



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: Ryan Stempksi, Public Works Director/City Engineer
Date: June 3, 2024
Item: Sewer Lining Agreements

Council Action Requested:
Approve Sewer Lining Agreements

Background Information:

The City received a private Inflow and Infiltration Grant from MCES to line certain private sewer services. Based on financial eligibility, some owners may be entitled to have the grant cover 100% of the costs and others will qualify for 50% of the costs. There are 9 properties owners currently in the project, all of whom have agreed to the cost-sharing for lining their sewers. Instead of bringing these agreements to the Council one-by-one, we are requesting the Council approve entering into the agreements with the property owners in the project and authorize the Mayor and Clerk to execute them as the signed agreements are received by the property owners.

The agreement allows the City access to the property for purposes of performing the project, identifies the cost-allocation for the respective property owner, states that the owner is responsible for any future maintenance or replacement of the sewer line following the warranty period, and gives the City the authority to assess the costs against the property as a special assessment if the owner fails to pay.

A Model Agreement is attached that shows the terms and conditions, but with the details for each property left blank. This information has been completed and submitted to each owner. The Council's approval to authorize signing these agreements as they are executed by the owners would save time. If any property owners wish to change any terms of the Agreement, either they will be removed from the project or the agreement will be brought back to the Council separately.

Financial Impact:

N/A

Advisory Commission Discussion:

N/A

Council Committee Discussion:

N/A

Attachments:

Model Agreement to Install a Liner in a Sanitary Sewer Line

**CITY OF HASTINGS
AGREEMENT TO INSTALL A LINER IN A SANITARY SEWER LINE**

THIS AGREEMENT TO INSTALL A LINER IN A SANITARY SEWER LINE as a public improvement pursuant to Minnesota Statutes § 429.021 is entered into and effective as of the Agreement Date by and between the City of Hastings, and the Owner.

RECITALS

WHEREAS, the Owner owns the Property, which is improved with an existing Building used for human habitation and the Building has a private Sanitary Sewer Line that is subject to infiltration due to roots and other breaks; and

WHEREAS, the City is lining certain private sanitary sewer lines to prevent inflow and infiltration; and

WHEREAS, the Owner desires the City's assistance to effectuate the installation of the liner in the private Sanitary Sewer Line connecting the Building to the City sewer main; and

WHEREAS, the City has the statutory authority to engage in local improvements for the purpose of constructing, extending and improving sanitary sewers and systems, including service connections and other appurtenances of a sewer system pursuant to Minnesota Statutes § 429.021, subd. 1(2).

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 1.1. 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 Local Improvement Project.

Section 1.2. Cooperation. The City and the Owner shall cooperate and use their respective best efforts to ensure the most expeditious implementation of the various provisions of this Agreement.

Section 1.3. Term. The term of this Agreement shall commence on the Agreement Date and shall terminate after completion of the installation of the Local Improvement Project and expiration of the Contractor Warranty Period.

Section 1.4. Recitals. The above recitals are true and correct as of the date hereof and constitute a part of this Agreement.

ARTICLE II **DEFINITIONS**

Section 2.1. Definitions. The following are terms used in this Agreement. Their 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 Local Improvement Project.
- (b) Agreement Date: The date that the City executes this Agreement.
- (c) Building: The single-family home, duplex or other residential building located on the Property.
- (d) City: The City of Hastings, a Minnesota municipal corporation.
- (e) Local Improvement Project: The installation of a liner in the private Sanitary Sewer Line (“Sanitary Sewer Line”) connecting the Building on the Property to the City’s sewer main. A copy of the Local Improvement Project plans and bid documents shall be kept on file with the City during the Local Improvement Project.
- (f) Owner: _____, husband and wife.
- (g) Property: The Property is addressed as _____, Hastings, Minnesota 55033, and is legally described in Exhibit A, attached hereto.
- (h) Contractor Warranty Period: The Contractor Warranty Period begins one (1) year from date of completion and acceptance by the City of the Local Improvement Project on the Property.

ARTICLE III
COVENANTS AND AGREEMENTS

Section 3.1. Covenants and Agreements of the Owner. The Owner covenants and agrees with the City that:

- (a) Local Improvement Project: The City has engaged a contractor to construct the Local Improvement Project and intends to contract directly with, oversee the Local Improvement Project and pay the contractor directly.
- (b) License to Construct and Inspect: The Owner hereby authorizes and grants the City, the contractor, and City building officials and inspectors a temporary license to enter the Property for the purposes of installing and inspecting the Local Improvement Project. The temporary license shall commence on the Agreement Date and shall terminate after expiration of the Contractor Warranty Period. The Owner acknowledges and agrees that the City will pay no compensation for the temporary license and Owner acknowledges the consideration of the City by installing the Local Improvement Project and paying the costs outlined in Section 3.2(a).
- (c) Owner Covenant that Owner is the Property Fee Owner: Owner hereby covenants and warrants with the City that Owner is seized in fee of the Property and has the right to enter into this Agreement with the City.
- (d) Owner Responsible for Maintenance, Repairs and/or Future Replacement of Local Improvement Project improvements on the Property: The Owner acknowledges and agrees that after installation of the Local Improvement Project on the Property and expiration of the Term, the private Sanitary Sewer Line improvements will be private improvements. The Owner also acknowledges and agrees that the Owner and future owners of the Property shall be responsible for the maintenance, repair and future replacement of the private Sanitary Sewer Line improvements. The Owner acknowledges and agrees that the City does not warrant the materials and/or the installation of the private Sanitary Sewer Line improvements, and the Owner acknowledges and agrees that the Owner must remedy any defects in the material and/or installation of the private Sanitary Sewer Line improvements following the Term of this Agreement.
- (e) [For 50%] Owner Payment of Costs of Local Improvement Project: The Owner agrees to pay 50% of the cost of the Local Improvement Project, due and payable within 30 days of the date of invoice from the City. A copy of the cost allocation is identified on Exhibit B, attached hereto. Failure to pay may result in the City assessing the costs against the Property. Owner hereby waives any right to challenge the cost of the Local Improvement Project and hereby acknowledges that the cost equals or exceeds the special benefit to the Property.
- (f) [For 100%] Owner Payment of Costs of Local Improvement Project: The Owner shall not be required to pay for the cost of the Local Improvement Project.

(g)

Section 3.2. Covenants and Agreements of the City. The City covenants and agrees with the Owner that:

- (a) City Payment of Costs of Local Improvement Project: The City hereby agrees to pay _____% [either 50% or 100%] of the cost of the Local Improvement Project. A copy of the cost allocation is identified on Exhibit B, attached hereto.
- (b) City Contractor Insurance: The City agrees that the City will require the City's contractor to maintain commercial general liability insurance with limits per occurrence of not less than \$1,000,000 during the term of the Agreement.

ARTICLE IV **DEFAULT AND REMEDIES UPON DEFAULT**

Section 4.1. 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(s) 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 thirty (30) 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(s) may pursue all remedies and sanctions available at law and in equity, including specific performance.

Section 4.2. No Remedy Exclusive. No remedy herein conferred upon or reserved to a party to this Agreement shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE V **RELEASE**

Section 5.1. Release. The Owner agrees that the City shall not be liable to the Owner, or any subsequent owner of the Property, for any costs expense or damage arising directly or indirectly from the installation of the Local Improvement Project or from any defective material or faulty installation or faulty design of said Local Improvement Project, and the Owner waives all claims and hereby releases the City, its officials, and employees of and from all claims for injury to person(s) or damage to real or personal property arising from the installation of the Local Improvement Project. The Owner agrees that this provision shall survive the expiration of the term of this Agreement.

ARTICLE VI **GENERAL PROVISIONS**

OWNER:

STATE OF MINNESOTA)
)
COUNTY OF _____)

ss.

The foregoing instrument was acknowledged before me on this ____ day of _____, 2024, by _____ and _____, husband and wife.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Real property in Dakota County, Minnesota, legally described as follows:

Abstract Property

PID:

EXHIBIT B
COST ALLOCATION

Total Cost:	<u>\$10,000.00</u>
Owner Responsibility:	<u>\$</u>
City Responsibility:	<u>\$</u>