

A G E N D A
CITY COUNCIL MEETING
MONDAY, APRIL 19, 2021
5:30 P.M.
COUNCIL CHAMBERS

Call to Order.

Pledge of Allegiance.

Roll Call.

(mot) 1. Adoption of Agenda.

(mot) 2. Approving minutes from April 5, 2021

3. Recognitions and Awards.

(mot) 4. *Consent Agenda

Licenses:

Exempt Gambling (raffle): Whitetails Unlimited Southern MN Chapter on May 22, 2021

Mobile Vendor: Mimi's Cones, 1208 10th Avenue SW

Right of Way Contractor: Midwest Diversified Utilities, Ellendale

Tree Removal: RJ's Contracting, Albert Lea

Claims:

a. Pre-list of bills

b. Investment Report.

Event Applications:

Stepping Out for Autism Walk on June 6, 2021

AHS Prom Grand March on May 15, 2021

PETITIONS AND REQUESTS:

(res) 5. Setting a public hearing for May 3, 2021 for Turtle Creek 2 sewer assessments.

(res) 6. Accepting a Coronavirus Response and Relief Grant for the Austin Municipal Airport.

(res) 7. Approving a building lease agreement with Lanny Bastianson.

(mot) 8. Setting the annual stormwater meeting for May 4, 2021 at 4:00 p.m.

(res) 9. Approving a tax increment financing redevelopment agreement.

(res) 10. Accepting donations to the City of Austin.

(mot) 11. Appointing An Le to the Human Rights Commission, term expiring 12/31/2021.

(mot) 12. Appointing Lia Culbert to the Human Rights Commission, term expiring 12/31/2021.

- (mot) 13. Appointing Christopher Moore as the Honorary Council Member, May through July 2021.
14. Reviewing an off-street parking appeal submitted by ISG o/b/o WDS and Austin Port Authority regarding property to be acquired and developed by Nu-Tek BioScience.
- (mot) a. Approve or deny parking appeal.
15. Reviewing a lot split for Lance and Snow Pogones.
- (res) a. Approve or deny lot split.
16. Granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at the following locations:
- (mot) a. 500 2nd Street SE, Phoon Property.
- (mot) b. 707 6th Avenue SW, Batikare Property.
- (mot) c. 1104 11th Avenue SW, Jones Property.
- (mot) d. 401 9th Street SW, Sanchez Property.

BID OPENINGS AND AWARDS

17. Receiving bids for Shirley Theel Park tile installation.
- (res) a. Awarding bid.
18. Receiving bids for 18th Avenue NW median improvements.
- (res) a. Awarding bid.
19. Receiving bids for 8th Avenue/Place NW & 8th Avenue SW mill and overlay.
- (res) a. Awarding bid.

CLOSED SESSION

- (mot) 20. Closed pursuant to Minn. Stat. § 13D.05, subd. 3(c) to develop or consider offers or counteroffers for the purchase or sale of real or personal property. The property to be considered are parcel identification numbers 34.460.1040; 34.865.0541; and 34.865.0610.
- (mot) 20a. Reopen meeting from closed session.
- (mot) 20b. Possible action to approve direction on property acquisition.

CITIZENS ADDRESSING THE COUNCIL

HONORARY COUNCIL MEMBER COMMENTS

REPORTS AND RECOMMENDATIONS:

City Administrator
City Council

- (mot) Adjourn to **May 3, 2021** at 5:30 pm in the Council Chambers.

M I N U T E S
CITY COUNCIL MEETING
April 5, 2021
5:30 PM
Council Chambers

MEMBERS PRESENT: Mayor King. Council Members Paul Fischer, Rebecca Waller, Jason Baskin, Michael Postma, Oballa Oballa, Joyce Poshusta and Council Member-at-Large Jeff Austin

MEMBERS ABSENT: None

STAFF PRESENT: City Administrator Craig Clark, Director of Administrative Services Tom Dankert and Police Chief David McKichan

STAFF APPEARING ELECTRONICALLY: Public Works Director Steven Lang, Fire Chief Jim McCoy, Planning and Zoning Administrator Holly Wallace, Human Resources Director Trish Wiechmann, Park and Rec Director Kevin Nelson, City Attorney Craig Byram, Library Director Julie Clinefelter and City Clerk Ann Kasel

OTHERS APPEARING ELECTRONICALLY: Austin Daily Herald, Honorary Council Member Teresa Lugo, Austin Packer Dance Team, Randal Forster, Lee Gundersheimer, Miranda Moen

Mayor King called the meeting to order at 5:30 p.m.

Moved by Council Member Fischer, seconded by Council Member Waller, approving the agenda. Carried.

Moved by Council Member Fischer, seconded by Council Member Baskin, approving Council minutes from March 15, 2021. Carried.

RECOGNITIONS

The Council recognized the Austin Packer Dance Team for their second-place finish at the State competition.

The Southeast Minnesota Arts Council gave a presentation on the organization. Lee Gundersheimer stated the organization serves 11 counties in Southeast Minnesota providing grants for the arts.

Miranda Moen, an Austin artist, testified that she received a grant from the organization.

Randy Forster, director of Summerset Theater, stated their company has received multiple grants that have helped support their shows and company.

Mr. Gundersheimer asked the Council to be the ambassadors for the organization in the Austin Community and added that there will be additional grant opportunities coming forth.

CONSENT AGENDA

Moved by Council Member Fischer, seconded by Council Member Poshusta, approving the consent agenda as follows:

Licenses:

Food: Lemondrops, 129 North Main Street
Right of Way Contractor: 3701 Communications Way, Evansville, IA
Sign Installer: Atwood Electric, Sigourney, IA
Tree Service: O'Connell Tree Service, LLC, Hollandale
Temporary Liquor: Austin Area Commission for the Arts on April 24, 2021

Claims:

- a. Pre-list of bills
- b. Credit Card and Financial Reports.
- c. Andy Lunt, 1905 22nd Street SW. The matter has been forwarded to the City Attorney to protect the City's interest.

Event Applications:

"Procesion Al Aposiol Santiago" on July 24, 2021

Carried.

BID OPENINGS AND AWARDS

The City received the following bids for the replacement of the roof and insulation at Riverside Arena:

Contractor	Base Bid	Alt 1	Alt 2	Alt 3
Heritage Exteriors & Restoration	\$397,032.69	\$100,000	\$250,000	\$40
C&C Services Group	\$485,000.00	\$ 55,000	\$185,000	\$22
Allweather Roof	\$778,690.00	\$316,440	\$277,530	\$55

Public Works Director Steven Lang explained the project and stated the City would like to award the base bid plus alternate 2, which is for a metal roof. He added that the roof has been replaced many times over the life of the arena and would like to switch to the metal roof option.

Council Member Postma asked if there are sound concerns with the metal roof.

Mr. Lang stated the sound concerns would likely be in the summer, when the use of the arena is less.

Moved by Council Member Fischer, seconded by Council Member Postma, awarding the bid for Riverside Arena roof replacement with alternate numbers 2 and 3 to Heritage Exteriors & Restoration. Carried 7-0.

The City received the following bids for asphalt street reconstruction projects:

<u>Contractor</u>	<u>Bid</u>
Ulland Brothers, Inc.	\$3,130,005.85
JJD Companies, LLC	\$3,242,735.25
Heselton Construction, LLC	\$3,422,947.85
Wencl Construction, Inc.	\$3,433,195.50

Public Works Director Steven Lang state the City bid all the projects together for cost savings. He recommended awarding the bid to Ulland Brothers, Inc.

Moved by Council Member Baskin, seconded by Council Member Fischer, awarding the bid for asphalt street reconstruction projects to Ulland Brothers, Inc. Carried 7-0.

The City received the following bids for concrete street reconstruction:

<u>Contractor</u>	<u>Bid</u>
Doyle Conner Co.	\$823,551.50
Heselton Construction, LLC	\$961,723.00

Public Works Director Steven Lang recommended awarding the bid to Doyle Conner Co.

Moved by Council Member Fischer, seconded by Council Member Waller, awarding the bid for concrete street reconstruction to Doyle Conner Co. Carried 7-0.

PETITIONS AND REQUESTS

Administrative Services Director Tom Dankert stated the City sponsors a 457 retirement account for employees with Nationwide. He stated the City negotiated a reduction in fees that are charged to employees that contribute to the account. He requested the Council approve the new pricing platform and investment options. He noted that this is of no cost to the City.

Moved by Council Member Poshusta, seconded by Council Member Fischer, approving the pricing platform reduction and additional investment option for the Nationwide Deferred Comp 457 Plan. Carried.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution approving a transfer of an on-sale liquor license to Cuatro Copas Bar, LLC. Carried 7-0.

Public Works Director Steven Lang stated the Council approved lighting improvements at the Airport with the adoption of the Capital Improvement Plan. The project would be funded by 100% FAA grant. SEH, Inc. has provided a proposal in the amount of \$49,300 for the design and bidding for the project.

Moved by Council Member Fischer, seconded by Council Member Postma, adopting a resolution approving a contract with SEH, Inc. for Airport airfield lighting improvements. Carried 7-0.

Public Works Director Steven Lang stated the City requires additional funding for the construction of the Waste Water Treatment Plant and would like to apply for a Clean Water Revolving Fund loan in the amount of \$70 million. This fund may be used instead of bonding for the project.

Director of Administrative Services Tom Dankert stated the City may get a lower interest rate by going with the Clean Water Revolving Fund rather than the City issuing bonds on its own.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution approving a Clean Water Revolving Fund Loan application. Carried 7-0.

Human Resources Director Trish Wiechmann requested the Council update its Fire Department Policy for part-time firefighters. She stated the Relief association changed their bylaws and the City policy needs to be modified to reference the bylaws and Fire Civil Service Rules and Regulations.

Moved by Council Member Baskin, seconded by Council Member Oballa, adopting a revised Fire Department policy for part-time firefighters. Carried.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution authorizing the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 609 8th Avenue SW, Hays Property. Carried.

Moved by Council Member Fischer, seconded by Council Member Oballa, adopting a resolution authorizing the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 904 12th Avenue SE, Franco Property. Carried.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution authorizing the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 305 1st Avenue SW, Messerschmidt Property. Carried.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution authorizing the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1101 12th Avenue SW, North Star Homes Property. Carried.

REPORTS

City Administrator Craig Clark stated that Dr. Ciota is stepping down as the Mayo CEO for Austin.

He stated that the City met with Senator Dornink and Representative Mueller about the Waste Water Treatment Plant.

Library Director Julie Clinefelter stated the Austin Page Turners will do a writer's workshop on May 22nd.

Council Member Baskin congratulated the Austin High School girls' basketball team on their section win.

Council Member Poshusta stated that it is National Library Week and Library worker appreciation day.

Council Member Postma stated the Taste of Nations is the coming Saturday.

Moved by Council Member Fischer, seconded by Council Member Waller, adjourning the meeting to April 19, 2021. Carried.

Adjourned: 6:26 p.m.

Approved: April 19, 2021

Mayor: _____

City Recorder: _____

Austin POLICE DEPARTMENT



LAW ENFORCEMENT CENTER 201 1st ST NE STE 2 AUSTIN, MINNESOTA 55912 (507) 437-9400 FAX (507) 437-9546

EVENT APPLICATION

1. Event Title Stepping Out for Autism Walk
2. Name/Address of Organization Hormel Historic Home, 208 4th Ave NW Austin
3. Contact Person Holly Johnson E-mail holly@hormelhistorichome.org
Phone 507-433-4243 Cell Phone 704-618-5665
4. Alternate Contact _____ E-mail _____
Phone _____ Cell Phone _____
5. Date of Event 6/6/2021 Approximate Number of Participants 100
6. Assembly Area Location and Description Hormel Historic Home-Peace Garden and inside HHH.
7. Starting Time of Event 1:00p.m. Estimated Termination Time 3:00 p.m.
8. Starting Point Hormel Historic Home
9. Termination Point Hormel Historic Home
10. Portion of Street Width: *(Run/Walk Events: Runners and walkers are to remain in the furthest right lane or out of the vehicle traffic lane as much as possible. Organizers are responsible for providing personnel wearing reflective safety gear along the route to assist participants at intersections.)* Participants will stay on sidewalk and we will provide crossing guards at intersections.
11. Please draw a map on the back of this form, or attach a map or PDF of the event route, and indicate if barricades are needed. Travel route of event (and/or street closures with barricades):
Participants will leave HHH garden on 4th Ave NW heading east, then walk to Main Street and turn N to the Mill Pond area and return to the HHH via the same route.

Holly Johnson

Digitally signed by Holly Johnson
Date: 2020.02.27 08:26:49 -06'00'

4/2/2021

Signature of Applicant

Date

Approved upon compliance with the following terms and conditions: _____

Digitally signed by Steven Lang
Date: 2021.04.05 10:17:10 -05'00'

City Engineer

Date

Chief of Police or Designated Officer Date 4-5-21

Austin POLICE DEPARTMENT



LAW ENFORCEMENT CENTER 201 1st ST NE STE 2 AUSTIN, MINNESOTA 55912 (507) 437-9400 FAX (507) 437-9546

EVENT APPLICATION

1. Event Title 2021 AHS Prom Grand March
2. Name/Address of Organization Austin High School
3. Contact Person Jane Carlson E-mail jane.carlson@austin.k12.mn.us
Phone 507-460-1800 x232 Cell Phone 507-319-8255
4. Alternate Contact Lisa Quednow E-mail lisa.quednow@austin.k12.mn.us
Phone 507-460-1825 Cell Phone _____
5. Date of Event 5/15/2021 Approximate Number of Participants 250
6. Assembly Area Location and Description 3rd Street NW in front of the high school, Grand march
will be along the sidewalk and we would like to allow parents to socially distance/view from street
7. Starting Time of Event 2:30 PM Estimated Termination Time 8:00 PM
8. Starting Point 3rd Avenue NW
9. Termination Point 1st Avenue NW
10. Portion of Street Width: *(Run/Walk Events: Runners and walkers are to remain in the furthest right lane or out of the vehicle traffic lane as much as possible. Organizers are responsible for providing personnel wearing reflective safety gear along the route to assist participants at intersections.)* we would like to close off 3rd St NW from 1st Avenue to 3rd Avenue (front of high school)
11. Please draw a map on the back of this form, or attach a map or PDF of the event route, and indicate if barricades are needed. Travel route of event (and/or street closures with barricades): _____

attached

Jane Carlson

Signature of Applicant

April 13, 2021

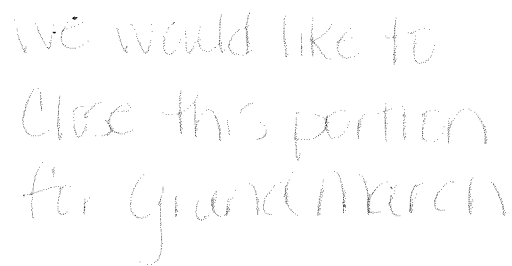
Date

Approved upon compliance with the following terms and conditions: _____

City Engineer

Date

D. [Signature] 4-15-21
Chief of Police or Designated Officer Date



RESOLUTION NO.

RESOLUTION SETTING HEARING ON PROPOSED ASSESSMENTS

WHEREAS, by resolution passed by the Council, the City Clerk is directed to prepare proposed assessments on the cost of the following projects:

Sanitary Sewer in the Turtle Creek 2 area

AND, WHEREAS, the City Clerk has notified the Council that such proposed assessments have been completed and filed in the office for public inspection.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF AUSTIN, MINNESOTA:

1. A hearing shall be held on the 3rd day of May, 2021 in the City Hall Council Chambers at 5:30 pm to pass upon such proposed assessments, and at such time and place all persons owning property affected by such improvements will be given an opportunity to be heard with reference to such assessments.
2. The City Clerk is hereby directed to cause a notice of hearing on proposed assessments to be published once in the official newspaper at least two weeks prior to the hearing, and shall state in the notice the total cost of the improvement. The City Clerk shall cause mail notice to be given to the owner of each parcel described in the assessment roll not less than two weeks prior to the hearing.
3. The owner of any property so assessed may pay his or her assessment at any time prior to certification of the assessment on such property with interest accrued to the date of payment to the City, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption of the assessments. He or she may at any time thereafter pay to the City the entire amount of the assessment remaining unpaid with interest accrued to December 31 of the year in which such payment is made.

Passed by a vote of yeas and nays this 19th day of April, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773



Steven J. Lang, P.E.
City Engr./Public Works Dir.
507-437-9949
Fax 507-437-7101
slang@ci.austin.mn.us

Memorandum

To: Mayor & Council
From: Steven J. Lang, P.E.
Date: April 12th, 2021
Subject: Airport Maintenance and Operations
Airport Coronavirus Response Grant Program

Each year the City of Austin is eligible to receive funds from MnDOT Aeronautics for operation and maintenance activities at the Austin Municipal Airport. The current two-year agreement details a reimbursement allotment to 75% or up to \$51,075 per year. As part of the agreement the city is required to operate and maintain the airport in a safe and serviceable manner, including mowing and snow removal. Each year we have about \$70,000 to 80,000 in eligible expenses, so we are able to max out the grant dollars on the following reimbursement items:

- Winter snow and ice removal
- Summer mowing
- Pavement maintenance, such as, sweeping, patching & striping
- Building utilities, supplies and repairs

With the passing of the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, the Austin Municipal Airport has received an additional \$13,000 allocation. Similar to the operations & maintenance agreement, funds can be used for the following:

- Operations
- Personnel
- Cleaning
- Sanitization
- Janitorial services
- Combating the spread of pathogens at the airport
- Debt service payments.

At this time, we would request Council acceptance of the \$13,000 grant funding. If you have any questions, please contact me.

RESOLUTION NO.

**ACCEPTING A CORONAVIRUS RESPONSE AND RELIEF
SUPPLEMENTAL APPROPRIATIONS ACT GRANT**

WHEREAS, the City of Austin has received a grant from the Coronavirus Response and Relief Supplemental Appropriations Act Grant in the amount of \$13,000 for the Austin Municipal Airport for maintenance and operations at the airport.

NOW THEREFORE, BE IT RESOLVED that the Austin City Council accepts said grant to the City of Austin in the amount of \$13,000 and authorizes the Mayor and City Recorder to execute the grant agreement.

Passed by a vote of yeas and nays this 19th day of April, 2021

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773



Steven J. Lang, P.E.
City Engineer/P.W. Director
507-437-9950
Fax 507-437-7101
slang@ci.austin.mn.us

Memorandum

To: Mayor & Council
From: Steven J. Lang, P.E.
Date: April 13th, 2021
Subject: Airport Property, Anderson Building

When the Airport expanded in the mid-2000's we purchased a parcel of property with an existing 60x60 metal building, called the Anderson Building. Over the years the building was leased out to a renter that has decided to vacate the lease. After checking around, we have found a new renter Lanny Bastianson and developed the attach building lease agreement. Details of the agreement are as follows:

<u>Anderson Building</u>	<u>Total</u>
May 1, 2021	\$2,400
May 1, 2022	\$2,400
May 1, 2023	<u>\$2,400</u>
Total	\$7,200

- Rent due in two equal payments on or before May 1st and Nov. 1st of each year
- Building to be used for the purpose of equipment/vehicle storage
- Storage and/or use of hazardous materials is not allowed
- Lessee shall pay the property taxes, estimated at \$100 for 2021

I would recommend extending a 3-year lease from May 1st, 2021 through April 30th, 2024 to Lanny Bastianson for the property described. If you have any questions, please feel free to contract me.

BUILDING LEASE

THIS AGREEMENT is made this ____ day of _____, 2021, by and between the City of Austin, a Minnesota municipal corporation, herein called LANDLORD, and Orlando Bastianson, herein called TENANT.

Section 1. Description of the property. In consideration of the rental and covenants specified below, the Landlord hereby leases to the Tenant real property located in Mower County, State of Minnesota, commonly referred to as the Anderson Building

Map available in City Engineer's Office. (Austin Township, Section 13, NE1/4 of the NE1/4)

(Herein called the "Building or Property").

Section 2. Use of Property. The Building is to be used for the purpose of equipment/vehicle storage.

- (1) Lessee agrees to comply with all state laws, local ordinances or other governmental regulations in connection with pest and weed control, land use, etc., which may be required by the property authorities. Vehicle maintenance and repair is not allowed on the property.
- (2) Storage and/or use of hazardous materials that have the potential to contaminate the ground, water or air are not allowed on the property.
- (3) The building shall maintain in good repair.
- (4) Grounds shall be mowed around the building and along the driveway.
- (5) Rodents shall be managed accordingly to minimize damage to the building and property.

Section 3. Length of Lease. This lease is for a three-year term beginning on May 1st, 2021, and ending on April 30th, 2024, unless otherwise terminated as hereinafter set forth.

Section 4. Rent. As and for rent of the above-described Building, Tenant shall pay Landlord the following said amount shall be due in two equal payments on or before May 1st and Nov. 1st of each year.

<u>Year</u>	<u>Total</u>
May 1 st , 2021	\$2,400
May 1 st , 2022	\$2,400
May 1 st , 2023	\$2,400

Section 5. Expenses.

- (1) Tenant shall pay for all expenses related to utility service for the building.
- (2) Tenant shall pay for all taxes associated with the lease of the building. This will show up as a "Personal Property" tax from the County. (*In 2020, the Personal Property tax for the building was \$92*)

Section 6. Technical Requirements

- (1) Lessee agrees not to assign or sublet the above leased premises, or any part thereof, without first obtaining the prior written consent of Lessor.
- (2) Lessee agrees that it will, at the expiration of the Lease, quietly yield and surrender the aforesaid leased premises to Lessor in as good condition and repair as when taken, reasonable wear and tear and damage by the elements excepted.

- (3) Lessee agrees to pay Lessor all costs and expenses, including attorney's fees, in a reasonable sum, in any action brought by the Lessor to recover any costs for the breach of any of the covenants or agreements contained in this Lease, or to recover possession of said property, whether such action progresses to judgment or not.
- (4) The Lessee assumes by this agreement all risk of personal injury of, or death to, himself, his employees, customers, invitees, licensees, family or guests while on or about the leased premises, and agrees to save harmless the City of Austin for all claims, suits, costs, losses, damage and expenses arising out of such injury or death.
- (5) Anything herein contained to the contrary notwithstanding, this Lease may be terminated and the provisions of this Lease may be, in writing, altered, changed or amended by mutual consent of the parties hereto. If the leased area, or any portion thereof, is needed by the Lessor for development purposes, the Lease may be terminated upon three (3) months written notice to the Lessee, and all damages are waived.
- (6) Lessee shall not be liable for any rent accruing after termination of the lease.

IN TESTIMONY WHEREOF, both parties have signed this lease this ____ day of _____, 2021.

ATTEST:

By: _____
Mayor

By: _____
Orlando Bastianson

By: _____
Recorder

Anderson Building Site Map



RESOLUTION NO.

BUILDING LEASE AGREEMENT

WHEREAS, The City of Austin owns a 60 x 60 metal building located at the Austin Municipal Airport known as the “Anderson Building”; and

WHEREAS, the City desires to lease the building to Lanny Bastianson; and

WHEREAS, the lease would run for a term of 3 years; and

WHEREAS, the lease would be for \$2,400 per year with payments due before May 1st and November 1st of each year.

NOW THEREFORE, BE IT RESOLVED THAT the Austin City Council approves said lease agreement with Lanny Bastianson.

Passed by a vote of Yeas and Nays this 19th day of April, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773



Steven J. Lang, P.E.
City Engr./Public Works Dir.
507-437-9949
Fax 507-437-7101
slang@ci.austin.mn.us

Memorandum

To: Mayor & Council
From: Steven J. Lang, P.E.
Date: April 13, 2021
Subject: 2021 Annual Stormwater Public Meeting

The City, under regulations from the current Small Municipal Separate Storm Sewer System General Permit (MNR040000), must hold a meeting regarding stormwater utility activities that is open to public comment annually. This public forum is offered to satisfy the second minimum control measure of the general permit for public participation and involvement.

Goal 1: Public Education & Outreach

- Develop & Maintain Stormwater Information on the City Web Site
- Stormwater Information in the City Newsletter
- Provide information to Building Department for Site Development Erosion Control Practices
- Annual Meeting
- Maintain Fiscally Balanced Stormwater Utility Fund

Goal 2: Public Participation/Involvement

- Conduct Annual Meeting
- Request Public Comments
- Consider Public Input for Action
- Coordination with external partners for public involvement

Goal 3: Illicit Discharge Detection and Elimination

- Maintain Storm Sewer System Maps
- Adopted Stormwater Ordinance to Prohibit Illicit Discharge
- Information on City Web Site for Reporting Illicit Discharges

Goal 4: Construction Site Stormwater Runoff Control

- Development, Adoption and Maintenance of Stormwater Erosion Control Ordinance, since 2007
- Develop and Maintain a Permit Application for Site Development
- Continuing Education provided through the University of Minnesota for both Engineering & Building Department Staff for the following Erosion & Stormwater Management Training:
 - Inspector/Installer
 - Site Management
- Develop & Maintain Stormwater Detail Standards
- Adopted stormwater ordinance for construction site management

Goal 5: Post-Construction Stormwater Management in New Development and Redevelopment

- Review Requirement Through Development Agreements for all New and Re-development Projects for Implementation of Stormwater Requirements
- Coordination of Stormwater Issues with Watersheds
 - Turtle Creek Watershed
 - Cedar River Watershed
- Adopted stormwater ordinance for post-construction site management

Goal 6: Pollution Prevention/Good Housekeeping

- Provide Training to City Employees on Stormwater Program
- Street Sweeping
- Program for the Cleaning and Maintenance of Stormwater Catch Basins, Stormwater Ponds and System Outfalls
- Development of Inspection Recording System to Better Track System Maintenance Activities
- Record and maintain current city owned inventory
- Develop stormwater pond effectiveness procedures and schedule.
- Adopted stormwater ordinance for pollution prevention and MS4 permit requirements.

We would request the Council set the annual stormwater meeting for Tuesday, May 4th at 4:00 p.m. The meeting will be held virtually via zoom. If you wish to attend, please contact the City Engineer's Office at 507-437-9950 for a zoom meeting link.

City of Austin
Craig Clark,
City Administrator



500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9941
craige@ci.austin.mn.us
www.ci.austin.mn.us

TO: Honorable Mayor and City Council Members

FROM: Craig D. Clark, Administrator

RE: Consideration of a Redevelopment TIF Agreement for District 15 within District 1

As part of the NuTek project the City Council has approved a State of Minnesota Job Creation Fund application, a Minnesota Investment Fund application, Grow Austin participation as well as a Development Agreement with NuTek. The Development Agreement noted the future consideration of an 8-year Economic Development Tax Increment Finance district with an estimated value of \$1.25 million over the TIF period.

At the 3/15/21 meeting Council held a public hearing for the establishment of TIF District 15 within District 1 that is the main planning document that describes why the area is eligible for the proposed project and activities. There were no comments from the public and Council approved a resolution which established the new District for the NuTek property.

To build on this the resolution which established the TIF district is an agreement (Exhibit 1) for your consideration with specific terms for TIF assistance to a private developer which were not included in the TIF plan. This contract known as a TIF redevelopment agreement. We were assisted by representatives at Dorsey and Whitney and Baker Tilly in forming this agreement.

The TIF redevelopment agreement, among other things, outlines the type of project the developer is to construct, which portions of the project are reimbursable with TIF received by the City, and the conditions the developer must satisfy in order to receive the TIF assistance from the City. The TIF redevelopment agreement protects the City from having to provide TIF assistance, in the event the Developer fails to satisfy the conditions set forth in the agreement.

Please let me know if you have any questions on the agreement.

Council Action is requested to Exhibit 1 the Redevelopment TIF contract and authorize the Mayor to sign and Recorder attest the agreement.

REDEVELOPMENT AGREEMENT

IN

MUNICIPAL DEVELOPMENT DISTRICT NO. 1

AND

TAX INCREMENT FINANCING (ECONOMIC DEVELOPMENT) DISTRICT NO. 15

CITY OF AUSTIN,
MOWER COUNTY, MINNESOTA

Between

CITY OF AUSTIN, MINNESOTA

And

JCW CREEKSIDE LLC

for the

NU-TEK BIOSCIENCE PROCESSING PLANT PROJECT

Dated as of [____], 2021

This Document Was Drafted By:

DORSEY & WHITNEY LLP (GIT)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

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REDEVELOPMENT AGREEMENT

THIS Redevelopment Agreement (this "Agreement"), made and entered into as of this [] day of [], 2021 by and between the CITY OF AUSTIN, a municipal corporation and political subdivision of the State of Minnesota (the "City"), and JCW CREEKSIDE LLC, a Wisconsin limited liability company, together with its successors and assigns (the "Developer").

WITNESSETH:

WHEREAS, the City has designated a Development District in the City denominated the Municipal Development District No. 1 (the "Development District") and adopted a Development Program (the "Development Program") therefor, pursuant to and in accordance with Minnesota Statutes ("M.S."), Sections 469.124 to 469.133, as amended; and

WHEREAS, the City adopted a resolution establishing Tax Increment Financing (Economic Development) District No. 15, an "economic development district" (the "TIF District") pursuant to M.S., Section 469.174, Subdivision 12, and approved a Tax Increment Financing Plan therefor (the "TIF Plan"); and

WHEREAS, in order to achieve the objectives of the Development Program and the TIF Plan, the City intends to provide assistance to the Developer through tax increment financing, as described in M.S., Sections 469.174 through 469.1794 (the "TIF Act"), to finance construction of an approximately 60,000 square foot manufacturing facility (the "Project");

WHEREAS, the City has determined that, in order to accomplish the purposes specified in and to carry out the Development Program and the TIF Plan, it is necessary and desirable for the City to reimburse the Developer for certain costs to be incurred and paid by the Developer in connection with the Project; and

WHEREAS, the City will apply tax increment revenues generated from the TIF District to (i) pay or reimburse the City for administrative expenses relating to the TIF District to the extent permitted by the TIF Act and (ii) reimburse the Developer, for certain costs incurred in connection with the construction of the Minimum Improvements (defined below) associated with the Project; and

WHEREAS, the City believes that the development activities associated with the Project pursuant to this Agreement are in the best interests of the City and benefit the health, safety, morals and welfare of its residents, and comply with the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual obligations set forth in this Agreement, the parties hereto hereby agree as follows:

ARTICLE 1
Definitions

1.01. Definitions.

In this Agreement, unless a different meaning clearly appears from the context:

“Act” means M.S., Sections 469.124 to 469.133.

“Agreement” means this Agreement, as the same may be from time to time modified, amended or supplemented.

“Assessment Agreement” means the Assessment Agreement between the City and the Developer in the form set forth as Exhibit F hereto.

“Available Tax Increment” has the definition given it in Section 5.02(e).

“Business Subsidies Act” means M.S., Sections 116J.993 through 116J.995.

“Certificate of Completion” means a certification in the form attached hereto as Exhibit D, to be provided to the Developer pursuant to this Agreement.

“City” means the City of Austin, Minnesota.

“City Council” means the City Council of the City.

“Construction Plans” means the plans, specifications, drawings and related documents for the construction work to be performed by the Developer on the Development Property.

“County” means the County of Mower, Minnesota, a political subdivision of the State of Minnesota.

“Default Notice” means written notice from the City to the Developer setting forth the Event of Default and the action required to remedy the same.

“Developer” means JCW Creekside LLC, a limited liability company organized under the laws of the State of Wisconsin.

“Development Property” or “Property” means the real property described in Exhibit A attached hereto.

“Event of Default” means as any of the events set forth in Section 7.01 hereof.

“Legal and Administrative Expenses” means the fees and expenses incurred by the City in connection with review and analysis of the development proposed under this Agreement with the adoption and administration of the TIF Plan and establishment of the TIF District, the preparation of this Agreement and the issuance of the TIF Note including, but not limited to, attorney and municipal advisor fees and expenses;

“Minimum Improvements” means the minimum improvements to be undertaken by the Developer as a part of the Project on the Development Property all as further described in Exhibit C attached hereto.

“Mortgage” means any mortgage made by the Developer which covers, in whole or in part, the Development Property.

“Mortgagee” means the owner or holder of a Mortgage.

“M.S.” means Minnesota Statutes.

“Project” means the construction of an approximately 60,000 square foot manufacturing facility.

“Public Assistance” means the Available Tax Increment to be paid under Article 5 hereof.

“Qualified Costs” means costs incurred by Developer in connection with construction of the Minimum Improvements that are reimbursable from tax increment pursuant to Sections 469.174, Subd. 12 and 469.1761 of the TIF Act, which are shown on Exhibit C to this Agreement. The total principal amount of any and all tax increment notes issued to reimburse the Developer for Qualified Costs of the Project will not exceed \$1,250,000.

“Development District” means Municipal Development District No. 1, designated pursuant to the Act.

“Development Program” means the Development Program developed for Municipal Development District No. 1.

“Restrictions” means the easements, covenants, conditions and restrictions set forth in Exhibit B attached hereto.

“Section” means a Section of this Agreement, unless used in reference to M.S..

“State” means the State of Minnesota.

“Termination Date” means the earlier of (i) February 1, 2032, (ii) the date the TIF Note is paid in full, (iii) the date on which the Tax Increment District expires or is otherwise terminated, or (iv) the date this Agreement is terminated or rescinded in accordance with its terms;

“TIF Act” means M.S., Sections 469.174 through 469.1794, as amended.

“TIF District” means Tax Increment Financing (Economic Development) District No. 15, a economic development district, established by the City Council on March 15, 2021.

“TIF Note” means the Tax Increment Revenue Note (JCW Development LLC) to be executed by the City and delivered to the Developer pursuant to Article 5 hereof, the form of which is attached hereto as Exhibit E.

“TIF Plan” means the Tax Increment Financing Plan for the TIF District approved by the City Council.

“Unavoidable Delay” means a failure or delay in a party’s performance of its obligations under this Agreement, or during any cure period specified in this Agreement which does not entail the mere payment of money, not within the party’s reasonable control, including but not limited to weather delays, acts of God, governmental agencies, the other party, strikes, labor disputes, fire or other casualty, lack of materials, or declarations of any state, federal or local government, pandemics, epidemics (including the COVID-19 virus). Within ten (10) days after a party impaired by the delay has actual (as opposed to constructive) knowledge of the delay it shall give the other party notice of the delay and the estimated length of the delay, and shall give the other party notice of the actual length of the delay within ten (10) days after the cause of the delay has ceased to exist. The parties shall pursue with reasonable diligence the avoidance and removal of any such delay. Unavoidable Delay shall not extend performance of any obligation unless the notices required in this definition are given as herein required.

ARTICLE 2

Representations and Warranties

2.01. City Representations.

The City makes the following representations to the Developer:

(a) The City a municipal corporation and political subdivision of the State. Under the provisions of the Act and the TIF Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City has designated the Development District and has adopted the Development Program in accordance with the provisions of the Act and has created the TIF District and adopted the TIF Plan in accordance with the provisions of the TIF Act.

(c) With each TIF Note payment, the City will provide Developer with a statement showing the Available Tax Increment along with a statement of the remaining amount of principal.

2.02. Developer Representations.

The Developer represents and warrants that:

(a) The Developer is a Wisconsin limited liability company and has power to enter into this Agreement and has duly authorized, by all necessary corporate action, the execution and delivery of this Agreement.

(b) Developer will, subject to and as required by Agreement, construct the Minimum Improvements in accordance with the terms of this Agreement, the TIF Plan and all applicable local, state and federal laws and regulations.

(c) At such time or times as may be required by law, the Developer will have complied with all local, state and federal environmental laws and regulations applicable to the Minimum Improvements, and will have obtained any and all necessary environmental reviews, licenses and clearances. The Developer has received no written notice from any local, state or federal official that the activities of the Developer or the City with respect to the Development Property may be or will be in violation of any environmental law or regulation. The Developer has no actual knowledge of any facts the existence of which would cause it to be in violation of any local, state or federal environmental law, regulation or review procedure with respect to the Development Property.

(d) Neither the execution or delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented by, limited by, conflicts with, or results in a breach of, any restriction, agreement or instrument to which the Developer is now a party or by which the Developer is bound.

(e) The Developer has no actual knowledge that any member of the City Council, or any other officer of the City has any direct or indirect financial interest in the Developer, the Development Property, or the Project.

(f) The Developer will use commercially reasonable efforts to obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all local, state and federal laws and regulations which must be obtained or met in connection with the Minimum Improvements. Without limitation to the foregoing, the Developer will request and seek to obtain from the City all necessary variances, conditional use permits and zoning changes related to the Minimum Improvements.

(g) The Developer would not undertake the Project without the financial assistance to be provided by the City pursuant to this Agreement and the TIF Plan.

(h) Apart from the assistance to be provided under this Agreement, the Developer shall pay all standard charges and fees due with respect to real estate developments and allocable to the Development Property under City ordinances and the City code, including but not limited to special assessments for local improvements, sewer and water use charges, building permit fees, plat fees, inspection fees, storm water fees and the like used against the Development Property.

2.03. Use, Ownership of Development Property; Restrictions; Use of Development Property. The Developer's use of the Development Property shall be subject to and in compliance with all of the conditions, covenants, restrictions and limitations imposed by this Agreement, the Restrictions, and all applicable laws, ordinances and regulations.

2.04. Ownership of Development Property. The Developer hereby represents and warrants that it is the owner in fee simple of the Development Property and that there are no liens, defects or other encumbrances upon title to the Development Property that would hinder the development of the Development Property by the Developer as contemplated by this Agreement.

2.05. Declaration of Restrictive Covenants. The Developer shall prepare, execute, and record on the title to the Development Property a Declaration of Restrictive Covenants, in form approved by the City, which includes the Restrictions set forth in Exhibit B. If the Developer determines that operation of the Development Property and the Minimum Improvements would endanger the financial viability thereof, the Developer may request the City Council to consent to the amendment, modification or termination of any of the restrictions in any respect. The City is under no obligation to amend, modify or terminate any of the restrictions and may, in its sole and absolute discretion, refuse to do so.

2.06. Damage or Destruction. Subject to any mortgage requirements, upon any damage or destruction of the Project, or any portion thereof, by fire or other casualty, the Developer shall within one hundred twenty (120) days after such damage or destruction, commence the process required to repair, reconstruct and restore the damaged or destroyed Project, or portion thereof, to substantially the same condition or utility value as existed prior to the event causing such damage or destruction and shall diligently pursue such repair, reconstruction and restoration.

2.07. Relocation Costs. The Developer shall pay all relocation costs or expenses required under federal or state law to be paid to any owner or occupant of the Development Property as a result of the Project, and shall indemnify and hold harmless the City, its governing body members, officers, and agents including the independent contractors, consultants, and legal counsel, servants and employees thereof from any such relocation costs and expenses in accordance with the provisions of Section 4.01.

2.08. Job Creation. The Developer shall cause Developer's tenant to maintain employment on the Development Property at or above 15 full-time employees by the first disbursal of Public Assistance described in Article 5 hereof and 35 full-time employees by any subsequent disbursal of Public Assistance. To be counted, each such full-time employee shall be compensated at or above 140% of the Federal Poverty Level for a family of four (including wages and non-mandatory benefits).

2.09. Assessment Agreement. The Assessment Agreement shall be executed by the Developer and the City as of the date hereof, and the Developer shall cause the Assessment Agreement and an executed Assessor's Certificate attached as Exhibit C thereto to be recorded on the title to the Development Property.

ARTICLE 3 Construction of Project

3.01. Construction Plans. Prior to commencing construction of the Minimum Improvements for the Project, the Developer shall make available to the City for review Construction Plans for the Project. The Construction Plans shall provide for construction of the Project in conformity with the Development Program, the TIF Plan, this Agreement, and all applicable state and local laws and regulations. The City shall approve the Construction Plans in writing if, in the reasonable discretion of the City, the Construction Plans: (a) conform to the Development Program, the TIF Plan, this Agreement, and to any subsequent amendments thereto approved by the City; (b) conform to all applicable federal, state and local laws, ordinances, rules

and regulations; (c) are adequate to provide for construction of the Minimum Improvements; and (d) no Event of Default has occurred.

No approval by the City shall relieve the Developer of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations, or to properly construct the Project. No approval by the City shall constitute a waiver of an Event of Default. Any disapproval of the Construction Plans shall set forth the reasons therefore and shall be made within thirty (30) days after the date of their receipt by the City. If the City rejects the Construction Plans, in whole or in part, the Developer shall submit new or corrected Construction Plans within thirty (30) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the City. Issuance of a building permit by the City for the Minimum Improvements shall constitute approval by the City of the Construction Plans and their conformance to the Development Program and TIF Plan.

3.02. Undertaking of Minimum Improvements.

(a) Subject to Unavoidable Delay, Developer shall commence the Project by June 30, 2021, and cause the Project to be substantially completed in accordance with the Section 3.03(a) and other terms of this Agreement by December 31, 2022.

(b) All work with respect to the Minimum Improvements shall be in substantial conformity with the Construction Plans approved by the City.

(c) The Developer shall not interfere with, or construct any improvements over, any public street or utility easement without the prior written approval of the City. All connections to public utility lines and facilities shall be subject to approval of the City (in accordance with City code) and any applicable private utility provider. Except for public improvements, which are undertaken by the City or other governmental body and assessed against benefited properties, all street and utility installations, relocations, alterations and restorations shall be at the Developer's expense and without expense to the City. The Developer, at its own expense, shall replace any public facilities or utilities damaged during the Project by the Developer or its agents or by others acting on behalf of or under the direction or control of the Developer.

3.03. Certificate of Occupancy; Certificate of Completion.

(a) Upon the Developer's request following the City's certification that the building shell of the Project is complete, the City will furnish the Developer with a Certificate of Completion for the Project, in substantially the form attached hereto as Exhibit D, as conclusive evidence of satisfaction and termination of the agreements and covenants of this Agreement with respect to the obligations of the Developer to complete the Project. The furnishing by the City of such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Mortgagee.

(b) If the City shall refuse or fail to provide a Certificate of Completion following the Developer's request, the City shall, within ten (10) days after the Developer's request, provide the Developer with a written statement specifying in what respects the Developer has failed to complete the Project in accordance with this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the reasonable opinion of the City, for the Developer to obtain the Certificate of Completion.

3.04. Progress Reports. Until the Certificate of Completion is issued for the Project, the Developer shall make, in such detail as may reasonably be required by the City, and forward to the City, upon demand by the City (provided such demand shall not be made more frequently than quarterly in the absence of an Event of Default hereunder), a written report as to the actual progress of construction.

3.05. Access to Development Property. The Developer agrees to permit the City and any of its officers, employees or agents access to the Development Property at all reasonable times for the purpose of inspection of all work being performed in connection with the Project; provided, however, that the City shall not have an obligation to inspect such work.

3.06. Modification; Subordination. The City agrees to subordinate its rights under this Agreement to the holder of any Mortgage securing construction or permanent financing, in accordance with the terms of a subordination agreement in a form reasonably acceptable to the City.

ARTICLE 4

Defense of Claims; Insurance

4.01. Defense of Claims.

(a) The Developer shall indemnify and hold harmless the City, its governing body members, officers, and agents including the independent contractors, consultants, and legal counsel, servants and employees thereof (hereinafter, for the purposes of this Section, collectively the "Indemnified Parties") for any expenses (including reasonable attorneys' fees), loss (excluding consequential, special or punitive damages except to the extent payable to third parties by any Indemnified Parties), damage to property, or death of any person occurring at or about, or resulting from any defect in, the Project; provided, however, the Developer shall not be required to indemnify any Indemnified Party for any claims or proceedings arising from any negligent, intentional misconduct, or unlawful acts or omissions of such Indemnified Party, or from expenses, damages or losses that are eligible to be reimbursed by insurance. Promptly after receipt by the City of notice of the commencement of any action in respect of which indemnity may be sought against the Developer under this Section 4.01, such person will notify the Developer in writing of the commencement thereof, and, subject to the provisions hereinafter stated, the Developer shall assume the defense of such action (including the employment of counsel, who shall be counsel reasonably satisfactory to the City) and the payment of expenses insofar as such action shall relate to any alleged liability in respect of which indemnity may be sought against the Developer. The City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such

counsel shall not be at the expense of the Developer unless the employment of such counsel has been specifically authorized by the Developer. Notwithstanding the foregoing, if the City has been advised by independent counsel that there may be one or more legal defenses available to it which are different from or in addition to those available to the Developer, the Developer shall not be entitled to assume the defense of such action on behalf of the City, but the Developer shall be responsible for the reasonable fees, costs and expenses (including the employment of counsel) of the City in conducting their defense. The Developer shall not be liable to indemnify any person for any settlement of any such action effected without the Developer's consent. The omission to notify the Developer as herein provided will not relieve the Developer from any liability which they may have to any Indemnified Party pursuant hereto, otherwise than under this Section.

(b) The Developer agrees to protect and defend the Indemnified Parties, and further agrees to hold the aforesaid harmless, from any claim, demand, suit, action or other proceeding whatsoever by any person or entity arising or purportedly arising from the actions or inactions of the Developer (or other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event, apply to any pecuniary loss (excluding consequential, special or punitive damages except to the extent payable to third parties by any of the Indemnified Parties) or penalty (including interest thereon from the date the loss is incurred or penalty is paid by the City at a rate equal to the prime rate) as a result of the Project, as constructed and operated by the Developer, causing the TIF District to cease to qualify as a "economic development district" under the TIF Act or to violate limitations as to the use of the revenues therefrom as set forth in the TIF Act.

(c) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City, as the case may be.

4.02. Insurance.

(a) Subject to the terms of any Mortgage relating to the Development Property, the Developer shall keep and maintain the Development Property and Minimum Improvements at all times insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with facilities of the type and size comparable to the Minimum Improvements, and the Developer shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for direct damage insurance covering all risks of loss, including, but not limited to, the following:

1. fire
2. extended coverage perils
3. vandalism and malicious mischief

4. boiler explosion (but only if steam boilers are present)
5. collapse

on a replacement cost basis in an amount equivalent to the full insurable value thereof. ("Full insurable value" shall include the actual replacement cost of the Minimum Improvements, exclusive of foundations and footings, without deduction for architectural, engineering, legal or administrative fees or for depreciation.) Insurance in effect with respect to any portion of the Minimum Improvements to be constructed, rehabilitated, or renovated as a part of the Project prior to the issuance by the City of a Certificate of Completion under Section 3.03 hereof with respect thereto shall be maintained on an "all-risk" builder's risk basis during the course of construction. The policies required by this Section 4.02 shall be subject to a no coinsurance clause or contain an agreed amount clause, and may contain a deductibility provision not exceeding \$25,000.

(b) Subject to the terms of any Mortgage relating to the Development Property, policies of insurance required by this Section 4.02 shall insure and be payable to the Developer, and shall provide for release of insurance proceeds to the Developer for restoration of loss. The City shall be furnished certificates showing the existence of such insurance. In case of loss, the Developer is hereby authorized to adjust the loss and execute proof thereof in the name of all parties in interest. On an annual basis and from time to time at the City's request, the Developer shall file with the City, as applicable, a certificate of insurance for each of the policies required under this Section.

ARTICLE 5

Public Assistance

5.01. Development Costs The Developer has agreed to and shall be responsible to pay all of its respective costs of the Project, as herein provided. However, the City, in order to encourage the Developer to proceed with the construction of the Minimum Improvements, and to assist the Developer in paying the costs thereof, is willing to provide the Public Assistance and thereby reimburse the Developer for Qualified Costs, as permitted by the TIF Act and in accordance with the TIF Plan, that will be incurred by the Developer to construct the Minimum Improvements.

5.02. Reimbursement for Qualified Costs.

The City agrees to reimburse the Developer, using Available Tax Increment on a pay-as-you-go basis, for Qualified Costs of the Project. The City shall, upon completion of the Minimum Improvements of the Project and the issuance of a the Certificate of Completion therefor, make reimbursement payments pursuant to a limited revenue tax increment note for the Project, the form of which is attached hereto as Exhibit E, with said payments of principal to be made on the dates (the "Payment Dates") specified in the TIF Note, subject to the following terms and conditions:

- (a) The total principal amount of any and all TIF notes issued for the Project will not exceed one million two hundred fifty thousand dollars (\$1,250,000).
- (b) The unpaid principal of the TIF Note shall bear no interest.

(c) No payments shall be made by the City to the Developer unless and until the Developer has provided written evidence reasonably satisfactory to the City that (i) Qualified Costs in the amount to be reimbursed from the Available Tax Increment have been incurred for the Project and paid by the Developer and (ii) the Certificate of Completion has been issued as contemplated in Section 3.03 hereof.

(d) The City shall be obligated to make the payments to the Developer required pursuant to this Section 5.02 *only from and to the extent of* the Available Tax Increment actually received from the TIF District for any tax year, and such payments shall never be considered to be a general obligation or indebtedness of the City.

(e) The City will retain 4.5% of the Tax Increment generated for administrative costs and apply the retained Tax Increment first to pay any administrative expenses relating to the Development Property to the extent permitted by the Tax Increment Act and to the extent that such expenses have not been paid or reimbursed to the City by the Developer. Any of the retained Tax Increment remaining after the payment of any administrative expenses then due and owing (the "Available Tax Increment") shall be paid to the Developer for reimbursement of the Qualified Costs on the Payment Dates.

(f) Upon thirty (30) days' written notice to the Developer, the City may prepay all or a portion of the outstanding principal balance due to the Developer pursuant to this Section 5.02 without penalty, on any date at a prepayment price equal to the outstanding principal balance to be prepaid to the prepayment date.

(g) The City shall not be obligated to make any payments hereunder subsequent to the termination of this Agreement as provided in Section 8.06 hereof, and any amounts remaining unpaid as of such date (other than by reason of failure of the City to comply with the terms of this Agreement) shall be considered forgiven by the Developer and shall cease to be owing.

(h) The Developer may assign its rights under this Agreement (including the payments to be made to the Developer hereunder) to secure financing incurred by the Developer to pay costs of the Project, including but not limited to any Mortgagee, or, after Certificate of Completion has been issued by the City, to third parties.

5.03. Conditions Precedent to Provision of Public Assistance.

Upon payment by the Developer of Qualified Costs for the Project, the Developer will deliver to the City an instrument executed by the Developer (i) specifying the amount and nature of the Qualified Costs of the Minimum Improvements for the Project to be reimbursed and (ii) certifying that such costs have been paid to third parties unrelated to the Developer, or if any costs have been paid to third parties related to the Developer, that such costs do not exceed the reasonable and customary costs of services, labor or materials of comparable quality, dependability, availability and other pertinent criteria and that such costs have not previously been contained in an instrument furnished to the City pursuant to this Section 5.03. Together with such instrument, the Developer shall deliver to the City evidence reasonably satisfactory to the City of the payment by the Developer of such costs to be reimbursed. Thereafter, the City will provide to

the Developer reimbursement for the Project, constituting a portion of the Public Assistance described in this Article 5, paid up to the maximum amount then due and payable, in accordance with Section 5.02.

5.04. Satisfaction of Conditions Precedent. Notwithstanding anything to the contrary contained herein, the City's obligation to reimburse the Developer for Qualified Costs shall be subject to satisfaction, or waiver in writing by the City, of all of the following conditions precedent:

- (a) the conditions precedent in this Section 5.04 hereof have been satisfied;
- (b) the Developer shall have cured any material title defects with respect to the Development Property;
- (c) the Developer shall not be in default under the terms of this Agreement beyond any applicable cure period;
- (d) the Developer shall have executed and recorded on the title to the Development Property, the Declaration of Restrictive Covenants, required by Section 2.05 hereof, as set forth in Exhibit B;
- (e) the Developer shall have closed on or received commitments in financing or shall provide equity sufficient to pay all costs to be incurred in connection with the Project;
- (f) the job creation conditions described in Section 2.08 have been satisfied;
and
- (g) the Developer shall have executed the Assessment Agreement described in Section 2.09.

In the event that all of the above conditions required to be satisfied as provided in this Section 5.04 have not been satisfied by December 31, 2022, either the City or the Developer may terminate this Agreement if such conditions are not satisfied within thirty (30) days following notice to the non-terminating party by the terminating party. Upon such termination, the provisions of this Agreement relating to the Minimum Improvements shall terminate and, except as provided in Article 8, neither the Developer nor the City shall have any further liability or obligation to the other hereunder.

5.05. Notice of Default. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement, the City shall at the same time forward a copy of such notice or demand to each investor, lender, or holder of any permitted mortgage, lien or other similar encumbrance at the last address of such holder shown in the records of the City. Each such investor, lender, or holder shall have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided that if the breach or default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project without first having expressly

assumed the obligation to the City, by written agreement satisfactory to the City, to complete the construction the Project in accordance with the plans and specifications therefor and this Agreement. Any such holder who shall properly complete the construction of the Project shall be entitled, upon written request made to the City, to a certification by the City to such effect in the manner provided in Section 3.03.

5.06. Real Property Taxes. Prior to the Termination Date, the Developer shall pay all real property taxes payable with respect to all and any parts of the Development Property acquired and owned by it until the Developer's obligations have been assumed by any other person pursuant to the provisions of this Agreement.

The Developer agrees that prior to the Termination Date:

(1) It will not seek administrative review or judicial review of the applicability of any tax statute relating to the ad valorem property taxation of real property contained on the Development Property determined by any tax official to be applicable to the Project or the Developer or raise the inapplicability of any such tax statute as a defense in any proceedings with respect to the Development Property, including delinquent tax proceedings; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(2) It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Project or the Developer or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings with respect to the Development Property; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(3) It will not seek any tax deferral or abatement, either presently or prospectively authorized under M.S., Section 469.1813, or any other State or federal law, of the ad valorem property taxation of the Development Property between the date of execution of this Agreement and the Termination Date.

5.07 Action to Reduce Taxes. The Developer may seek through petition or other means to have the market value for the Development Property reduced. Until the TIF Note is fully paid, such activity must be preceded by written notice from the Developer. Upon receiving such notice, or otherwise learning of the Developer's intentions, the City may suspend payments due under the TIF Note until the actual amount of the reduction is determined, whereupon the City will make the suspended payments less any amount that the City is required to repay the County as a result any reduction in market value of the Development Property. During the period that the payments are subject to suspension, the City may make partial payments on the TIF Note if it determines, in its sole and absolute discretion, that the amount retained will be sufficient to cover any repayment which the County may require. The City's suspension of payments on the TIF Note pursuant to this Section shall not be considered a default under this Agreement.

5.08 Legal and Administrative Expenses. The Developer shall pay all Legal and Administrative Expenses that are incurred in connection with the negotiating, approval and documentation of this Agreement. Thereafter, Administrative Expenses shall be reimbursed in accordance with 5.02(e) of this Agreement or any amendment to this Agreement requested by the Developer.

ARTICLE 6 Prohibitions Against Assignment and Transfer

6.01. Transfer of Property and Assignment. Other than leases made in the ordinary course of business, the Developer has not made and will not make, or suffer to be made, any total or partial sale, assignment, conveyance, lease, or other transfer, with respect to this Agreement, the Project or Property or any part thereof or any interest therein (other than any Mortgage or Mortgages securing financing for the Project or other than any assignment of the payments to be made to the Developer under Section 5.02 hereof that is permitted under Section 5.02 hereof), or any contract or agreement to do any of the same, without the prior written approval of the City, which shall not be unreasonably withheld or delayed. The City shall be entitled to require as conditions to any such approval that: (i) the proposed transferee have the qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer; (ii) the proposed transferee, by recordable instrument satisfactory to the City shall, for itself and its successors and assigns, assume all of the obligations of the Developer under this Agreement. No transfer of, or change with respect to, ownership in the Project or Property or any part thereof, or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Project or Property and the completion of the Project that the City would have had, had there been no such transfer or change. There shall be submitted to the City for review all legal documents relating to the transfer.

Notwithstanding the foregoing, this Section 6.01 shall not apply to any transfer or assignment: (i) to any entity controlling, controlled by or under common control with the Developer; (ii) to any entity in which the majority equity interest is owned by the parties that have a majority equity interest in the Developer; or (iii) that after giving effect to such transfer or assignment does not result in a change in control of the Developer.

Provided that no Event of Default exists hereunder, any such transfer or assignment shall release the Developer from its obligations hereunder upon execution and delivery to the City by the transferee or assignee of an instrument in form and substance satisfactory to the City by which the transferee or assignee assumes the obligations of the Developer hereunder.

Except as set forth in the immediately preceding paragraph, in the absence of specific written agreement by the City to the contrary, no approval of any assignment or transfer by the City thereof with respect to any transfer or assignment shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the completion of the Project, from any of their obligations with respect thereto.

6.02. Termination of Limitations on Transfer. The provisions of Section 6.01 shall terminate at such time as the Certificate of Completion has been issued by the City under Section 3.03 of this Agreement with respect to the Project; provided, however, that any assignment of the payments to be made to the Developer under Section 5.02 may only be assigned as permitted under Section 5.02 hereof.

ARTICLE 7

Event of Default; Fees

7.01. Events of Default. Subject to Unavoidable Delay, the following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any one or more of the following events which occurs and continues for more than thirty (30) days after written notice by the defaulting party of such default (and the term “default” shall mean any event which would with the passage of time or giving of notice, or both, be an “Event of Default” hereunder):

(a) Failure of the Developer to construct or reconstruct the Minimum Improvements as required hereunder.

(b) Failure of the Developer to furnish the Construction Plans as required hereunder.

(c) Failure of the Developer to pay to the City any amounts required to be paid by the Developer hereunder.

(d) Failure of the Developer or the City to observe and perform any other material covenant, condition, obligation or agreement on its part to be observed or performed hereunder.

(e) Failure of the Developer to pay any taxes on the Development Property prior to the same becoming delinquent.

(f) Filing of any voluntary petition in bankruptcy or similar proceedings by the Developer; general assignment for the benefit of creditors made by the Developer or admission in writing by the Developer of inability to pay its debts generally as they become due; or filing of any involuntary petition in bankruptcy or similar proceedings against the Developer which are not dismissed or stayed within sixty (60) days.

7.02. Remedies on Default. In the event the City desires to exercise any of its rights or remedies as provided herein or otherwise available to the City at law or in equity, the City shall first provide written notice to Developer setting forth with specific particularity the Event of Default and the action required to cure or remedy the same (the “Default Notice”). Developer or any transferee or assignee under Section 6.01 hereof, shall have thirty (30) days from receipt of a Default Notice to cure or remedy the Event of Default specified in the Default Notice, or such longer period as may be reasonably required to complete the cure as soon as reasonably possible under the circumstances. If, following Developer’s receipt of a Default Notice, Developer does not cure or remedy the Event of Default therein specified within the time provided above, the City

may take any one or more of the following actions at any time prior to Developer's curing or remedying the Event of Default:

(a) Suspend its performance under this Agreement until it receives assurances from Developer, deemed reasonably adequate by the City, that Developer will cure its default and continue its performance under this Agreement.

(b) In the case of a material default that is not cured within a reasonable period of time, terminate all rights of Developer under this Agreement.

(c) Withhold the Certificate of Completion.

(d) Take whatever action at law or in equity may appear necessary or desirable to the City to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement.

In the event the City should fail to observe or perform any covenant, agreement or obligation of the City on their part to be observed and performed under this Agreement, Developer may take any one or more of the following actions:

(a) Suspend its performance under this Agreement until it receives assurances from the City deemed adequate by Developer, that the City will cure its default and continue its performance under this Agreement.

(b) In the case of a material default that is not cured within a reasonable period of time, terminate all rights of the City under this Agreement.

(c) Take whatever action at law or in equity may appear necessary or desirable to Developer to enforce performance and observance of any obligation, agreement, or covenant of the City under this Agreement.

7.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City, or to the Developer is intended to 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. In order to entitle the City, or Developer to exercise any remedy reserved to them, it shall not be necessary to give notice, other than such notice as may be required under this Agreement.

7.04. Waivers. All waivers by any party to this Agreement shall be in writing. If any provision of this Agreement is breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

7.05. Agreement to Pay Attorneys' Fees. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become

due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

ARTICLE 8
General Provisions

8.01. Conflicts of Interest; City Representatives Not Individually Liable. No member, official, employee, or consultant or employee of a consultant of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, consultant or the consultant's employees or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official, consultant or consultant's employee, or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or successors or on any obligations under the terms of this Agreement. No member, official, consultant or consultant's employee, or employee of the Developer shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City on any obligations under the terms of this Agreement.

8.02. Equal Employment Opportunity. Developer, for itself and its successors and assigns, agrees that during the construction of the Project it will comply with any applicable affirmative action and nondiscrimination laws or regulations.

8.03. Restrictions on Use. Developer agrees for itself, and its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that Developer, and such successors and assigns, shall devote the Development Property to, and only to and in accordance with, the uses specified in the Development Program, this Agreement and other agreements entered into between the Developer and the City, and shall not discriminate upon the basis of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, and familial status in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

8.04. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

8.05. Business Subsidies Act.

The Developer warrants and represents that the Developer's investment in the purchase of the Development Property and in site preparation equals at least 70% of the City Assessor's finalized market value of the Development Property for the 2020 assessment year (the most recent year for which finalized values are available), calculated as follows:

Aggregate cost of acquisition of Development Property..... \$ 10

<i>Plus</i> Estimated cost of site preparation.....	\$ 1,635,000
<i>Less</i> site preparation costs reimbursed by the City.....	<u>\$(1,250,000)</u>
<i>Equals</i> net land and site preparation cost.....	\$ 385,010
Assessor's finalized market value of Development Property (2020).....	\$ 52,000

\$385,010 (net acquisition and site preparation cost) is 740.403% of \$52,000 (Assessor's finalized fair market value of the Development Property for 2020).

Accordingly, the parties agree and understand that the financial assistance described in this Agreement does not constitute a business subsidy within the meaning of the Business Subsidy Act. To the extent permitted by applicable law, the Developer releases and waives any claim against the City and its governing body members, officers, agents, servants and employees thereof arising from application of the Business Subsidy Act to this Agreement, including without limitation any claim that the City failed to comply with the Business Subsidy Act with respect to this Agreement.

8.06. Term of Agreement. This Agreement shall terminate upon the earlier to occur of (i) February 1, 2032, (ii) the date the TIF Note is paid in full, (iii) the date on which the Tax Increment District expires or is otherwise terminated, or (iv) the date this Agreement is terminated or rescinded in accordance with its terms; it being expressly agreed and understood that the provisions of this Agreement are intended to survive the expiration and satisfaction of any security instruments placed of record contemporaneously with this Agreement, if such expiration and satisfaction occurs prior to the expiration of the term of this Agreement, as stated in this Section 8.06.

8.07. Provisions Surviving Termination. Sections 4.01 and 7.05 hereof shall survive any termination, rescission, or expiration of this Agreement with respect to or arising out of any event, occurrence, or circumstance existing prior to the date thereof.

ARTICLE 9 Administrative Provisions

9.01. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by any party to another party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally as follows:

(a) in the case of Developer, addressed to or delivered personally to:

JCW Creekside LLC
c/o JCW Development LLC
100 Tower Drive

Beaver Dam, WI 53916
Attention: Benjamin D. Westra

(b) in the case of the City, addressed or delivered personally to:

City of Austin
500 4th Avenue NE
Austin, MN 55912
Attention: City Recorder

The City and the Developer, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

9.02. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

9.03. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and the Developer and their respective successors and assigns.

9.04. 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.

9.05. Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified only by written amendment authorized and executed by the City and the Developer. The Mayor and City Recorder are authorized to execute and deliver amendments and any documents related to this Agreement on behalf of the City.

9.06. Further Assurances and Corrective Instruments. The City and the Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Development Property or the Minimum Improvements or for carrying out the expressed intention of this Agreement.

9.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions or Sections of this Agreement.

9.08. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without giving effect to the conflicts-of-laws principles thereof.

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

CITY OF AUSTIN, MINNESOTA

By _____
Mayor

And _____
City Recorder

STATE OF MINNESOTA)
) ss.
COUNTY OF MOWER)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2021, by _____, the Mayor, and _____, the City Recorder, of the City of Austin, a Minnesota municipal corporation, on behalf of the corporation.

IN WITNESS WHEREOF, I have set my hand and my official seal this ____ day of _____, 2021.

Notary Public



JCW CREEKSIDE LLC, a Wisconsin limited liability company

By: Denita Schreier
Denita Schreier, Authorized Signatory

STATE OF WI)
COUNTY OF Dodge) ss.

The foregoing instrument was acknowledged before me on this 16th day of April, 2021, by Denita Schreier as the Authorized Signatory of JCW Creekside LLC, a Wisconsin limited liability company, on behalf of the company.

IN WITNESS WHEREOF, I have set my hand and my official seal this 16th day of April, 2021.

Rhonda L. Harder
Notary Public

exp 12.4.2024

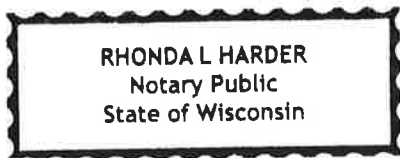


EXHIBIT A

DEVELOPMENT PROPERTY

The real property and interests in such property located in the County of Mower, State of Minnesota and described as follows:

<u>Parcel ID Number</u>	<u>Legal Description</u>
34.156.0030	Lot 1, Block 2, Cook Farm Business Park, Mower County, Minnesota
34.156.0060	Lot 4, Block 2, Cook Farm Business Park, Mower County, Minnesota

EXHIBIT B

COVENANTS AND RESTRICTIONS

During the term of that certain Redevelopment Agreement between the City of Austin (the "City"), and JCW Creekside LLC together with its successors and permitted assigns (the "Developer"), dated [____], 2021, and recorded in the Office of the Mower County Registrar as Document No. [____] on [____], 20[____], the Property shall be subject to the following covenants and restrictions:

1. The Property shall not be exempt from real estate taxes notwithstanding the ownership or use of the land.

2. The Property shall not be sold, transferred, conveyed or leased to any of the following parties:

- (a) An institution of purely public charity;
- (b) A church or ancillary tax-exempt housing;
- (c) A public hospital;
- (d) A public school district;
- (e) An organization exempt from federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if as a result of such sale, transfer, conveyance or lease the Property would become exempt from real estate taxes; or
- (f) A Minnesota cooperative association organized under Minnesota Statutes, Section 308.05 and 308.18 for the purpose of complying with the provisions of Minnesota Statutes, Section 273.133, subdivision 3, or any other party that would cause the Property to be valued and assessed for real estate tax purposes at a lower percentage of its market value than the Property is then being valued and assessed for real estate tax purposes or would result in the Property becoming exempt from real estate taxes.

3. The Property shall not be used for any of the following purposes:

- (a) The operation of a public charity;
- (b) A church or house of worship;
- (c) The operation of a public hospital;
- (d) The operation of a public schoolhouse, academy, college, university or seminary of learning; or

- (e) Any other use which would cause the Property to be valued and assessed for real estate tax purposes at a lower percentage of its market value than the Property is then being valued and assessed for real estate tax purposes or would result in the Property becoming exempt from real estate taxes.

4. The Property shall be devoted to uses consistent with a “economic development district” under Minnesota Statutes, Sections 469.174 through 469.1794.

5. The Property owner shall:

- (a) not discriminate upon the basis of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, and familial status in the sale, lease, or rental or in the use or occupancy of the Development Property, the Minimum Improvements or any part thereof;
- (b) develop the Development Property in an orderly manner consistent with the City’s zoning ordinances and comprehensive plan.

6. The covenants and restrictions herein contained shall run with the title to the Property and shall be binding upon all present and future owners and occupants of the Property; provided, however, that the covenants and restrictions herein contained shall inure only to the benefit of the City and may be released or waived in whole or in part at any time, and from time to time, by the sole act of the City, and variances may be granted to the covenants and restrictions herein contained by the sole act of the City. These covenants and restrictions shall be enforceable only by the City, and only the City shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of the covenants and restrictions herein contained, or to enforce the performance or observance thereof.

7. Notwithstanding Section 6 hereof, the covenants and restrictions herein contained shall remain in effect until the earlier of (i) February 1, 2032, (ii) the date the City terminates the TIF District or the TIF District expires, or (iii) as otherwise set forth in the Redevelopment Agreement.

EXHIBIT C

PROJECT DESCRIPTION; QUALIFIED COSTS

Project Description

The Project involves the construction of an approximately 60,000 square foot manufacturing facility. The proposed uses of the building include primarily production and operations with a small office portion for operations directly related to the business. The square footage of the completed building will comply with the requirements of an economic development district with at least 85% being used for a qualifying purpose and less than 15% will be office space.

Qualified Costs

The estimated public costs of the TIF District are listed below. Such costs ("Qualified Costs") are eligible for reimbursement from tax increments of the TIF District. The categories below identify the categories of expenses that the parties agree may be reimbursed through tax increment financing. The amounts assigned to each category are estimates only and not independent limitations of Developer's Qualified Costs.

Site Improvements/Preparation costs	\$1,250,000
Administrative expenses	<u>59,684</u>
Total	\$1,309,684*

* Developer's Qualified Cost. The total principal amount of any and all tax increment notes issued to reimburse the Developer for Qualified Costs of the Project will not exceed \$1,250,000.

EXHIBIT D

CERTIFICATE OF COMPLETION

WHEREAS, JCW Creekside LLC, a Wisconsin limited liability company (“the Developer”), is the owner and the Developer of the property in the County of Mower and State of Minnesota described on Exhibit A hereto and made a part hereof (the “Development Property”); and

WHEREAS, the Development Property is subject to the provisions of a certain Redevelopment Agreement (the “Agreement”) in the Municipal Development District No. 1 and Tax Increment Financing (Economic Development) District No. 15, dated as of [____], 2021, between the Developer and the City of Austin, Minnesota; and

WHEREAS, the Developer has fully and duly performed all of the covenants and conditions of Developer under the Agreement with respect to the completion of the Project (as defined in the Agreement);

NOW, THEREFORE, it is hereby certified that all requirements of the Developer under the Agreement with respect to the completion of the Project have been completed and duly and fully performed, and this instrument is to be conclusive evidence of the satisfactory termination of the covenants and conditions of the Agreement as they relate to the completion of the Project. All other covenants and conditions of the Agreement shall remain in effect and are not terminated hereby.

Dated this ____ day of _____, 20__.

CITY OF AUSTIN, MINNESOTA

By _____
Mayor

And _____
City Recorder

Exhibit A

Development Property

The real property and interests in such property located in the County of Mower, State of Minnesota and described as follows:

<u>Parcel ID Number</u>	<u>Legal Description</u>
34.156.0030	Lot 1, Block 2, Cook Farm Business Park, Mower County, Minnesota
34.156.0060	Lot 4, Block 2, Cook Farm Business Park, Mower County, Minnesota

EXHIBIT E

FORM OF LIMITED TAX INCREMENT REVENUE NOTE

No. R- _____

\$[_____]

**UNITED STATES OF AMERICA
STATE OF MINNESOTA
CITY OF AUSTIN**

**LIMITED REVENUE TAXABLE TAX INCREMENT NOTE
(NU-TEK BIOSCIENCE PROCESSING PLANT PROJECT)**

PRINCIPAL AMOUNT: \$

The City of Austin, Minnesota (the “City”) for value received, promises to pay, but solely from the source, to the extent and in the manner hereinafter provided, to JCW Creekside LLC, or its registered assigns (the “Owner”), the principal sum of one million two hundred fifty thousand dollars (\$1,250,000), in semi-annual installments payable beginning August 1, 2023, and on each February 1 and August 1] thereafter up to and including February 1, 2032 (each being a “Scheduled Payment Date”), with no interest on the outstanding and unpaid principal balance of this Limited Tax Increment Revenue Note (Nu-Tek Bioscience Processing Plan Project) (this “Note”). Each payment on this Note is payable in any coin or currency of the United States of America which on the date of such payment is legal tender for public and private debts and shall be made by check or draft made payable to the Owner and mailed to the Owner at the postal address within the United States designated from time to time by the Owner.

This Note is subject to prepayment on any Scheduled Payment Date at the option of the City, in whole or in part, upon payment to the Owner of the principal amount of the Note to be prepaid, without premium or penalty.

This Note is a special and limited obligation and not a general obligation of the City, which has been issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including M.S., Sections 469.174 through 469.1794. This Note is issued pursuant to the provisions of that certain Redevelopment Agreement, dated as of [_____], 2021, as the same may be amended from time to time (the “Redevelopment Agreement”), between the City and the Owner.

THIS NOTE IS NOT PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN PLEDGED TAX INCREMENT, AS DEFINED BELOW.

The Note Payment Amounts due hereon shall be payable solely from a portion of the tax increments, less the City’s administrative fee of four and five-tenths percent (4.5%), from the Development Property within the City’s Tax Increment Financing (Economic Development) District No. 15 (the “Tax Increment District”) within its Municipal Development District No. 1, which are paid to the City and which the City is entitled to retain pursuant to the provisions of

M.S., Sections 469.174 through 469.1794, as the same may be amended or supplemented from time to time (the "Available Tax Increment"). The City makes no representation or covenant, express or implied, that the Available Tax Increments will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City shall pay to the Owner on each Scheduled Payment Date all Available Tax Increment on that date to the extent necessary to pay principal then due and any past due installment. To the extent that the City is unable to pay the total principal due on this Note at or prior to the February 1, 2032, maturity date hereof as a result of its having received as of such date insufficient Available Tax Increment, such failure shall not constitute a default under this Note and the City shall have no further obligation hereon.

This Note shall not be payable from or constitute a charge upon any funds of the City, and the City shall not be subject to any liability hereon or be deemed to have obligated itself to pay hereon from any funds except the Available Tax Increment, and then only to the extent and in the manner herein specified.

The Owner shall never have or be deemed to have the right to compel any exercise of any taxing power of the City or of any other public body, and neither the City nor any council member, officer, employee or agent of the City, nor any person executing or registering this Note shall be personally liable hereon by reason of the issuance or registration hereof or otherwise. The Owner may assign its rights hereunder, with notice thereof provided to City, in accordance with the associated TIF Agreement.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the City of Austin has caused this Note to be executed by the manual signatures of the Mayor and the City Recorder and has caused this Note to be dated as of _____, 20__.

Mayor

City Recorder

EXHIBIT F

FORM OF ASSESSMENT AGREEMENT

THIS AGREEMENT is dated as of [____], 2021, and is between the City of Austin, Minnesota, a municipal corporation and political subdivision of the State of Minnesota (the “City”) and JCW Creekside LLC, a Wisconsin limited liability company together with its successors and permitted assigns (the “Developer”).

IN CONSIDERATION OF the mutual covenants and benefits herein described, the City and the Developer recite and agree as follows:

Section 1. Recitals.

1.01. Development District; Development Program. The City has heretofore undertaken certain development activities, which is a “project” as defined in Minnesota Statutes, Section 469.174, subdivision 8, known as Municipal Development District No. 1 (the “Project Area”) pursuant to a Project Plan for Municipal Development District No. 1 (the “Project Plan”).

1.02. Tax Increment Financing District; Project. Pursuant to the Minnesota Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 to 469.1794, as amended (the “TIF Act”), the City has approved a tax increment financing plan (the “Financing Plan”), which is the proposed method for financing the development activities currently proposed to be undertaken pursuant to the Project Plan and established a portion of the Project Area as a tax increment financing district (“Tax Increment District”). The Financing Plan proposes to finance the cost of construction of a manufacturing facility not less than 60,000 square feet (the “Project”).

1.03. Implementation. The City has authorized and directed its officers to take all actions necessary to implement and carry out the Project Plan and the Financing Plan. The Project Plan and the Financing Plan propose that the City finance certain costs of or related to the Project, payable from tax increment (as defined in the TIF Act) derived from the District (“Tax Increment”).

1.04. Development Agreement. The City and the Developer have entered into a Redevelopment Agreement, dated as of [____] 2021 (the “Redevelopment Agreement”), which provides that the Developer, or its permitted assignee, will improve the real property described in Exhibit A hereto (the “Land”) by the construction of the portion of the Project located thereon. The Redevelopment Agreement provides that upon the execution and delivery of the Redevelopment Agreement, the City and Developer are to enter into this Assessment Agreement.

Section 2. Minimum Market Value.

2.01. Agreed Upon Minimum. The Developer agrees that the minimum market value of the Land and the portion of the Project located thereon for ad valorem tax purposes, (i) for the assessment made as of January 2, 2022, shall be not less than \$4,700,000, and shall not be reduced by any action taken by the Developer (other than a deed in lieu of, or under threat of, condemnation by the City, Mower County or other condemning authority), to less than the said

amount, and that during the term of this Assessment Agreement no reduction of the market value therefor below said minimum market value shall be sought by the Developer or granted by any public official or court except in accordance with Minnesota Statutes, Section 469.177, subdivision 8. This minimum market value shall apply only to the Land, the portion of the Project located thereon and any other facilities situated on the Land. In the event of involuntary conversion of the Land and the portion of the Project located thereon for any reason (other than condemnation by a public entity), the minimum market value shall not be reduced to an amount less than said minimum market value.

The Developer acknowledges and agrees that the Land and the portion of the Project located thereon are subject to ad valorem property taxation and that such property taxes constitute taxes on “real property” (as provided in Section 469.174 of the TIF Act) and, to the extent reflecting net tax capacity rates of taxing jurisdictions levied against the captured net tax capacity of the District, tax increment.

2.02. Higher Market Value. Nothing in this Assessment Agreement shall limit the discretion of the assessor of the City or any other public official or body having the duty to determine the market value of the Land, the portion of the Project located thereon and other facilities on the Land for ad valorem tax purposes, to assign to the Land, the portion of the Project located thereon or to any other improvements constructed on the Land, on a nondiscriminatory basis and treated fairly and equally with all other property so classified in the respective counties, a market value in excess of the minimum market value specified in Section 2.01. The Developer shall have the normal remedies available under the law to contest any estimated assessor’s estimated value in excess of said minimum market values, but only to the extent of the excess.

2.03. Substantial Completion. For purposes of this Assessment Agreement and the determination of the market value of the Land and the portion of the Project located thereon for ad valorem tax purposes, the Developer agrees that the portion of the Project located thereon shall be deemed to be completed in accordance with the Development Agreement as of December 31, 2022 (the required date of completion), whether in fact completed or not.

Section 3. Filing and Certification.

3.01. Assessor Certification. The City shall present this Assessment Agreement to the assessor of the City and request such assessor to execute the certification attached hereto as Exhibit C. The Developer shall provide to the assessor all information relating to the Land and the portion of the Project located thereon requested by the assessor for the purposes of discharging the assessor’s duties with respect to the certification.

3.02. Filing. Prior to the recording of any mortgage, security agreement or other instrument creating a lien on the Land, the Developer shall cause this Assessment Agreement and a copy of Minnesota Statutes, Section 469.177, subdivision 8, attached hereto as Exhibit B, to be recorded in the office of the County Recorder or Registrar of Titles of Mower County, and shall pay all costs of such recording.

Section 4. Relation to Development Agreement. The covenants and agreements made by the Developer in this Assessment Agreement are separate from and in addition to the

covenants and agreements made by the Developer in the Development Agreement and nothing contained herein shall in any way alter, diminish or supersede the duties and obligations of the Developer under the Development Agreement.

Section 5. Miscellaneous Provisions.

5.01. Binding Effect. This Assessment Agreement shall inure to the benefit of and shall be binding upon the City and the Developer and their respective successors and assigns, and upon all subsequent owners of the Land and the portion of the Project located thereon.

5.02. Severability. In the event any provision of this Assessment 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.

5.03. Amendments, Changes and Modifications. Except as provided in Section 5.04, this Assessment Agreement may be amended or any of its terms modified only by written amendment authorized and executed by the City and the Developer and otherwise in compliance with Section 469.177, subdivision 8, of the Act.

5.04. Further Assurances and Corrective Instruments. The City and the Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Land or the portion of the Project located thereon, or for carrying out the expressed intention of this Assessment Agreement.

5.05. Execution Counterparts. This Assessment 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.

5.06. Applicable Law. This Assessment Agreement shall be governed by and construed in accordance with the internal laws of the State of Minnesota.

5.07. Captions. The captions or headings in this Assessment Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Assessment Agreement.

5.08. Effective Date. This Assessment Agreement shall be effective as of [____], 2021.

5.09. Termination Date. This Assessment Agreement shall terminate upon the termination of the District in accordance with Minnesota Statutes, Section 469.176, subdivision 1.

5.10. Definitions. Terms used with initial capital letters but not defined herein shall have the meanings given such terms in the Development Agreement, unless the context hereof clearly requires otherwise.

[Signature Pages Follow]

IN WITNESS WHEREOF, the City has caused this Assessment Agreement to be executed in its name by its duly authorized officers and the Developer has caused this Assessment Agreement to be executed in its corporate name.

CITY OF AUSTIN, MINNESOTA

By _____
Mayor

And _____
City Recorder

STATE OF MINNESOTA)
) ss.
COUNTY OF MOWER)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2021, by _____, the Mayor, and _____, the City Recorder, of the City of Austin, a Minnesota municipal corporation, on behalf of the corporation.

IN WITNESS WHEREOF, I have set my hand and my official seal this ____ day of _____, 2021.

Notary Public

JCW CREEKSIDE LLC, a Wisconsin limited liability company

By: Denita Schreier
Denita Schreier, Authorized Signatory

STATE OF WI)
COUNTY OF Dodge) ss.

The foregoing instrument was acknowledged before me on this 10th day of April, 2021, by Denita Schreier as the Authorized Signatory of JCW Creekside LLC, a Wisconsin limited liability company, on behalf of the company.

IN WITNESS WHEREOF, I have set my hand and my official seal this 10th day of April, 2021.

Rhonda L. Harder
Notary Public

EXP 12.4.2024

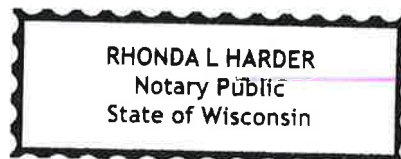


EXHIBIT A
DESCRIPTION OF LAND

The real property and interests in such property located in the County of Mower, State of Minnesota and described as follows:

<u>Parcel ID Number</u>	<u>Legal Description</u>
34.156.0030	Lot 1, Block 2, Cook Farm Business Park, Mower County, Minnesota
34.156.0060	Lot 4, Block 2, Cook Farm Business Park, Mower County, Minnesota

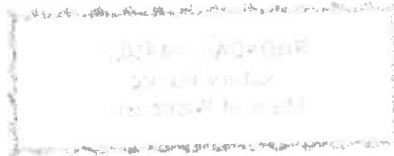


EXHIBIT B

COPY OF MINNESOTA STATUTES, SECTION 469.177, SUBDIVISION 8

Assessment agreements. An authority may enter into a written assessment agreement with any person establishing a minimum market value of land, existing improvements, or improvements to be constructed in a district, if the property is owned or will be owned by the person. The minimum market value established by an assessment agreement may be fixed, or increase or decrease in later years from the initial minimum market value. If an agreement is fully executed before July 1 of an assessment year, the market value as provided under the agreement must be used by the county or local assessor as the taxable market value of the property for that assessment. Agreements executed on or after July 1 of an assessment year become effective for assessment purposes in the following assessment year. An assessment agreement terminates on the earliest of the date on which conditions in the assessment agreement for termination are satisfied, the termination date specified in the agreement, or the date when tax increment is no longer paid to the authority under section 469.176, subdivision 1. The assessment agreement shall be presented to the county assessor, or city assessor having the powers of the county assessor, of the jurisdiction in which the tax increment financing district and the property that is the subject of the agreement is located. The assessor shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable

The assessment agreement shall be filed for record and recorded in the office of the county recorder or the registrar of titles of each county where the real estate or any part thereof is situated. After the agreement becomes effective for assessment purposes, the assessor shall value the property under section 273.11, except that the market value assigned shall not be less than the minimum market value established by the assessment agreement. The assessor may assign a market value to the property in excess of the minimum market value established by the assessment agreement. The owner of the property may seek, through the exercise of administrative and legal remedies, a reduction in market value for property tax purposes, but no city assessor, county assessor, county auditor, board of review, board of equalization, commissioner of revenue, or court of this state shall grant a reduction of the market value below the minimum market value established by the assessment agreement during the term of the agreement filed of record regardless of actual market values which may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording an assessment agreement constitutes notice of the agreement to anyone who acquires any interest in the land or improvements that is subject to the assessment agreement, and the agreement is binding upon them.

An assessment agreement may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an assessment agreement must be approved by

the governing body of the municipality. If the estimated market value for the property for the most recently available assessment is less than the minimum market value established by the assessment agreement for that or any later year and if bond counsel does not conclude that termination of the agreement is necessary to preserve the tax exempt status of outstanding bonds or refunding bonds to be issued, the modification or termination of the assessment agreement also must be approved by the governing bodies of the county and the school district. A document modifying or terminating an agreement, including records of the municipality, county, and school district approval, must be filed for record. The assessor's review and certification is not required if the document terminates an agreement. A change to an agreement not fully executed before July 1 of an assessment year is not effective for assessment purposes for that assessment year. If an assessment agreement has been modified or prematurely terminated, a person may seek a reduction in market value or tax through the exercise of any administrative or legal remedy. The remedy may not provide for reduction of the market value below the minimum provided under a modified assessment agreement that remains in effect. In no event may a reduction be sought for a year other than the current taxes payable year.

EXHIBIT C

ASSESSOR'S CERTIFICATE

The undersigned, being the duly qualified and acting assessor of the City of Austin, Minnesota, hereby certifies that.

1. I am the assessor responsible for the assessment of the Land described in the foregoing Exhibit A;

2. I have read the foregoing Assessment Agreement dated as of [____], 2021;

3. I have received and read a duplicate original of the Redevelopment Agreement referred to in the Assessment Agreement;

4. I have received and reviewed the architectural and engineering plans and specifications for the portion of the Project agreed to be constructed on the Land pursuant to the Redevelopment Agreement;

5. I have received and reviewed an estimate prepared by the Developer of the cost of the Land and the portion of the Project to be constructed thereon;

6. I have reviewed the market value previously assigned to the Land on which the applicable portion of the Project is to be constructed, and the minimum market value to be assigned to the Land and the portion of the Project located thereon by the Assessment Agreement is a reasonable estimate; and

7. I hereby certify that the market value assigned to the Land and the portion of the Project located thereon described on the foregoing Exhibit A by the Assessment Agreement is reasonable and the market value assigned to the Land and the portion of the Project located thereon, for the assessment January 2, 20__, shall be not less than \$_____, and for the assessment made as of January 2, 20__, and continuing throughout the term of this Assessment Agreement, shall be not less than \$_____.

Dated: _____, 20__.

City Assessor, City of Austin, Minnesota

RESOLUTION NO.

ACCEPTING DONATIONS TO THE CITY OF AUSTIN

WHEREAS, the City has received gift as follows:

Gift	Donor	For
\$90	Justin Ellingson	Austin Police Department
\$2500	Belita Schindler	Parks and Recreation Ski/snowshoe program
\$25	Duane and Julie Champlin	Parks and Recreation memorial scholarship program
\$5,248	Marcusen Park Baseball	Scoreboard

NOW THEREFORE, BE IT RESOLVED that the Austin City Council accepts said gifts to the City of Austin.

Passed by a vote of yeas and nays this 19th day of April, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773



Planning & Zoning Department
507-437-9950
Fax 507-437-7101

Memorandum

To: Mayor and City Council

From: Austin Planning Commission

Re: Off-Street Parking Appeal Submitted by ISG o/b/o WDS and Austin Port Authority regarding property to be acquired and developed by Nu-Tek BioScience.

Date: April 15, 2021

At the April 14, 2021, meeting of the Austin Planning Commission, the Planning Commission reviewed a request from ISG appealing the requirements of Austin City Code Section 11.70, subd. 1, (H)(14) regulating the number of off-street parking stalls required for industrial buildings.

Section 11.70, Subd. 5, allows appeal of all parking requirements to the Planning Commission and Board of Adjustment and Appeals.

The petitioners have requested approval of 51 parking stalls for a new 46,572 SF industrial facility (see attached site plan).

The project proposes to have 65 less stalls than the required 116 (1 space for every 400SF of floor area or for ea. 5 workers, whichever is greater) for the following reasons:

- there are a small number of employees relative to the size of the building,
- eleven of the 51 stalls will be allocated for visitors/excess parking
- fewer parking spaces reduces the cost of the project
- fewer spaces minimizes unnecessary impervious surface to reduce stormwater collection demand.
- there is room for expansion if needed.

This property is currently undeveloped and is located at the corner of 11th St NW and 27th Ave NW in the Creekside Business Park.

Section 11.70, Subd. 5:

All parking requirements are open to appeal to the Planning Commission and Board of Adjustment and Appeals.

REQUIRED OFF-STREET PARKING

116 spaces

Parking Proposed: 51 spaces (44% of required parking)

The Planning Commission determined, based on the information presented, that that the parking will accommodate the proposed use.

After review, the Planning Commission, with eight members present, recommended granting the appeal by the following vote:

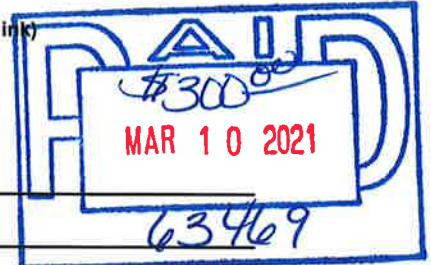
Ayes – 8

Nays – 0

APPLICATION FOR CONSIDERATION OF PLANNING REQUEST

(This form should be filled out in duplicate by typing or printing in ink)

CITY OF AUSTIN



Street Location of Property: The SE corner of 11th St NW & 27th Ave NW

Legal Description of Property: Parcel 34.156.0030

COOK FARM BUSINESS PARK Lot 001 Block 002 SubdivisionCd 34156

Owner: Name Austin Port Authority Phone _____

Address 500 4TH AVE NE

City Austin State MN Zip 55912

Type of Request: ☒ X Variance _____ CUP _____ IUP _____ Rezone _____ Other _____

Applicable to Section 11.70 of the Austin City Zoning Ordinance, as amended

Description of Request _____

Parking variance to allow for a reduction in spaces required. Per Section 11.70, over 100 parking spaces would be required. Approval for 51 parking spaces is requested.

Reason for Request _____

There would be a maximum of 40 employees. The requested 51 parking spaces would be enough to accommodate all employees and guests parking needs on-site.

Present Zoning Classification I-1 Limited Industrial

Existing Use of the Property Vacant

Has a request for a rezoning, variance, or conditional use permit on the subject site or any part thereof been previously sought? No When? n/a

Signature of Applicant  Date 3-2-2021

Approved _____ Denied _____ by the Planning Commission on _____ (date)

Approved _____ Denied _____ by the Common Council

Comments _____

MARCH 9, 2021

Holly Wallace
Planning & Zoning Administrator
City of Austin
500 4th Ave NE
Austin, MN 55912
HollyW@ci.austin.mn.us



RE: WDS CONSTRUCTION
VARIANCE APPLICATION

Dear Ms. Wallace,

ISG works for WDS Construction in providing engineering, site design and permitting services. On behalf of WDS, we are submitting a Variance Application and the supporting documents for the proposed new WDS Construction Spray Dryer on the Parcel 34.156.0030. The property is a vacant +/- 4.34-acre lot in the I-1 zone district. The following narrative describes the design intent and variance request in detail.

VARIANCE REQUEST

WDS Construction is proposing to construct a new 46,572 SF facility for an industrial spray dryer facility. A concept plan is provided to illustrate the site layout.

WDS is requesting a parking reduction variance from the City of Austin's code requirements. Per Section 11.70 of Austin's Code of Ordinances, "Industrial buildings, warehouses, wholesale houses are required to provide one parking space for each 400 SF of floor area or for each five workers based on peak employment, whichever requirement is greater." This would result in a requirement of greater than 100 parking spaces for the proposed building. Instead, WDS is requesting approval for a total of 51 parking spaces.

WDS requests that the City of Austin's Board of Adjustment and/or Planning Commission consider the variance request for the following reasons:

1. Granting a parking reduction would have no detriment to the health, safety and welfare of the community, and no negative impacts to the adjacent properties. As detailed in the following points, the parking reduction would still provide more than adequate on-site parking for the proposed facility and not cause any off-site parking disturbance to adjacent properties.
2. There would be a maximum of 40 employees, and therefore, requiring more than 100 parking spaces would provide an excess of unnecessary parking. The lower number of employees compared to other industrial facilities is a result of process automation requiring less employees at this proposed site.
3. The proposed parking of 51 spaces would be enough to accommodate the maximum employees and visitors to the site. There would be no need for on-street or off-site parking with this parking reduction variance request.



4. Reducing the parking spaces to meet the actual needs of the facility would also reduce unnecessary impervious site coverage and reduce demand on the City's storm sewer and regional stormwater treatment pond.

Should the variance be granted, we will proceed with the site plan review and other necessary applications necessary to gain approval for development.

Thank you again for reviewing the variance application and associated materials. Please contact me at 507-387-6651 with any questions or if there is any additional information we can provide in support of this project. We look forward to working with you and the City of Austin.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Petzel", is positioned above the typed name.

Bryan Petzel, PE
Civil Engineering Group Leader
Bryan.Petzel@ISGInc.com

Attachments: Variance Application
 Concept Plan

City of Austin
500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773



Holly Wallace
Planning & Zoning Administrator
507-437-9952 / Fax 507-437-7101
Cellular 1-507-438-2380
Email: hollyw@ci.austin.mn.us

Memorandum

To: Mayor and City Council

From: Holly Wallace, Austin Planning & Zoning Administrator

Subject: Requested Minor Subdivision of Property petitioned by Lance and Snow Pogones

Date: April 15, 2021

Please find attached a survey and legal description of a property which has been petitioned for a lot split. Pogones currently has a home on the larger parcel, but wishes to create a smaller parcel, within the larger parcel, for a new home and to sell the current home. The Pogones property is outside the city limits, but within the city's extraterritorial area (2 miles within city limits). The city subdivision ordinance applies to properties in the extraterritorial area. However, the county zoning ordinances still apply. Therefore a parallel review by the city and county is appropriate, with a view towards mitigating potential issues should the area be annexed in the future.

Pogones is in the process of obtaining a zoning permit from the county and city staff and AU have also reviewed the proposed lot split. No concerns were noted by city and AU staff. The lot split is part of the zoning permit process, as well as other land use issues the county is still reviewing. The county does not object to the lot split.

CERTIFICATE OF SURVEY IN LOT 3, BLOCK 1, VALLEY VIEW ACRES MOWER COUNTY, MINNESOTA

PREPARED LEGAL DESCRIPTION PARCEL C

All that part of Lot 3, Block 1, VALLEY VIEW ACRES, as the same is platted and recorded in the office of the County Recorder of Mower County, Minnesota; described as follows:

Commencing at the southeast corner of said Lot 3; thence South 89°08'34" West a distance of 568.01 feet on an assumed bearing on the south line of said Lot 3 to the point of beginning;

thence South 89°08'34" West a distance of 284.67 feet on the south line of said Lot 3;

thence North 00°32'55" West a distance of 437.11 feet;

thence North 61°22'01" East a distance of 322.66 feet;

thence South 00°32'55" East a distance of 587.48 feet to the point of beginning.

PREPARED LEGAL DESCRIPTION PARCEL D

All that part of Lot 3, Block 1, VALLEY VIEW ACRES, as the same is platted and recorded in the office of the County Recorder of Mower County, Minnesota; less all that part of said Lot 3 which is west of a line drawn parallel with and 908.00 feet east of the west line of said Valley View Acres;

also less the following:

Commencing at the southeast corner of said Lot 3; thence South 89°08'34" West a distance of 568.01 feet on an assumed bearing on the south line of said Lot 3 to the point of beginning;

thence South 89°08'34" West a distance of 284.67 feet on the south line of said Lot 3;

thence North 00°32'55" West a distance of 437.11 feet;

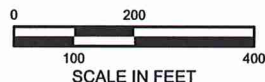
thence North 61°22'01" East a distance of 322.66 feet;

thence South 00°32'55" East a distance of 587.48 feet to the point of beginning.

LEGEND:

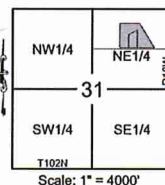
- = 5/8 Inch x 16 Inch iron stake monument
(Capped S.J.T. 22705)-Placed
- = Iron stake monument-Found

SCALE: 1" = 200'



FOR: LANCE POGONES

LOCATION MAP



Date: 1/8/21
 Revised date: -
 Drawn by: ADM
 Survey: S.J.T.
 Coord-System: MNDOT CO. NAD83 1996
 Page 1 of 1
 Job No: 20-364 REV.DWG

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This document is the property of Jones, Haugh & Smith Inc. and may not be used, copied or duplicated without prior written consent.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Steven J. Thompson,
 L.S. No. 22705

Date



**JONES
 HAUGH
 SMITH**
 Engineers + Surveyors

515 South Washington Ave.
 Albert Lea, MN 56007
 507-373-4876

415 West North Street
 Owatonna, MN 55060
 507-451-4598

RESOLUTION NO. _____

EXEMPTING SUBDIVIDER FROM AUSTIN CITY CODE
SUBDIVISION REGULATION AND REQUIREMENTS

WHEREAS, the petitioners, Lance and Snowell Pogones, have requested a waiver of the platting requirements under Section 13.40 of the Austin City Code in order to accommodate the creation of a new parcel from an existing parcel, described as;

See attached.

WHEREAS, this area is well defined within an existing parcel.

NOW THEREFORE, BE IT RESOLVED, that the petitioners above named are hereby exempt from the requirements of Chapter 13 of the Austin City Subdivision regulations requiring the platting of said property as a precondition to said subdivision.

BE IT FURTHER RESOLVED, that the City Recorder is hereby authorized and directed to deliver to owners a certified copy of this resolution for recording.

Passed by a vote of Yeas and Nays this _____ day of April 2021.

YEAS

NAYS 0

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
Zoning Department



500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9950
Fax: 507-437-7101
www.ci.austin.mn.us

Memorandum

To: Mayor and City Council

Cc: Swee Mee Phoon
911 E Village Cir SE, Rochester, MN 55904

From: Holly Wallace, Planning & Zoning Administrator

Re: Accumulation of Refuse and Junk
At 500 2nd St SE, Phoon Property

Date: April 16, 2021

May I ask the City Council to approve granting the Planning & Zoning Department the power to contract for the removal of refuse and junk at 500 2nd St SE. The property owner has been notified of this violation to the City Code Sections 10.01 Subd.2 & 3, 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

Therefore, I am requesting the Mayor and City Council to approve empowering the Planning & Zoning Department to act on the removal of this junk. Such action is permitted by the City Code Section 10.14.

Thank You

City of Austin
Zoning Department



500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9950
Fax: 507-437-7101
www.ci.austin.mn.us

March 22nd, 2021

Swee Mee Phoon
911 E Village Cir SE
Rochester, MN 55904

RE: Zoning Violations at 500 2nd St SE, Austin, MN 55912

Dear Swee:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on March 22nd, 2021 at this site and the following issues need to be resolved:

1. **Remove all junk/garbage from property**

The violation of Austin City Code Sections 10.01 Subd 2 & 3, 10.14 Subd.1(B) 4 and 10.14 Subd.4-6 were found. These City Code sections read as follows:

City Code Section 10.01 Subd. 2. *Disposal required.* Every person shall, in a sanitary manner, store and dispose of refuse that may accumulate upon property owned or occupied by him or her in accordance with the terms of this section. Garbage shall be collected or otherwise lawfully disposed of, at least once each week during the year.

City Code Section 10.01 Subd 3. Deposit of garbage or refuse. It is unlawful:

D. For any person to deposit anywhere within the city any refuse in a manner that it may be carried or deposited by the elements upon any public place or any other premises within the city;

City Code Section 10.14, Subd. 1(B):

JUNK. All scrap metal, rags, batteries, paper, trash, rubber tires, debris, waste, wood, and/or construction materials not used in connection with a building or which is carried as inventory in an on-going construction business at a lawful place of business, dismantled vehicles, machinery and appliances or parts thereof and parts of vehicles, glass, tinware, plastic, aluminum and/or steel cans, old or discarded household goods, household furnishings or furniture, hardware or appliances. Neatly stacked firewood located so as to comply with the setback requirements as set forth in Chapter 11 and in accordance with side yard or rear yard setback requirements shall not be considered junk.

City Code Section 10.14, Subd. 4. *Notice and abatement.*

B. *Public nuisances affecting health*

5. Accumulations of manure, refuse or other debris;

D. *Public nuisances affecting peace and safety.*

16. Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from accumulation;

City Code Section 10.14, Subd. 4(E-G)

NOTICE AND ABATEMENT.

E. Whenever a public officer or other person charged with enforcement determines that a public nuisance is being maintained or exists on premises in the City, the City enforcement officer shall notify in writing the owner or occupant of the premises of such fact and order that such nuisance be terminated and abated.

F. The notice shall be served in person or by certified or registered mail. If the premises are not occupied and the owner is unknown, the notice may be served by posting it on the premises. The notice shall specify the steps to be taken to abate the nuisance and the time, not exceeding ten (10) days, within which the nuisance is to be abated.

G. If an emergency exists that presents an immediate danger to citizens affecting their safety, the officer shall require immediate abatement of such nuisance. If the notice is not complied with within the time specified, the enforcing officer shall report that fact forthwith to the Council and may take such other appropriate action as may be necessary. The Council may, after notice to the owner or occupant, provide for the abating of the nuisance by the City.

City Code Section 10.14, Subd. 5:

RECOVERY OF COST. The owner of the premises on which a nuisance has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Recorder shall prepare a bill for the cost and mail it to the owner. There upon, the amount shall be immediately due and payable at the Office of the City Recorder. Ownership shall be presumed to be the owner as shown on the records of the County Treasurer unless the City Recorder has reason to know that such information is not accurate, in which event, notice shall be given to such other person as the City Recorder has reason to believe is, in fact, the true owner of said premises.

City Code Section 10.14, Subd. 6:

ASSESSMENT. If the cost of abating said nuisance is not paid in full to the City Recorder before September 1, next, then on or before September 1, next, following the abatement of the nuisance, the City Recorder shall list the total unpaid charges along with other such charges, as well as other charges for current services to be assessed under Minnesota Statutes 429.101 against each separate lot or parcel to which charges are attributable. The Council may then spread the charges against such property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten (10), as the Council may determine in each case.

Please resolve the City Code violations within **10 days** of the date of this letter, or the matter will be referred to the Austin City Council for corrective action. Council generally meets the first and third Mondays of every month. You will be fined a minimum of \$100, the amount varies depending on the type of violations.

Your cooperation with this matter will be greatly appreciated, and if you have any questions, please call me at my office at (507)437-9950.

Sincerely,



Brent Johnson
Zoning Inspector



April 14, 2021
11:18 AM

500 2nd St SE

City of Austin
Zoning Department



500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9950
Fax: 507-437-7101
www.ci.austin.mn.us

Memorandum

To: Mayor and City Council

Cc: Borere Batikare
707 6th Ave SW, Austin, MN 55912

From: Holly Wallace, Planning & Zoning Administrator

Re: Accumulation of Refuse and Junk
At 707 6th Ave SW, Batikare Property

Date: April 16, 2021

May I ask the City Council to approve granting the Planning & Zoning Department the power to contract for the removal of refuse and junk at 707 6th Ave SW. The property owner has been notified of this violation to the City Code Sections 10.01 Subd.2 & 3, 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

Therefore, I am requesting the Mayor and City Council to approve empowering the Planning & Zoning Department to act on the removal of this junk. Such action is permitted by the City Code Section 10.14.

Thank You

**City of Austin
Zoning Department**



**500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9950
Fax: 507-437-7101
www.ci.austin.mn.us**

March 23rd, 2021

Borere Batikare
707 6th Ave SW
Austin, MN 55912

RE: Zoning Violations at 707 6th Ave SW, Austin, MN 55912

Dear Borere:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on March 23rd, 2021 at this site and the following issues need to be resolved:

1. Remove all junk/garbage from property

The violation of Austin City Code Sections 10.01 Subd 2 & 3, 10.14 Subd.1(B) 4 and 10.14 Subd.4-6 were found. These City Code sections read as follows:

City Code Section 10.01 Subd. 2. *Disposal required.* Every person shall, in a sanitary manner, store and dispose of refuse that may accumulate upon property owned or occupied by him or her in accordance with the terms of this section. Garbage shall be collected or otherwise lawfully disposed of, at least once each week during the year.

City Code Section 10.01 Subd 3. *Deposit of garbage or refuse. It is unlawful:*

D. For any person to deposit anywhere within the city any refuse in a manner that it may be carried or deposited by the elements upon any public place or any other premises within the city;

City Code Section 10.14, Subd. 1(B):

JUNK. All scrap metal, rags, batteries, paper, trash, rubber tires, debris, waste, wood, and/or construction materials not used in connection with a building or which is carried as inventory in an on-going construction business at a lawful place of business, dismantled vehicles, machinery and appliances or parts thereof and parts of vehicles, glass, tinware, plastic, aluminum and/or steel cans, old or discarded household goods, household furnishings or furniture, hardware or appliances. Neatly stacked firewood located so as to comply with the setback requirements as set forth in Chapter 11 and in accordance with side yard or rear yard setback requirements shall not be considered junk.

City Code Section 10.14, Subd. 4. *Notice and abatement.*

B. *Public nuisances affecting health*

5. Accumulations of manure, refuse or other debris;

D. *Public nuisances affecting peace and safety.*

16. Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from accumulation;

City Code Section 10.14, Subd. 4(E-G)

NOTICE AND ABATEMENT.

E. Whenever a public officer or other person charged with enforcement determines that a public nuisance is being maintained or exists on premises in the City, the City enforcement officer shall notify in writing the owner or occupant of the premises of such fact and order that such nuisance be terminated and abated.

F. The notice shall be served in person or by certified or registered mail. If the premises are not occupied and the owner is unknown, the notice may be served by posting it on the premises. The notice shall specify the steps to be taken to abate the nuisance and the time, not exceeding ten (10) days, within which the nuisance is to be abated.

G. If an emergency exists that presents an immediate danger to citizens affecting their safety, the officer shall require immediate abatement of such nuisance. If the notice is not complied with within the time specified, the enforcing officer shall report that fact forthwith to the Council and may take such other appropriate action as may be necessary. The Council may, after notice to the owner or occupant, provide for the abating of the nuisance by the City.

City Code Section 10.14, Subd. 5:

RECOVERY OF COST. The owner of the premises on which a nuisance has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Recorder shall prepare a bill for the cost and mail it to the owner. There upon, the amount shall be immediately due and payable at the Office of the City Recorder. Ownership shall be presumed to be the owner as shown on the records of the County Treasurer unless the City Recorder has reason to know that such information is not accurate, in which event, notice shall be given to such other person as the City Recorder has reason to believe is, in fact, the true owner of said premises.

City Code Section 10.14, Subd. 6:

ASSESSMENT. If the cost of abating said nuisance is not paid in full to the City Recorder before September 1, next, then on or before September 1, next, following the abatement of the nuisance, the City Recorder shall list the total unpaid charges along with other such charges, as well as other charges for current services to be assessed under Minnesota Statutes 429.101 against each separate lot or parcel to which charges are attributable. The Council may then spread the charges against such property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten (10), as the Council may determine in each case.

Please resolve the City Code violations within **10 days** of the date of this letter, or the matter will be referred to the Austin City Council for corrective action. Council generally meets the first and third Mondays of every month. You will be fined a minimum of \$100, the amount varies depending on the type of violations.

Your cooperation with this matter will be greatly appreciated, and if you have any questions, please call me at my office at (507)437-9950.

Sincerely,



Brent Johnson
Zoning Inspector



April 14, 2021
10:50 AM

707 6th Ave SW

City of Austin
Zoning Department



500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9950
Fax: 507-437-7101
www.ci.austin.mn.us

Memorandum

To: Mayor and City Council

Cc: Dennis Jones
1009 Ridge Rd, Darien, GA 31305-9646

From: Holly Wallace, Planning & Zoning Administrator

Re: Accumulation of Refuse and Junk
At 1104 11th Ave SW, Jones Property

Date: April 21, 2021

May I ask the City Council to approve granting the Planning & Zoning Department the power to contract for the removal of refuse and junk at 1104 11th Ave SW. The property owner has been notified of this violation to the City Code Sections 10.01 Subd.2&3, 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

Therefore, I am requesting the Mayor and City Council to approve empowering the Planning & Zoning Department to act on the removal of this junk. Such action is permitted by the City Code Section 10.14.

Thank You

**City of Austin
Zoning Department**



**500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
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Fax: 507-437-7101
www.ci.austin.mn.us**

March 24th, 2021

Dennis Jones
1009 Ridge Rd
Darien, GA 31305-9646

RE: Zoning Violations at 1104 11th Ave SW, Austin, MN 55912

Dear Dennis:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on March 24th, 2021 at this site and the following issues need to be resolved:

1. Remove all junk/garbage from property

The violation of Austin City Code Sections 10.01 Subd 2 & 3, 10.14 Subd.1(B) 4 and 10.14 Subd.4-6 were found. These City Code sections read as follows:

City Code Section 10.01 Subd. 2. *Disposal required.* Every person shall, in a sanitary manner, store and dispose of refuse that may accumulate upon property owned or occupied by him or her in accordance with the terms of this section. Garbage shall be collected or otherwise lawfully disposed of, at least once each week during the year.

City Code Section 10.01 Subd 3. *Deposit of garbage or refuse. It is unlawful:*

D. For any person to deposit anywhere within the city any refuse in a manner that it may be carried or deposited by the elements upon any public place or any other premises within the city;

City Code Section 10.14, Subd. 1(B):

JUNK. All scrap metal, rags, batteries, paper, trash, rubber tires, debris, waste, wood, and/or construction materials not used in connection with a building or which is carried as inventory in an on-going construction business at a lawful place of business, dismantled vehicles, machinery and appliances or parts thereof and parts of vehicles, glass, tinware, plastic, aluminum and/or steel cans, old or discarded household goods, household furnishings or furniture, hardware or appliances. Neatly stacked firewood located so as to comply with the setback requirements as set forth in Chapter 11 and in accordance with side yard or rear yard setback requirements shall not be considered junk.

City Code Section 10.14, Subd. 4. *Notice and abatement.*

B. *Public nuisances affecting health*

5. Accumulations of manure, refuse or other debris;

D. *Public nuisances affecting peace and safety.*

16. Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from accumulation;

City Code Section 10.14, Subd. 4(E-G)

NOTICE AND ABATEMENT.

E. Whenever a public officer or other person charged with enforcement determines that a public nuisance is being maintained or exists on premises in the City, the City enforcement officer shall notify in writing the owner or occupant of the premises of such fact and order that such nuisance be terminated and abated.

F. The notice shall be served in person or by certified or registered mail. If the premises are not occupied and the owner is unknown, the notice may be served by posting it on the premises. The notice shall specify the steps to be taken to abate the nuisance and the time, not exceeding ten (10) days, within which the nuisance is to be abated.

G. If an emergency exists that presents an immediate danger to citizens affecting their safety, the officer shall require immediate abatement of such nuisance. If the notice is not complied with within the time specified, the enforcing officer shall report that fact forthwith to the Council and may take such other appropriate action as may be necessary. The Council may, after notice to the owner or occupant, provide for the abating of the nuisance by the City.

City Code Section 10.14, Subd. 5:

RECOVERY OF COST. The owner of the premises on which a nuisance has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Recorder shall prepare a bill for the cost and mail it to the owner. There upon, the amount shall be immediately due and payable at the Office of the City Recorder. Ownership shall be presumed to be the owner as shown on the records of the County Treasurer unless the City Recorder has reason to know that such information is not accurate, in which event, notice shall be given to such other person as the City Recorder has reason to believe is, in fact, the true owner of said premises.

City Code Section 10.14, Subd. 6:

ASSESSMENT. If the cost of abating said nuisance is not paid in full to the City Recorder before September 1, next, then on or before September 1, next, following the abatement of the nuisance, the City Recorder shall list the total unpaid charges along with other such charges, as well as other charges for current services to be assessed under Minnesota Statutes 429.101 against each separate lot or parcel to which charges are attributable. The Council may then spread the charges against such property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten (10), as the Council may determine in each case.

Please resolve the City Code violations within **10 days** of the date of this letter, or the matter will be referred to the Austin City Council for corrective action. Council generally meets the first and third Mondays of every month. You will be fined a minimum of \$100, the amount varies depending on the type of violations.

Your cooperation with this matter will be greatly appreciated, and if you have any questions, please call me at my office at (507)437-9950.

Sincerely,



Brent Johnson
Zoning Inspector

CC: Anissa Jones



April 14, 2021
10:57 AM

1104 11th Ave SW

City of Austin
Zoning Department



500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9950
Fax: 507-437-7101
www.ci.austin.mn.us

Memorandum

To: Mayor and City Council

Cc: Ledesma Sanchez
401 9th St SW, Austin, MN 55912

From: Holly Wallace, Planning & Zoning Administrator

Re: Accumulation of Refuse and Junk
At 401 9th St SW, Sanchez Property

Date: April 16, 2021

May I ask the City Council to approve granting the Planning & Zoning Department the power to contract for the removal of refuse and junk at 401 9th St SW. The property owner has been notified of this violation to the City Code Sections 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

Therefore, I am requesting the Mayor and City Council to approve empowering the Planning & Zoning Department to act on the removal of this junk. Such action is permitted by the City Code Section 10.14.

Thank You

City of Austin
Zoning Department



500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9950
Fax: 507-437-7101
www.ci.austin.mn.us

March 23rd, 2021

Ledesma Sanchez
401 9th St SW
Austin, MN 55912

RE: Zoning Violations at 401 9th St SW Austin, MN 55912

Dear Ledesma:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on March 23rd, 2021 at this site and the following issues need to be resolved:

1. Remove all junk from property

The violation of Austin City Code Sections 10.14 Subd.1(B) 4 and 10.14 Subd.4-6 were found. These City Code sections read as follows:

City Code Section 10.14, Subd. 1(B):

JUNK. All scrap metal, rags, batteries, paper, trash, rubber tires, debris, waste, wood, and/or construction materials not used in connection with a building or which is carried as inventory in an on-going construction business at a lawful place of business, dismantled vehicles, machinery and appliances or parts thereof and parts of vehicles, glass, tinware, plastic, aluminum and/or steel cans, old or discarded household goods, household furnishings or furniture, hardware or appliances. Neatly stacked firewood located so as to comply with the setback requirements as set forth in Chapter 11 and in accordance with side yard or rear yard setback requirements shall not be considered junk.

City Code Section 10.14, Subd. 4. *Notice and abatement.*

B. *Public nuisances affecting health*

5. Accumulations of manure, refuse or other debris;

D. *Public nuisances affecting peace and safety.*

16. Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from accumulation;

City Code Section 10.14, Subd. 4(E-G)

NOTICE AND ABATEMENT.

E. Whenever a public officer or other person charged with enforcement determines that a public nuisance is being maintained or exists on premises in the City, the City enforcement officer shall notify in writing the owner or occupant of the premises of such fact and order that such nuisance be terminated and abated.

F. The notice shall be served in person or by certified or registered mail. If the premises are not occupied and the owner is unknown, the notice may be served by posting it on the

premises. The notice shall specify the steps to be taken to abate the nuisance and the time, not exceeding ten (10) days, within which the nuisance is to be abated.

G. If an emergency exists that presents an immediate danger to citizens affecting their safety, the officer shall require immediate abatement of such nuisance. If the notice is not complied with within the time specified, the enforcing officer shall report that fact forthwith to the Council and may take such other appropriate action as may be necessary. The Council may, after notice to the owner or occupant, provide for the abating of the nuisance by the City.

City Code Section 10.14, Subd. 5:

RECOVERY OF COST. The owner of the premises on which a nuisance has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Recorder shall prepare a bill for the cost and mail it to the owner. There upon, the amount shall be immediately due and payable at the Office of the City Recorder. Ownership shall be presumed to be the owner as shown on the records of the County Treasurer unless the City Recorder has reason to know that such information is not accurate, in which event, notice shall be given to such other person as the City Recorder has reason to believe is, in fact, the true owner of said premises.

City Code Section 10.14, Subd. 6:

ASSESSMENT. If the cost of abating said nuisance is not paid in full to the City Recorder before September 1, next, then on or before September 1, next, following the abatement of the nuisance, the City Recorder shall list the total unpaid charges along with other such charges, as well as other charges for current services to be assessed under Minnesota Statutes 429.101 against each separate lot or parcel to which charges are attributable. The Council may then spread the charges against such property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten (10), as the Council may determine in each case.

Please resolve the City Code violations within **10 days** of the date of this letter, or the matter will be referred to the Austin City Council for corrective action. Council generally meets the first and third Mondays of every month. You will be fined a minimum of \$100, the amount varies depending on the type of violations.

Your cooperation with this matter will be greatly appreciated, and if you have any questions, please call me at my office at (507)437-9950.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Johnson", written in a cursive style.

Brent Johnson
Zoning Inspector



April 14, 2021
10:54 AM

401 9th St SW

City of Austin
500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773



Steven J. Lang, P.E.
City Engr./Public Works Dir.
507-437-9949
Fax 507-437-7101
slang@ci.austin.mn.us

Memorandum

To: Mayor & Council
From: Mitch Wenum, PE
Date: April 15, 2021
Subject: Bids – Shirley Theel Park Tile Installation
CP 20307

The City of Austin received bids for the installation of drain tile in Shirley Theel Park on April 14, 2021. The park has drainage issues that limits the usage of the baseball and soccer fields by local groups during the spring and summer. The proposed project would install approximately 5,600 feet of drain tile that would help keep the fields in a usable condition. The bids are summarized below.

Contractor	Total Bid Amount
Hodgman Drainage Co.	\$58,358.75
Hansen Hauling & Excavating, Inc.	\$60,638.75
SJ Iverson Construction	\$65,219.25
Engineer's Estimate	\$70,375.00

The project will be funded with a grant from the Hormel Foundation. We would recommend awarding the project to Hodgman Drainage Co. If you have any questions, please contact me.

Hormel Foundation Grant	\$58,358.75
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RESOLUTION NO.

AWARDING BID FOR SHIRLEY THEEL PARK TILE INSTALLATION

WHEREAS, pursuant to an advertisement for bids for the following local improvements:

Shirley Theel Park Tile Installation

Bids were received, opened and tabulated according to law and the following bids were received complying with the advertisement:

<u>Contractor</u>	<u>Bid</u>
Hodgman Drainage Co.	\$58,358.75
Hansen Hauling & Excavating, Inc.	\$60,638.75
SJ Iverson Construction	\$65,219.25
Engineer's Estimate	\$70,375.00

AND, WHEREAS, it appears Hodgman Drainage Co. is the lowest responsible bidder.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Austin, Minnesota that the base bid of Hodgman Drainage Co. is hereby accepted and the Mayor and City Recorder are hereby authorized and directed to enter into the standard city contract with Hodgman Drainage Co. in the name of the City of Austin for the following:

Shirley Theel Park Tile Installation

Passed by a vote of yeas and nays this 19th day of April, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773



Steven J. Lang, P.E.
City Engr./Public Works Dir.
507-437-9949
Fax 507-437-7101
slang@ci.austin.mn.us

Memorandum

To: Mayor & Council
From: Mitch Wenum, PE
Date: April 15, 2021
Subject: Bids – 18th Avenue NW Median Improvements

The City of Austin received bids for improvements to the 18th Avenue NW medians on April 14, 2021. Work will consist of removing the existing deteriorated landscaping and filling the medians with concrete pavement. We requested bids for two alternates on the project. Alternate 1 would use standard concrete to fill the medians. Alternate 2 would use colored and stamped concrete that would match the adjacent concrete.

The bids are summarized below.

Contractor	Base Bid	Alternate Bid 1	Alternate Bid 2
Doyle Conner Co.	\$25,257.50	\$34,920.00	\$66,096.00
Legends Concrete, Inc.	\$31,975.00	\$43,640.00	\$90,720.00
Engineer's Estimate	\$18,875.00	\$52,000.00	\$60,000.00



Existing 18th Ave NW median with deteriorated landscaping. This is what the project is replacing

Cost: \$0.00



Example median with standard concrete. Alternate Bid 1 would look similar to this.

Cost: \$60,177.50



Existing 18th Ave NW median with colored and stamped concrete. Alternate Bid 2 would match this as close as possible.

Cost: \$91,353.50

We would recommend awarding the Base Bid and Alternate Bid 1 to Doyle Conner Co. The project will be funded using State Aid Funds. If you have any questions, please contact me.

State Aid Funds

\$60,177.50

RESOLUTION NO.

**AWARDING BID FOR 18TH AVENUE NW
MEDIAN IMPROVEMENTS**

WHEREAS, pursuant to an advertisement for bids for the following:

18th Avenue NW Median Improvements

Bids were received, opened and tabulated according to law and the following bids were received complying with the advertisement:

WHEREAS, the following proposals were received:

<u>Contractor</u>	<u>Base Bid</u>	<u>Alt 1</u>	<u>Alt 2</u>
Doyle Connor Co.	\$25,257.50	\$34,920	\$66,096
Legends Concrete, Inc.	\$31,975.00	\$43,640	\$90,720
Engineer's Estimate	\$18,875.00	\$52,000	\$60,000

AND, WHEREAS, the City would like to award the base bid and alternate 1 for the project;

AND WHEREAS, it appears fox Doyle Connor Co. has submitted the lowest bid for the project.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Austin, Minnesota that the bid of Doyle Connor Co. is hereby accepted and the Mayor and City Recorder are authorized to sign the contract.

Passed by a vote of yeas and nays this 19th day of April, 2021

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773



Steven J. Lang, P.E.
City Engr./Public Works Dir.
507-437-9949
Fax 507-437-7101
slang@ci.austin.mn.us

Memorandum

To: Mayor & Council
From: Mitch Wenum, PE
Date: April 15, 2021
Subject: Bids – 8th Avenue/Place NW & 8th Avenue SW Mill & Overlay
CP 21105

The City of Austin received bids for an asphalt mill and overlay project on April 15, 2021. The streets being constructed are 8th Avenue/Place NW and 8th Avenue SW. Work will consist of asphalt milling, drain tile installation, curb repairs, and asphalt paving. The bids are summarized below.

Contractor	Total Bid Amount
Ulland Brothers, Inc.	\$207,881.20
Engineer's Estimate	\$198,765.00

The projects will be funded using Local Funds 49 and 67. We would recommend awarding the project to Ulland Brothers, Inc. If you have any questions, please contact me.

Fund 49 – Capital Improvement Fund	\$ 151,845.00
Fund 67 – Stormwater Utility Fund	\$ 56,036.20

RESOLUTION NO.

**AWARDING BID FOR 8TH AVENUE/PLACE &
8TH AVENUE SW MILL AND OVERLAY PROJECT**

WHEREAS, pursuant to an advertisement for bids for the following local improvements:

8th Avenue/Place & 8th Avenue SW Mill and Overlay Project

Bids were received, opened and tabulated according to law and the following bids were received complying with the advertisement:

<u>Contractor</u>	<u>Bid</u>
Ulland Brothers, Inc.	\$207,881.20
Engineer's Estimate	\$198,765.00

AND, WHEREAS, it appears Ulland Brothers, Inc. is the lowest responsible bidder.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Austin, Minnesota that the base bid of Ulland Brothers, Inc. is hereby accepted and the Mayor and City Recorder are hereby authorized and directed to enter into the standard city contract with Ulland Brothers, Inc. in the name of the City of Austin for the following:

8th Avenue/Place & 8th Avenue SW Mill and Overlay Project

Passed by a vote of yeas and nays this 19th day of April, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor