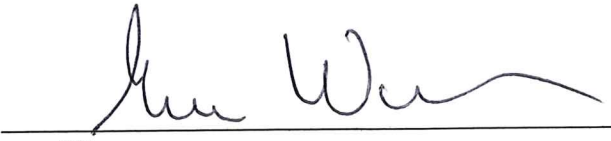
By: _____
Kelly Murtaugh
Its City Clerk


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 said instrument was signed in 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

**OWNER:
GREGORY WAGNER AND DEBORAH WAGNER**

By: 
Gregory Wagner

By: 
Deborah Wagner

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this 3 day of
October, 2023, Gregory Wagner and Deborah Wagner, husband and wife.


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, MN 55121
651-451-1831



EXHIBIT A
DEPICTION OF ORIGINAL WATER SERVICE LINE AND ORIGINAL SEWER SERVICE LINE

