



City Council Memorandum

To: Mayor Fasbender & City Council Members
From: Ryan Stempki – Public Works Director
Date: July 15, 2024
Item: Resolution Amending the Trunk Highway 316 Construction Agreement

COUNCIL ACTION REQUESTED

Council is requested to approve a resolution and authorize the Mayor and City Clerk to sign an agreement amending the TH 316 Construction Agreement to document the costs for a water service line leak repair associated with the project is the State's responsibility.

BACKGROUND INFORMATION

MnDOT is looking to close out the contract for the TH 316 Construction Project. During that process a water service line leaked that was installed with the project. The leak was repaired at a cost of \$15,172.55. MnDOT has agreed to cover that cost as a project warranty expense and has amended the construction contract accordingly.

FINANCIAL IMPACTS

None. MnDOT and their Contractor are covering all costs of the water service line repairs installed with the project.

ATTACHMENTS

- Resolution Amending the Trunk Highway 316 Construction Agreement
- Amendment No. 1 to the Construction Agreement for TH 316

**CITY OF HASTINGS
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HASTINGS
APPROVING THE AMENDMENT OF MnDOT MUNICIPAL COOPERATIVE
CONSTRUCTION AGREEMENT NO. 1045012, TRUNK HIGHWAY 316
IMPROVEMENT PROJECT**

Council member _____ introduced the following Resolution and moved its adoption:

WHEREAS, the State of Minnesota (“State”) and the City of Hastings (“City”) entered into Cooperative Construction Agreement No. 1045012 (“Agreement”), dated April 1, 2021, providing payment to the State for costs of the roundabout, utility, and trail construction and associated construction upon, along, and adjacent to, Trunk Highway No. 316 from Tuttle Drive to Trunk Highway No. 61, according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 1926-22 (T.H. 316=316); and

WHEREAS, after the Agreement was fully executed, the State and City mutually agreed that the cost of the repair of the water service leak performed by the City’s contractors will be the State’s responsibility; and

WHEREAS, the State and City desire to amend the Agreement to reflect a lump sum payment in the amount of \$15,172.55 is owed to the City.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF HASTINGS AS FOLLOWS:

The City Council hereby approves the Resolution as presented that Cooperative Construction Agreement No. 1045012 between the State and City be amended to reflect a lump sum payment of \$15,172.55 is owed to the City and hereby authorize execution of the amended Agreement.

Council member _____ moved a second to this resolution and upon being put to a vote it was adopted by the Council Members present.

Adopted by the Hastings City Council on _____, 2024, by the following vote:

Ayes:
Nays:
Absent:

ATTEST:

Mary Fasbender, Mayor

Kelly Murtaugh, City Clerk

SEAL

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
AND
CITY OF HASTINGS
AMENDMENT NO. 1**

State Project Number (S.P.):	<u>1926-22</u>	Original Amount Receivable
Trunk Highway Number (T.H.):	<u>316=316</u>	<u>\$1,585,601.03</u>
State Aid Project Number (S.A.P.):	<u>130-010-013</u>	Total City Obligation at Bid
City Project Number:	<u>2021-1</u>	<u>\$1,553,643.04</u>
Federal Project Number:	<u>NHPP-HSIP 0316(302)</u>	Amended Amount Payable
Lighting System Feed Point No.:	<u>19E7, 19E8, 19E9</u>	<u>\$15,172.55</u>

This Amendment is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and the City of Hastings acting through its City Council ("City").

Recitals

1. The State has a contract with the City identified as MnDOT Contract No. 1045012 ("Original Contract") to provide payment by the City to the State for the City's share of the costs of the roundabout, utility, and trail construction and other associated construction upon, along, and adjacent to Trunk Highway No. 316 from 625 feet south of Tuttle Drive to Trunk Highway No. 61 according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 1926-22 (T.H. 316=316); and
2. This Agreement is amended to have the State provide payment for water service leak and repair performed by the City of Hastings; and
3. The State and the City are willing to amend the Original Contract as stated below.

Contract Amendment

In this Amendment deleted contract terms will be ~~struck out~~ and the added contract terms will be underlined.

REVISION 1. Article 1.5 is amended as follows:

1.5. Exhibits. ~~Preliminary~~ Amended Revised Schedule "I" is on file in the office of the City Engineer and attached and incorporated into this Agreement. Exhibit "A" – Pond Maintenance is attached and incorporated into this Agreement.

REVISION 2. Article 4.1 is amended as follows:

4.1. Schedule "I". The ~~Preliminary~~ Amended Revised Schedule "I" includes all anticipated City participation construction items and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.

REVISION 3. Article 4.2 is amended as follows:

4.2. City Participation Construction. The City will participate in the following at the percentages indicated. The construction includes the City's proportionate share of item costs for Mobilization, Field Office Type D-Modified, Field Laboratory Type DX, and Traffic Control.

- A. 100 Percent will be the City's rate of cost participation in all of the trail construction. The construction includes, but is not limited to, those construction items tabulated on Sheets No. 2 through No. 3 of the ~~Preliminary~~ Amended Revised Schedule "I".
- B. 100 Percent will be the City's rate of cost participation in all of the roundabout construction. The construction includes, but is not limited to, those construction items tabulated on Sheets No. 4 through No. 6 of the ~~Preliminary~~ Amended Revised Schedule "I".
- C. 100 Percent will be the City's rate of cost participation in all of the city utility construction. The construction includes, but is not limited to, those construction items tabulated on Sheets No. 7 through No. 8 of the ~~Preliminary~~ Amended Revised Schedule "I".

REVISION 4. Article 5.1 is amended as follows:

5.1. City Cost. ~~\$1,585,601.03~~ **\$1,553,643.04** is the City's estimated share of the costs of the contract construction and the construction engineering cost share as shown in the ~~Preliminary~~ Amended Revised Schedule "I". The ~~Preliminary~~ Amended Revised Schedule "I" was prepared using ~~estimated quantities and contractor's unit prices, and may include any credits or lump sum costs. Upon award of the construction contract, the State will prepare a Revised Schedule "I" based on construction contract unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement.~~

REVISION 5. Article 6 is inserted as follows:

6. State Cost and Payment by the State.

6.1. State Cost. **\$15,172.55** is the State's lump sum cost for water service leak and repair performed by the City of Hastings. The State's payment is based on invoice, dated February 29, 2023, received by the City from their contractor Valley Rich for performing water service leak and repairs.

REVISION 6. Article 6 through Article 17 are amended to read as follows:

6 7. Authorized Representatives

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

~~6.1~~ **7.1** The State's Authorized Representative will be:

Name, Title: Malaki Ruranika, Cooperative Agreements Engineer (or successor)
 Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155
 Telephone: (651) 366-4634
 E-Mail: malaki.ruranika@state.mn.us

~~6.2~~ **7.2** The City's Authorized Representative will be:

Name, Title: Ryan Stempski, City Engineer (or successor)
 Address: 1225 Progress Drive, Hastings, MN 55033
 Telephone: (651) 480-2368
 E-Mail: rstempski@hastingsmn.gov

~~7~~ **8. Assignment; Amendments; Waiver; Contract Complete**

~~7.1~~ **8.1. Assignment.** No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

~~7.2~~ **8.2. Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

~~7.3~~ **8.3. Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.

~~7.4~~ **8.4. Contract Complete.** This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

8. ~~9~~. Liability; Worker Compensation Claims

~~8.1~~ **9.1.** Each party is responsible for its own acts, omissions, and the results thereof to the extent authorized by law and will not be responsible for the acts, omissions of others, and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.

~~8.2~~ **9.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

9. ~~10~~. Nondiscrimination

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

10. ~~11~~. Title VI/Non-discrimination Assurances

The City agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035. The City will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. The State may conduct a review of the City's compliance with this provision. The City must cooperate with the State throughout the review process by supplying all requested information and documentation to the State, making City staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by the State.

11. ~~12~~. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, accounting procedures, and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

12. ~~13~~. Government Data Practices

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the City or the State.

13. ~~14~~. Telecommunications Certification

By signing this agreement, the City certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the City does not and will not use any equipment, system, or service that uses “covered telecommunications equipment or services” (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. The City will include this certification as a flow down clause in any contract related to this agreement.

~~14.~~ 15. Governing Law; Jurisdiction; Venue

Minnesota law governs the validity, interpretation, and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

~~15.~~ 16. Termination; Suspension

~~15.1.~~ 16.1 By Mutual Agreement. This Agreement may be terminated by mutual agreement of the parties.

~~15.2.~~ 16.2 Termination for Insufficient Funding. The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the performance of contract construction under the Project. Termination must be by written or fax notice to the City.

~~15.3.~~ 16.3 Suspension. In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities and performance of work authorized through this Agreement.

~~16.~~ 17. Force Majeure

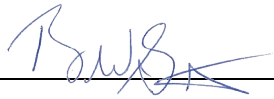
No party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

The terms of the Original Contract are expressly reaffirmed and are incorporated by reference. Except as amended herein, the terms and a conditions of the Original Contract and all previous amendments remain in full force and effect.

[The remainder of this page has been intentionally left blank]

CITY OF HASTINGS

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions, or ordinances.

By: 

Title: **Public Works Director**

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer)

Date: _____

Approved:

By: _____
(State Design Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

Date: _____

INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.