

**A G E N D A**  
**CITY COUNCIL MEETING**  
**MONDAY, JUNE 21, 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 June 7, 2021

3. Recognitions and Awards.

    Mayor for a Day – Talan Medgaarden

    Jerry Mohrfeld Recognition – Port Authority Member since 1987

    Officers Derek Ellis, Ryan Leif and K-9 Officer Rudy

(mot) 4. \*Consent Agenda

Claims:

- a. Pre-list of bills
- b. Investment and Financial Reports.

Event Applications:

    Faith for the Future Block Party – First United Methodist Church on August 29, 2021

**PETITIONS AND REQUESTS:**

(mot) 5. Approving a \$1,000 donation to 4<sup>th</sup> Avenue Fest coming from contingency funds.

(res) 6. Accepting donations to the City of Austin.

(res) 7. Applying for the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan.

(mot)           a. Authorizing the City Administrator to sign assurances of compliance with Civil Rights requirements and compliance with award terms and conditions.

8. Reviewing an ordinance for the adoption of a cable franchise agreement.

(mot)           a. For preparation of the ordinance.

          b. For adoption of the ordinance.

          c. For publication of the summary ordinance.

(res)           d. Approving an indefeasible right of use agreement with MetroNet.

(res) 9. Approving a grant award for a flood property purchase at 304 22<sup>nd</sup> Street SW.

(res) 10. Approving a MN Dot maintenance contract for Hwy 105.

- (res) 11a. Rescinding resolution 16295.
- (res) 11b. In support of a \$14.5 million dollar bonding request for the Waste Water Treatment Plant.
  
- (res) 12a. Approving the final plat for Nature's Ridge Third Addition.
- (res) 12b. Approving a development agreement for Nature's Ridge Third Addition.

### **BID OPENINGS AND AWARDS**

- 13. Receiving bids for pavement striping.
  - (res) a. Awarding bid.
  
- 14. Receiving bids for 10<sup>th</sup> Place NE sanitary sewer extension.
  - (res) a. Awarding bid.
  
- 15. Receiving bids for the 31<sup>st</sup> St SW street reconstruction project.
  - (mot) a. Supporting Mower County's intent to award bid and authorizing the use of State Aid funding for the City's portion of the project.

### **CITIZENS ADDRESSING THE COUNCIL**

### **HONORARY COUNCIL MEMBER COMMENTS**

#### **REPORTS AND RECOMMENDATIONS:**

City Administrator  
City Council

- (mot) Adjourn to **Tuesday, July 6, 2021** at 5:30 pm in the Council Chambers.

\*All items listed with an asterisk (\*) are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a council member or citizen so requests in which event the item will be removed from the general order of business and considered in its normal sequence on the agenda.

**M I N U T E S**  
**CITY COUNCIL MEETING**  
June 7, 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, City Attorney Craig Byram 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, Library Director Julie Clinefelter and City Clerk Ann Kasel

**OTHERS APPEARING ELECTRONICALLY:** Austin Daily Herald, Tim Ruzek, Ross Stickler, Brian Gorgan (Moss & Barnett)

**APPEARING IN PERSON:** Honorary Council Member Christopher Moore, Don Durben, Dan Morem, Carol Brown, Casey McIntyre, Ron Mecklenburg, John Jensen

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

Added to the Agenda:

Licenses:

Massage Therapist: Savannah Percival, 24271 540<sup>th</sup> Avenue #3  
Sign Installer: Abel Signs, Inc., 14 N. Mantorville Ave, Kasson  
Temporary Food: Lu Senda Antigua Church, 100 4<sup>th</sup> Avenue SE  
Temporary Liquor: Austin Country Club on June 16, 2021

21. Approving engineering design services with SEH, Inc. for replacement of an equalization digester cover.

Moved by Council Member Baskin, seconded by Council Member Postma, approving the agenda as amended. Carried.

Moved by Council Member Fischer, seconded by Council Member Baskin, approving Council minutes from May 17, 2021. Carried.

## CONSENT AGENDA

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

### Licenses:

Massage Therapist: Serena Hubbell, 1101 Oakland Avenue West  
Movable Business: El Sabor de Mexico, 515 11<sup>th</sup> Avenue SW  
Movable Business: Erin's Street Bistro, Albert Lea  
Right of Way: Jaeckel's Contracting, Inc, Farmington  
Right of Way: Kevin Neitzell Construction, LLC, Hayward  
Right of Way: Remodeling DL, LLC, Rochester  
Temporary Food: Salvation Army on August 21, 2021  
Temporary 3.2 Beer: Austin Area Chamber of Commerce on July 20, 2021  
Massage Therapist: Savannah Percival, 24271 540<sup>th</sup> Avenue #3  
Sign Installer: Abel Signs, Inc., 14 N. Mantorville Ave, Kasson  
Temporary Food: Lu Senda Antigua Church, 100 4<sup>th</sup> Avenue SE  
Temporary Liquor: Austin Country Club on June 16, 2021

### Claims:

- a. Pre-list of bills
- b. Financial and Credit Card Reports.

### Event Applications:

Austin Eagles Street Dance on June 19, 2021

Carried.

## PUBLIC HEARINGS

A public hearing was held on deferred sanitary sewer improvements. City Clerk Ann Kasel stated notices were mailed to each property owner and published in the paper.

Don Durben, 2401 12<sup>th</sup> Street SW, stated the lot was marked earlier in the year and was concerned about that the city did not know about the location.

Public Works Director Steven Lang stated the City and Austin Utilities are aware of the location now.

Dan Morem, stated he owns land south of the college that are vacant lots. He questioned why it was going to be assessed after 30 years. He also asked if he could develop those lots.

Mr. Lang stated the City is assessing costs from a project in 1989. He stated the lots are buildable as long as they meet the subsurface requirements.

Carol Brown, 2200 12<sup>th</sup> Street SW, stated she is with the Austin Baptist Chapel and was under the understanding that the assessments were deferred and would be payable when the lots were built upon.

City Attorney Craig Byram stated these assessments are out of the ordinary assessment process. He added that the property owners were given a benefit to have the assessments be interest free for 30 years.

Casey McIntyre, 1906 26<sup>th</sup> Street SW, stated he purchased lot his home in 2003 and purchased the adjacent lot two years later. He stated he doesn't want a house on the adjacent lot and is concerned about the cost of the assessment, especially the interest.

Council Member Poshusta stated she supports dropping the interest.

City Clerk Ann Kasel stated the payment date could be extended to October 31<sup>st</sup>, and the interest rate and term could also be modified. The Council could make that decision at the July 6<sup>th</sup> assessment hearing.

Ron Mecklenburg, 1701 12<sup>th</sup> Street SW, stated he owns 8.5 acres and has three assessments for sewer connections plus paving assessments on south side of the property. He believed the assessments were deferred until the sewer was going to be connected.

Council Member Baskin stated he would be in favor of dropping assessments or having them be interest free.

There were not additional public comments.

Moved by Council Member Poshusta, seconded by Council Member Waller, adopting a resolution ordering improvements for deferred sanitary sewer improvements. Carried 6-1 with Council Member Baskin voting nay.

A public hearing was held on deferred water improvements. City Clerk Ann Kasel stated notices were mailed to each property owner and published in the paper.

There were no public comments.

Moved by Council Member-at-Large Austin, seconded by Council Member Waller, adopting a resolution ordering improvements for deferred water improvements. Carried 6-1 with Council Member Baskin voting nay.

A public hearing was held to review a tax abatement application from New Horizon Homes for a property at 1303 18<sup>th</sup> Drive NE. City Administrator Craig Clark stated a \$369,000 home is proposed to be constructed and recommended approval of the abatement.

There were no public comments.

Moved by Council Member Fischer, seconded by Council Member Baskin, adopting a resolution approving a five year tax abatement for New Horizon homes for the property at 1303 18<sup>th</sup> Drive NE. Carried 7-0.

A public hearing was held to review a tax abatement application from New Horizon Homes for a property at 2013 14<sup>th</sup> Avenue NE. City Administrator Craig Clark stated a \$699,000 home is proposed to be constructed and recommended approval of the abatement.

There were no public comments.

Moved by Council Member Poshusta, seconded by Council Member Oballa, adopting a resolution approving a tax abatement application from New Horizon Homes for a property at 2013 14<sup>th</sup> Avenue NE. Carried 7-0.

A public hearing was held to review a tax abatement application from New Horizon Homes for a property at 2101 14<sup>th</sup> Avenue NE. City Administrator Craig Clark stated a \$400,000 home is proposed to be constructed and recommended approval of the abatement.

There were no public comments.

Moved by Council Member Poshusta, seconded by Council Member Oballa, adopting a resolution approving a tax abatement application from New Horizon Homes for a property at 2101 14<sup>th</sup> Avenue NE. Carried 7-0.

A public hearing was held to review a tax abatement application from Bigelow and Lennon Construction for a property at 1404 20<sup>th</sup> Street NE. City Administrator Craig Clark stated a \$330,000 home is proposed to be constructed and recommended approval of the abatement.

There were no public comments.

Moved by Council Member Postma, seconded by Council Member Fischer, adopting a resolution approving a tax abatement application from Bigelow and Lennon Construction for a property at 1404 20<sup>th</sup> Street NE. Carried 7-0.

City Administrator Craig Clark introduced Brian Grogan, the City's attorney for a proposed cable franchise which will extend fiber in the community.

Brian Groban, attorney for the City in consideration of a cable franchise, presented the application for a proposed cable television franchise in Austin from CMN-RUS, Inc. d/b/a MetroNet. He stated the City published a notice of intent to franchise a cable communications system and one proposal was received from MetroNet. He stated the purpose of the public hearing is to receive input from interested parties regarding the application.

Mr. Groban reviewed the application with the Council and stated the Council doesn't have a basis to deny the application based on the financial information provided.

Council Member Postma asked what percentage of community is proposed to be served.

Mr. Grogan stated MetroNet is proposing to serve 85% of the residents of Austin. He noted they may not be able to go into buildings that have an exclusive agreement with another provider.

Council Member Baskin asked if this will create competition in pricing.

Mr. Grogan stated the cable fees may have less flexibility but the broadband side may have opportunities for competitiveness.

Mr. Clark introduced John Jensen with MetroNet. Mr. Jensen stated he hopes to have construction starting soon.

There were no other public comments.

Moved by Council Member Baskin, seconded by Council Member Postma, adopting a resolution regarding the application of CMN-RUS, Inc. for a cable franchise. Carried 7-0.

#### BID OPENING AND AWARD

The City received bids for the 4<sup>th</sup> Street and 3<sup>rd</sup> Avenue NW street improvements. The following bids were received:

Contractor	Bid
Doyle Connor Co.	\$457,406.15
Pember Companies, Inc.	\$482,459.25

Public Works Director Steven Lang stated work will consist of the removal of signal lights at 4<sup>th</sup> Street and 3<sup>rd</sup> Avenue NW, closure and removal of 3<sup>rd</sup> Avenue NW between 4<sup>th</sup> Street & 5<sup>th</sup> Street NW, street lighting improvements and pedestrian crossing improvements on 4<sup>th</sup> Street NW between Austin High and Pacelli High Schools. Mr. Lang recommended awarding the bid to Doyle Connor Co. with work beginning in July.

Moved by Council Member Fischer, seconded by Council Member Waller, awarding the bid for 4<sup>th</sup> Street and 3<sup>rd</sup> Avenue NW street improvements to Doyle Connor Co. Carried 7-0.

#### PETITIONS AND REQUESTS

Moved by Council Member-at-Large Austin, seconded by Council Member Waller, adopting a resolution setting final assessment hearing on proposed sanitary sewer and water assessments. Carried.

Planning and Zoning Administrator Holly Wallace reviewed a proposed rezoning ordinance. She stated the property owner, KO Management, LLC, is requesting to rezone the property from an R-1 single family zone to a I-1 light industrial zone to facilitate the construction of a new storage facility. The Planning Commission reviewed the matter at their May 11, 2021 meeting and recommended approval of the rezoning ordinance by a 7-0 vote.

Moved by Council Member Baskin, seconded by Council Member Oballa, for preparation of the rezoning ordinance. Carried.

Moved by Council Member Fischer, seconded by Council Member Waller, for adoption and publication of the ordinance. Carried 7-0.

The City Council reviewed an ordinance for the use of bow and arrow in the City limits. Police Chief McKichan stated the ordinance was rewritten to allow for the use of a bow and arrow in accordance with DNR fishing regulations from a boat. Bow fishing is not allowed within 100 feet of pedestrians or within 150 feet of homes.

Moved by Council Member Fischer, seconded by Council Member Poshusta, for preparation of the use of bow and arrow ordinance. Carried.

Moved by Council Member-at-Large Austin, seconded by Council Member Fischer, for adoption and publication of the ordinance. Carried 7-0.

Moved by Council Member-at-Large Austin, seconded by Council Member Waller, adopting a resolution accepting donations to the City of Austin. Carried 7-0.

Public Works Director Steven Lang stated the City has identified State bonding dollars as a possible funding source for Waste Water Treatment Plant improvements. He stated the City received \$7.45 million in 2020 for engineering design and construction and would like to apply for an additional \$13 million in 2022 for construction costs.

Moved by Council Member Baskin, seconded by Council Member-at-Large Austin, adopting a resolution approving a Waste Water Treatment Plant bonding request. Carried 7-0.

Moved by Council Member Fischer, seconded by Council Member Baskin, adopting a resolution Declaring the property at 711 Oakland Avenue West a hazardous structure. Carried 7-0.

Moved by Council Member-at-Large Austin, seconded by Council Member Oballa, appointing Tim Ruzek to the Port Authority Board, term expiring December 31, 2024. Carried.

Mayor King read the Human Rights statement from the Austin Human Rights Commission.

Moved by Council Member Oballa, seconded by Council Member Baskin, in support of a Human Rights statement from the Austin Human Rights Commission. Carried.

Public Works Director Steven Lang stated one of the covers of the equalization digesters at the Waste Water Treatment Plant cracked in January 2021 and is in need of replacement. The

estimated cost of the replacement cover is \$1.5 million and will be funded through the Industrial Plant budget. Mr. Lang stated SEH has provided a proposal in the amount of \$42,020 to complete design services on the project for bidding. He recommended awarding the contract to SEH, Inc.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution approving engineering design services with SEH, Inc. for the replacement of an equalization digester cover. Carried 7-0.

## REPORTS

City Administrator Craig Clark stated 4<sup>th</sup> Avenue Fest will be on June 16<sup>th</sup> at Horace Austin Park. He stated he met with Senator Dornink and Representative Mueller on housing.

Library Director Julie Clinefelter stated there is a lot going on for the summer at the Library with summer reading kicking off in the next week.

Public Works Director Steven Lang stated the sump pump inspection program will begin in the SW area of town in July. He stated at the next Council meeting there will be bids awarded for the 31<sup>st</sup> Street SW project. He added that he would like to take the Council on a tour of the Cedar River Watershed District's projects.

City Attorney Craig Byram stated the Governor may be ending the state of emergency and public boards and commissions will need to appear in person and no longer allowed via electronic meetings.

Council Member Oballa stated the HRA board visited the newly constructed HRA home.

Council Member Postma attended the neighborhood watch meeting recently thanked the Police Department for their participation.

Council Member Poshusta stated the Senior Center had reopened with Doreen Nelson as the new director.

Moved by Council Member-at-Large Austin, seconded by Council Member Fischer, adjourning the meeting to June 21, 2021. Carried.

Adjourned: 7:05 p.m.

Approved: June 21, 2021

Mayor: \_\_\_\_\_

City Recorder: \_\_\_\_\_

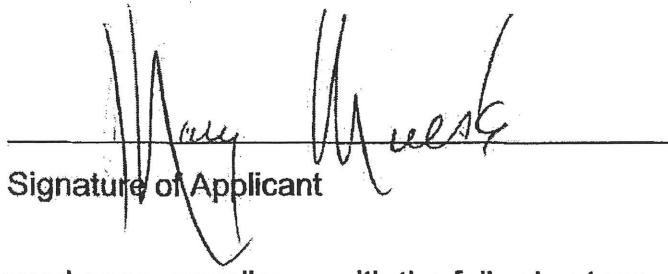
# Austin POLICE DEPARTMENT

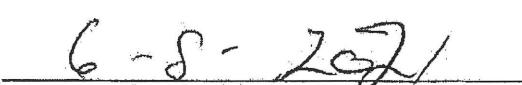


LAW ENFORCEMENT CENTER 201 1<sup>st</sup> ST NE STE 2 AUSTIN, MINNESOTA 55912 (507) 437-9400 FAX (507) 437-

## EVENT APPLICATION

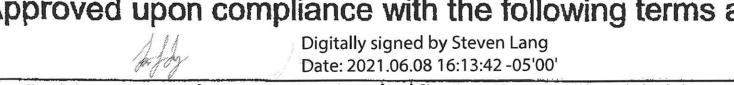
1. Event Title FAITH FOR THE FUTURE BLOCK PARTY
2. Name/Address of Organization First United Methodist Church
3. Contact Person Mary Mueske E-mail mkmueske@gmail.com  
Phone 507-219-9967 Cell Phone 507-219-9967
4. Alternate Contact Pastpr Donna Dempewolf E-mail donna@austinfirst.org  
Phone 507-433-8839 Cell Phone 651-324-5084
5. Date of Event August 29, 2021 Approximate Number of Participants 75
6. Assembly Area Location and Description street in front of church..1st Ave NW. Block street from 1st Street NW to 2n Street NW
7. Starting Time of Event 10:00am Estimated Termination Time 4:00pm
8. Starting Point street in front of church
9. Termination Point street in front of church
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.)* totally contained to block in front of church
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)

  
Signature of Applicant

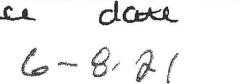
  
Date

Approved upon compliance with the following terms and conditions:

Digitally signed by Steven Lang  
Date: 2021.06.08 16:13:42 -05'00'

  
City Engineer date

  
Chief of Police date

  
6-8-21

RESOLUTION NO.

## ACCEPTING DONATIONS TO THE CITY OF AUSTIN

WHEREAS, the City has received gift as follows:

Gift	Donor	For
\$370.00	Pat McGarvey	2021 Flowers
\$2,500.00	Hormel Foods	Bike Club

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 21st day of June, 2021.

ATTEST:

APPROVED:

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## City Recorder

**City of Austin**  
**Craig Clark,**  
**City Administrator**



**500 Fourth Avenue N.E.**  
**Austin, Minnesota 55912-3773**  
**Phone: 507-437-9941**  
**[craigc@ci.austin.mn.us](mailto:craigc@ci.austin.mn.us)**  
**[www.ci.austin.mn.us](http://www.ci.austin.mn.us)**

**To: Mayor and Council Members**

**From: Craig D. Clark, City Administrator**

**RE: Resolution to apply for the City of Austin's distribution of American Rescue Plan Act (ARPA) funds**

The League of Minnesota Cities (LMC) is suggesting that City's adopt resolutions to apply for American Rescue Plan Act funds. While not a specific requirement, as was the cases for the CARES funds, LMC suggest the City establish a paper trail to document how these funds are handled including the initial request.

At present, the City of Austin is estimated to receive \$2,873,530 based on tentative distribution amounts we have been provided. As an interesting aside the revenue reduction calculation based off the GFOA ARP Revenue Replacement Calculator, Austin would be eligible for up to \$4,180,525. This calculation will allow us to likely utilize the funding in just one calendar year though funding can be utilized until the end of 2024. Included in your packet is a formal resolution (Exhibit 1) to apply for the ARPA funding.

There will be additional steps in the process as we will adopt a resolution to accept the funding at a later time. There are also other terms and conditions you should be aware of and are attached as Exhibits 2-4.

**Council action is requested to approve the Resolution included as Exhibit 1 and thereby authorize the City Administrator to sign Exhibits 2 and 3 and staff to update terms for Exhibit 4 or other documents on behalf of the City.**

**CITY OF \_\_\_\_\_  
RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION TO APPLY FOR THE CORONAVIRUS LOCAL FISCAL  
RECOVERY FUND ESTABLISHED UNDER THE AMERICAN RESCUE PLAN ACT**

**WHEREAS**, since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the disease has infected over 32 million and killed over 575,000 Americans (“Pandemic”). The disease has impacted every part of life: as social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs;

**WHEREAS**, as a result of the Pandemic cities have been called on to respond to the needs of their communities through the prevention, treatment, and vaccination of COVID-19.

**WHEREAS**, city revenues, businesses and nonprofits in the city have faced economic impacts due to the Pandemic.

**WHEREAS**, Congress adopted the American Rescue Plan Act in March 2021 (“ARPA”) which included \$65 billion in recovery funds for cities across the country.

**WHEREAS**, ARPA funds are intended to provide support to state, local, and tribal governments in responding to the impact of COVID-19 and in their efforts to contain COVID-19 in their communities, residents, and businesses.

**WHEREAS**, the United States Department of Treasury has adopted guidance regarding the use of ARPA funds.

**WHEREAS**, the City, in response to the Pandemic, has had expenditures and anticipates future expenditures consistent with the Department of Treasury’s ARPA guidance.

**WHEREAS**, the State of Minnesota will distribute ARPA funds to the City because its population is less than 50,000.

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

1. The City intends to collect its share of ARPA funds from the State of Minnesota to use in a manner consistent with the Department of Treasury’s guidance.
2. City staff, together with the Mayor and the City Attorney are hereby authorized to take any actions necessary to receive the City’s share of ARPA funds from the State of Minnesota for expenses incurred because of the Pandemic.

3. City staff, together with the Mayor and the City Attorney are hereby authorized to make recommendations to the City Council for future expenditures that may be reimbursed with ARPA funds.

Adopted by the City Council of Austin, Minnesota this 21st day of June, 2021.

YEAS

NAYS

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Mayor

Attested:

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City Recorder

**U.S. DEPARTMENT OF THE TREASURY  
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS**

Recipient name and address: [Recipient to provide]	DUNS Number: [Recipient to provide] Taxpayer Identification Number: [Recipient to provide] Assistance Listing Number: 21.027
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Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient:

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Authorized Representative:

Title:

Date signed:

U.S. Department of the Treasury:

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Authorized Representative:

Title:

Date:

**PAPERWORK REDUCTION ACT NOTICE**

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY  
CORONAVIRUS LOCAL FISCAL RECOVERY FUND  
AWARD TERMS AND CONDITIONS

1. Use of Funds.
  - a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
  - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
  - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
  - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
  - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
  - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
  - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
  - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
  - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.

- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed the federal government must be paid promptly by

Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

**15. Disclaimer.**

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

**16. Protections for Whistleblowers.**

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A Treasury employee responsible for contract or grant oversight or management;
  - v. An authorized official of the Department of Justice or other law enforcement agency;
  - vi. A court or grand jury; or
  - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

## **ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS**

### **ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the “Recipient”) provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient’s beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient’s program(s) and activity(ies), so long as any portion of the Recipient’s program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient’s programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

*The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.*

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.
7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other

agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

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Recipient

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Date

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Signature of Authorized Official

#### PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

# MetroNet Cable Franchise

**City of Austin, Minnesota**

June 21, 2021

Presented by: Brian T. Grogan, Esq

# Federal Cable Act

**One of the stated purposes of the Cable Act is to:**

*“promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.”*

*See 47 U.S.C. § 521 (6) – emphasis added*

# Federal Cable Act

**A franchising authority may award one or more franchises within its jurisdiction:**

*"except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise."*

*See 47 U.S.C. § 541 (a)(1) - emphasis added*  
- codified in the Cable Act as Section 621

# Cable Franchising

- **Existing Charter franchise**
  - Granted in 2006
  - 8 year term – in renewal
  - Multiple extensions granted
- **MetroNet competitive franchise request**
  - May 21, 2021 – City received MetroNet's Application requesting a cable franchise
  - June 7, 2021 – Public Hearing regarding applications received
    - City found MetroNet qualified and authorized staff to continue to negotiate franchise

# Franchise Negotiations

## City Goals

- Substantially similar franchise obligations
  - for MetroNet and Charter
- Compliance with local, state and federal laws

## November 2020 – June 2021

- MetroNet provided to City a mark-up of Charter's existing cable franchise
- City staff and MetroNet negotiate franchise

# Franchise Terms

- 1. 10 year term**
- 2. 5% Franchise fee**
  - a. Strong definition of "Gross Revenues"
  - b. Bundled services addressed
  - c. Payments due to City quarterly
- 3. Performance bond - \$50,000**
- 4. Strong customer service standards**

# Franchise Terms

## 5. 2 PEG channels

- a. Dedicated channel capacity for shared PEG access
- b. Option to request one additional PEG Channel in 5<sup>th</sup> year of franchise term
- c. Option to request one HD PEG Channel
- d. PEG Fee = \$.50 per subscriber, per month, paid to City quarterly

## 6. Free service to public buildings and schools

- a. Provide complimentary service
- b. Advance notice to City if MetroNet begins franchise fee offset for free service

## 7. Dedicated connection

- a. From City's master control studio to MetroNet's headed

# System Build Out

- **Initial Service Area**

- 90% of the Dwelling Units in the Franchise Area
- Construction of initial service area complete no later than 28 months from the start of physical construction of the system
- MetroNet may extend service if there is a density equivalent of 30 homes per cable mile



# Construction Process

- **MetroNet to comply with**

- City Code - unless modified by Franchise
- Model permit application included in Franchise
- Sample construction drawings in Franchise

- **Construction permits**

- Dark Fiber Agreement

# Dark Fiber Agreement

- MetroNet will provide an Indefeasible Right of Use
- Two (2) dark fibers between 500 4<sup>th</sup> Avenue NE
  - 1. 1601 11<sup>th</sup> Drive NE
  - 2. 1304 21<sup>st</sup> Street NE
  - 3. 1205 South Main Street

# Recommendation

*City Administration and Legal Counsel*

## **Recommend Approval**

MetroNet Cable Franchise

Dark Fiber Agreement

# Questions

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# **CABLE TELEVISION FRANCHISE ORDINANCE**

**City of Austin, Minnesota**

**and**

**CMN-RUS, INC.**

**June 8, 2021**

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**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE CITY OF AUSTIN, MINNESOTA,  
GRANTING A FRANCHISE TO CMN-RUS, INC., ITS SUCCESSORS AND  
ASSIGNS, TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY,  
SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE  
FRANCHISE, PROVIDING FOR CITY REGULATION AND USE OF THE CABLE  
SYSTEM, AND PRESCRIBING PENALTIES FOR VIOLATION OF THE  
FRANCHISE PROVISIONS AND ADOPTING, BY REFERENCE, CITY CODE,  
WHICH, AMONG OTHER THINGS, CONTAINS PENALTY PROVISIONS.

THE CITY COUNCIL OF THE CITY OF AUSTIN, MINNESOTA ORDAINS:

The City of Austin, Minnesota (“City”), pursuant to Applicable Laws, is authorized to grant one (1) or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City.

Negotiations between CMN-RUS, Inc. (“Company”) and the City have been completed and the franchise process followed in accordance with the guidelines established by the City Code, Minnesota Statutes Chapter 238 and the Cable Act (47 U.S.C. § 546).

The City reviewed the legal, technical and financial qualifications of Company and, after a properly noticed public hearing, has determined that it is in the best interest of the City and its residents to grant a cable television franchise to the Company.

**NOW, THEREFORE, THE CITY OF AUSTIN, MINNESOTA DOES  
ORDAIN** that a franchise is hereby granted to Company to operate and maintain a Cable System in the City upon the following terms and conditions:

**SECTION 1. DEFINITIONS.** For the purpose of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” and “will” are always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

(1) “Applicable Laws” means any local, state or federal law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary or permanent), judgment or decree or other order issued, executed, entered or deemed applicable to City by any governmental authority having jurisdiction over the City.

(2) “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service shall be the definition set forth in 47 U.S.C. § 522(3).

(3) “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

(4) “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(6).

(5) “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (b) a facility that serves Subscribers without using any public right-of-way;
- (c) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) an open video system that complies with 47 U.S.C. § 573; or
- (e) any facilities of any electric utility used solely for operating its electric utility systems.

Cable System as defined herein shall be the definition set forth in 47 U.S.C. § 522(7).

(6) “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC. Cable Channel as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(4). Company represents that as of the Effective Date Company offers an all-digital Cable System and does not allocate six (6) MHz per Channel.

(7) “City” is the City of Austin, a municipal corporation in the State of Minnesota.

(8) “City Council” is the City Council of the City of Austin, Minnesota.

(9) “Class IV Cable Communications Channel” means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

(10) “Company” is CMN-RUS, Inc., an Indiana corporation, , or the lawful successor, transferee or assignee thereof.

(11) “Dwelling Unit“ shall mean any residential home or business that has the ability to receive Company’s Cable Service without the need for Company to obtain any private property rights from a third party or that has access to a Cable Service through a fiber-to-the-premises network.

(12) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(13) “Franchise” or “Cable Franchise” means this franchise ordinance and the regulatory and contractual relationship established hereby.

(14) “Franchise Fee” shall be the definition set forth in 47 U.S.C. §542(g).

(15) “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

(16) “Gross Revenues” means any and all revenues derived by the Company from the operation of the Cable System to provide Cable Services in the City. Gross Revenues shall not include any tax, fee or assessment of general applicability. A Franchise Fee is not such a tax, fee or assessment. Gross Revenues shall not include: PEG Fees; tower rent; bad debt written off by Company in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue upon collection; or Subscriber deposits. The City acknowledges and accepts that Company shall maintain its books and records in accordance with GAAP. Where Company bundles, integrates, ties, or combines Cable Service with other services in a bundled package for which Subscribers pay a single fee, Gross Revenues for such bundled, integrated, or tied combination of services shall be determined based on a pro rata allocation among the services offered unless such allocation methodology is directly in conflict with GAAP, in which case Company shall allocate bundled revenues in accordance with GAAP.

(17) “Initial Service Area” shall mean a geographic area that represents at least ninety percent (90%) of the Dwelling Units in the Franchise Area.

(18) “Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business

Hours" must include some evening hours, at least one (1) night per week and/or some weekend hours.

(19) "Normal Operating Conditions" means those Service conditions which are within the control of Company. Those conditions which are not within the control of Company include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Company include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Normal Operating Conditions as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.

(20) "PEG" is public, educational and governmental.

(21) "Person" is any Person, firm, partnership, association, corporation, company or organization of any kind.

(22) "Service Area" or "Franchise Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted.

(23) "Service Interruption" means the loss of picture or sound on one or more Cable Channels.

(24) "Standard Installation" means any residential Installation which can be completed using a Drop of one hundred twenty-five (125) feet.

(25) "Street" means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. "Street" shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the public right-of-way.

(26) "Subscriber" means a Person who receives Cable Service distributed by a Cable System and does not further distribute it. Subscriber as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.5(ee).

(27) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. Video Programming as defined herein shall be the definition set forth in 47 U.S.C. § 522(20).

## SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

(1) Non-Exclusive Grant. This grant is non-exclusive and, subject to the provisions of Minn. Stat. § 238.08, Subdivision 1(b), the City reserves the right to

grant a similar use of said Streets to any other qualified Person at any time during the period of this Franchise, provided however, that any additional cable franchise granted shall comply with Minnesota Statues, Section 238.08 and any other applicable state and federal level playing field requirements. Nothing in this paragraph shall prevent the City from imposing additional terms and conditions on any other Person to whom it may grant a franchise.

(2) Nothing herein shall in any way limit or reduce Company's right to provide Cable Service in the City under Applicable Laws, nor the City's right to regulate Company's provision of Cable Service in the City under Applicable Laws.

(3) Company shall have both the privilege and the obligation to provide Cable Service over its Cable System as a condition to the grant of this Franchise. To the extent permitted under Applicable Law, Company shall further have the right to provide information services as defined in federal law as may be amended from time-to-time, telephone services regulated pursuant to Minn. Stat § 237.01 et seq., and telecommunications services as defined in federal law as may be amended from time to time. Both the City and Company hereby reserve all rights under Applicable Law regarding the provision of and regulation of the above referenced non-Cable Services.

(4) This Franchise constitutes the entire agreement between the City and the Company regarding the subject matter hereof. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties.

(5) Franchise Term. The term of this Franchise shall be for the period of ten (10) years from the date of acceptance by the Company, unless renewed, revoked or, terminated sooner as herein provided.

(6) Renewal; Renegotiation. Any renewal of this Franchise shall be for a period of not more than fifteen (15) years, and renewal shall only be granted after holding a public hearing, with reasonable notice to and opportunity for representatives of Company and the public to be heard. Renewal proceedings shall follow the requirements of federal and state law. Renegotiation of any or all of the terms of the Franchise may occur at such time as may be mutually agreed upon by the City and Company.

(7) EAS/Emergency Use by City.

(a) At all times during the term of this Franchise, the Company shall provide and maintain an Emergency Alert System (EAS) consistent with Applicable Law and regulation including 47 C.F.R., Part 11 and any applicable State/County Emergency Alert System Plan.

(b) City shall have authority to test the EAS, consistent with Applicable Law, and if System fails to perform Company shall

immediately make all repairs, at Company's sole cost, and shall retest the System to demonstrate compliance.

(8) Home Wiring. Company will comply with Applicable Law regarding cable home wiring including Minn. Stat. § 238.25.

### SECTION 3. COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS.

(1) The Company shall conform to all state laws and rules regarding cable communication not later than one (1) year after they become effective, and regulations relating to Cable Systems and found in 47 C.F.R. §§ 76.601 to 76.617, unless otherwise stated, and shall conform to all federal laws and regulations regarding cable as they become effective.

(2) The terms of this Franchise shall define the contractual rights and obligations of Company with respect to the provision of Cable Service and operation of the Cable System in City. The Company, through this Franchise, is granted the right to construct, maintain and operate its Cable System using the Streets within the City in compliance with all lawful and nondiscriminatory provisions of the City Code, as may be amended periodically. Subject to the police power exception below, in the event of a conflict between A) the lawful, nondiscriminatory provisions of the City Code or applicable nondiscriminatory regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern.

(3) The material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power. The Company reserves all rights it may have to challenge any modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

(4) Company shall at all times comply with all requirements of the City Code which are generally applicable to any Person residing in or conducting business in the City.

(5) Consistent with Minn. Stat. § 238.086, to the extent there is a conflict in language between this Franchise and a City ordinance regulating the Company's use of the Streets, the terms of this Franchise shall prevail.

### SECTION 4. COMPANY LIABILITY - INDEMNIFICATION. The Company shall indemnify the City, its officers and its employees, against all claims, demands, actions, suits and proceedings by Persons including agents or employees of Company against all liability to others, and against any loss, cost and expense resulting therefrom arising out of construction and/or operation of the Cable System, irrespective of the

amount of the comprehensive liability insurance policy required hereunder, provided that the City shall give the Company written notice of its obligation to indemnify the City within ten (10) business days of receipt of a written claim or action (e.g. summons and complaint or demand letter) pursuant to this section. In the event any such claim arises, the City shall tender the defense thereof to the Company and the Company shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. The Company shall be responsible for all of its attorney's fees in defending said claim. If the City determines in good faith that its interest cannot be represented by the Company, the Company shall be excused from any obligation to represent the City. Notwithstanding the foregoing, the Company shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or gross negligence of the City or for the City's use of the Cable System, including any PEG Channels.

## SECTION 5. CONSUMER PROTECTION AND SERVICE STANDARDS

(1) Company shall maintain a location in the City for receiving Subscriber inquiries, bill payments, and equipment transfers. The location shall be staffed by a Person capable of receiving inquiries and bill payments and shall be open during Normal Business Hours. If Company chooses not to maintain an office located in the City, equipment exchanges requiring a truck roll shall be at no charge to the Subscriber or City.

(2) The Company shall comply with the standards and requirements for customer service set forth in Exhibit C, attached hereto, once Company provides Cable Service to its first Subscriber in the City and, thereafter, throughout the term of this Franchise. If the FCC obligations are amended or deleted, Company and City agree to meet and discuss such customer service standards to serve the community.

(3) The Company will provide a toll-free telephone number for receiving Subscriber inquiries and shall maintain a repair service capable of responding to Subscriber inquiries or requests for service within twenty-four (24) hours after receipt of the complaint or request. All costs incurred in making repairs, or maintenance to the Cable System shall be borne by the Company unless otherwise provided in the Subscriber's contract, if any, or unless said repairs are necessitated by negligence or deliberate acts of the Subscriber, in which case, the Subscriber shall bear the costs.

(4) All costs incurred in making repairs, or maintenance to the Cable System shall be borne by the Company unless otherwise provided in the Subscriber's contract, if any, or unless said repairs are necessitated by negligence or deliberate acts of the Subscriber, in which case, the Subscriber shall bear the costs.

(5) The Company shall, upon the request of any Subscriber, remove in a commercially reasonable time all wires and equipment from the premises of such Subscriber.

(6) All complaints by Subscribers or other citizens regarding the quality of service, equipment malfunction, billing disputes and any other matters relative to the Cable System shall be responded to by the Company, whenever possible, within twenty-four (24) hours. The Company shall resolve the cause of the complaint, if reasonably possible. If a Subscriber or citizen complaint cannot be resolved within five (5) working days, the complainant may then file a written complaint with the City. If the complaint cannot be satisfied by the City Administrator through mediation between the Company and the Subscriber or citizen, such complaint shall be referred to the City Council for a hearing.

(7) Subscriber Contracts. Company shall, written upon request, provide the City with any standard form residential Subscriber contract utilized by Company. If no such written contract exists, Company shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any standard form Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Company's current Subscriber rates and charges for Cable Service, specifically including Basic Cable Service, shall be maintained on file with City and shall be available for public inspection. For purposes of this section, the availability of this information on Company's web site shall constitute compliance.

## SECTION 6. TECHNICAL STANDARDS.

(1) The Cable System shall be maintained to meet or exceed the requirements of the current additions of the National Electrical Code (NFPA 70) and the National Electrical Safety Code (ANSI C2). In all matters requiring interpretation of either of these codes, the City's interpretation shall control over all other sources and interpretations. The City's interpretation shall be consistently applied with respect to other occupants of the Streets. Nothing herein prohibits the Company from challenging the City's interpretation before an appropriate regulatory authority.

(2) Company shall maintain a System that at least meets all minimum technical standards or guidelines applicable to fiber-to-the-premises networks now or hereafter established by the FCC (47 C.F.R. Subpart K, § 76.601-76.640) relating to Cable Systems; provided, however, that in no event shall the technical standards required to be met by Company be less stringent than the FCC standards or guidelines in effect during the term of this Franchise.

(3) City may require Company to conduct special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. Before ordering such tests, Company shall be afforded thirty (30) days to correct

problems or complaints upon which tests were ordered. The City shall meet with Company prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. Nothing in this Section 6(3) shall waive the City's right to enforce Company's compliance with the requirements of the City Code.

(4) To the extent applicable to Company's Cable System, the results of tests required to be filed by Company with the FCC shall also be copied to the City within ten (10) days of the conduct of the tests.

(5) The System shall be designed for and operated on a twenty-four (24) hour a day continuous operation basis. Company shall make provisions to ensure, as much as is reasonable, continuous operation of the System.

**SECTION 7. COMPANY RULES.** The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights to perform its obligations under this Franchise, and to assure any uninterrupted service to each and all of its customers, provided, however, that such rules, regulations, terms and conditions shall not conflict with this Franchise, federal law or the laws of the State of Minnesota and, if required by law, shall be subject to approval by proper federal and/or state regulatory body. Upon request, copies of said rules shall be filed with the City Administrator.

## **SECTION 8. CONSTRUCTION STANDARDS.**

(1) During construction of the System in the Initial Service Area, the following standards shall apply.

(a) Construction Permits. The Company shall comply with Chapter 7 of the City Code. The City and Company agree that in addition to the permit application requirements set forth at: [Right-of-Way Permitting \(austin.mn.us\)](http://Right-of-Way%20Permitting%20(austin.mn.us).), Exhibit D sets forth all the information the Company will be required to submit to the City to obtain a construction permit from the City. Further, City agrees that the drawings attached in Exhibit D satisfy the requirements of Chapter 7 of the City Code. Within thirty (30) days of the submittal of a complete application for a construction permit, the City will issue the Company a blanket construction permit to install aerial and underground facilities within City Streets. Each blanket construction permit will cover a large geographic area of the City consisting of up to one thousand (1,000) homes and/or businesses. Submission of blanket construction permits shall be staggered to allow the City adequate time for review. The City has requested, and Grantee has agreed to provide, fiber connections to City owned facilities as specified in a separate agreement between the parties ("Dark Fiber Agreement"). As consideration for the Dark Fiber Agreement, the City agrees it will not charge Grantee any permitting fees for the initial construction of the System so long as the

parties enter into a mutually acceptable Dark Fiber Agreement and the terms of the Dark Fiber Agreement are met by Grantee. If the parties fail to enter into a Dark Fiber Agreement or if Grantee fails to comply with the terms of the Dark Fiber Agreement, Grantee shall promptly pay the City permit fees, at the City's then current rates, for all previously submitted permit applications and, thereafter, shall pay the City permit fees for all future permit applications. The City and Grantee shall undertake all reasonable steps to meet its obligations under this paragraph.

(b) Utility Poles. Subject to the following requirements, the Company will have the ability to place utility poles in the City rights-of-way on a limited basis:

- (i) the Company shall not install a utility pole in any areas of the City where all of the utilities are located underground;
- (ii) the Company must demonstrate to the City that it is unable to use an existing utility pole in the general area where it wishes to place a utility pole due to commercially unreasonable make ready costs or excessive delays gaining access to the existing utility poles;
- (iii) any requested utility pole will be permitted temporarily, for a mutually agreed upon, reasonable period of time, until the line can be moved to the existing utility pole;
- (iv) any requested temporary utility pole will be located on the same side of the road as an existing utility pole line;
- (v) the Company will make reasonable accommodations requested by the City to improve the aesthetics of a requested temporary utility pole in the area where it is to be located;
- (vi) the location of a requested utility pole will not adversely affect the health, safety or welfare of any person;
- (vii) the Company will make the requested utility pole available to any other communications provider on just and reasonable terms subject to loading requirements and space availability;
- (viii) If a utility company installs a new utility pole that will accommodate the Company's facilities in any area where the Company has installed a utility pole, provided the Company has access to the new utility pole under reasonable terms and conditions, within a reasonable time period after being notified by the City, the Company will move its facilities to the new utility pole and will remove the Company utility pole from the right-of-way.

(c) Underground Construction.

(i) When installing its facilities underground, the Company will install its fiber utilizing boring technology and procedures. Company shall be allowed to locate its underground facilities at a depth of 18" to 24" in the right of way and at a depth of 36" under a Street unless there are other facilities located at or near that depth or locating at that depth will pose a safety hazard. In areas with high construction costs and/or where the deployment of conduit is not cost effective or feasible, on a case-by-case basis, subject to City approval, which approval will not be arbitrarily, discriminatorily, or unreasonably withheld, the Company may install its fiber utilizing open trench or micro-trenching technology and procedures.

(ii) The following procedure will be exclusively used any time the Company is required to insert a hole in a driveway, walkway or Street to locate other utilities under and across paved or concrete surfaces. The Company will utilize an 8" minimum core drill to remove the pavement and then remove debris utilizing a vacuum excavator to visually expose the path to cross the Street. After the crossing is completed, the excavated pothole will be backfilled with a flowable stabilized sand/cement slurry mix comprised of at least two (2) bags/yard of cement to completely fill the excavation hole to the depth of the existing pavement. For roadway pavement, where possible the core plug removed to access the pothole will then be cleaned and coated with epoxy resin around the outside surface of the plug and replaced in the excavation hole so that it is even with the top of the existing surface of the Street. For sidewalks and driveways, the entire panel will require replacement with like materials from joint to joint.

(d) Restoration. Consistent with Chapter 7 of the City Code, Company shall have the right to pothole in a paved driveway, sidewalk, trail or Street to locate other buried utilities. Company shall not be required to remove and replace full or half Street sections as a result of pothole operations. In extraordinary circumstances, removal of full joint to joint panels may be warranted. Company shall use commercially reasonable standards and efforts to restore any driveway, walkway or Street to the same, or substantially similar, condition that existed before Company's excavation. The Company will use commercially reasonable efforts to restore property within three (3) business days of the boring, subject to factors beyond the Company's reasonable control. Consideration will be given to the amount of restoration needed with each boring and the Company will endeavor to conduct borings in a manner which requires the least amount of restoration (e.g. when appropriate using Streets and sidewalks for equipment rather than lawns, etc.). After boring

under the Street / curb and sidewalks, the Company will inspect for any heaving that may have occurred from the boring process. City reserves its right to inspect Company's restoration work in accordance with Chapter 7 of the City Code.

(e) Construction Communications Plan. The Company will implement a construction communications plan and will use commercially reasonable efforts to meet the following timelines and standards, as they relate to each approved permit application area:

(i) At least thirty (30) days, but no more than forty-five (45) days, prior to the commencement of construction in a residential area, the Company will send a detailed letter to the residential addresses in that area advising occupants of upcoming construction activities.

(ii) At least fourteen (14) days, but no more than thirty (30) days, prior to the commencement of construction in a residential area, the Company will send postcard reminder to the residential addresses in that area reminding occupants of upcoming construction activities.

(iii) At least three (3) days, but no more than seven (7) days, prior to the commencement of construction in a residential area, the Company will send out Street teams to place signs in the yards of those residential properties where the Company will commence with construction activities.

(iv) Each communication sent to a residential address will include the URL to the Company's construction website: [metronetinc.com/construction](http://metronetinc.com/construction). On this website residents can find additional information regarding the construction plans in their area. Following construction, property owners will also be able to use this website to submit damage claims in the event the Company inadvertently causes damage to their property.

(f) Work Hours. The Company and its contractors may perform construction activities including, but not limited to, boring, aerial construction, pulling cable, splicing and clean-up work ("Construction Activities") from 7 AM until 7 PM, Monday through Saturday.

(2) Subject to the force majeure provisions contained herein at Section 33, Company shall not open or disturb the surface of any Street, berm, sidewalk, driveway or public place without first obtaining a permit from the proper authority, for which permit the City may impose a reasonable fee to be paid by the Company as adopted by the City Council. The lines, conduits, cables and other property placed in the Streets, alleys or utility easements pursuant to such permit,

shall be located in the Streets, berm or portions of the Streets, berm and public places as shall be determined by the proper authority. The Company shall, upon completion of any work requiring the opening of any Street or public places, restore the same, including the pavement and its foundations, to as good a condition as they were formerly, and in a manner and quality approved by the proper municipal authority, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with due diligence and, if the Company shall fail to perform the work promptly, to remove all dirt and rubbish and to put the Street, berm or public place back into good condition, the City shall have the right to put the Street, berm or public place back into good condition, at the expense of the Company and the Company shall, upon demand, pay to the City the reasonable cost of such work done or performed.

(3) To the extent not inconsistent with any other local law, all wires, conduits, cable and other property and facilities of Company shall be located, constructed, installed and maintained in compliance with applicable codes. Company shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the Streets and public places of the Franchise Area or endanger the lives or property of any Person.

(4) The Company shall, on the request of any Person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires, shall be paid by the Person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than ten (10) days' advance notice to arrange for such temporary wire changes.

(5) The Company shall have the authority to trim trees, in accordance with City Code.

(6) At all times, the Company shall comply with all Applicable Law, including, but not limited to:

- (a) National Electric Safety Code (National Bureau of Standards);
- (b) National Electric Code (National Bureau of Fire Underwriters);  
and
- (c) Applicable FCC or other Federal, State and local regulations.

(7) Relocation for the City. The Company shall, upon receipt of reasonable advance written notice, to be not less than ten (10) days, protect, support, temporarily disconnect, relocate, or remove any property of Company when lawfully required by the City pursuant to its police powers.

(8) Whenever the City shall undertake any public improvements which affects cable equipment, it shall, with due regard to reasonable working conditions, direct

the Company to remove or relocate its wires, conduits, cables and other property located in said Street, right-of-way or public place. The Company shall relocate or protect its facilities at its own expense. The City shall give the Company reasonable notice of the undertaking of public improvements which affect the Company's cable equipment. If the City reimburses any other entity for their costs associated with the temporary removal request, then the City shall also provide a proportionate level of reimbursement to the Company for its expenses associated with the temporary removal.

#### SECTION 9. PREFERENTIAL OR DISCRIMINATORY PRACTICES

PROHIBITED. Company shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Company shall at all times comply with 47 C.F.R. § 76.984 and all executive and administrative orders relating to nondiscrimination.

#### SECTION 10. EXTENSION POLICY.

(1) Company shall construct and operate its Cable System to provide Service to all parts of its Initial Service Area as provided in this Franchise. Company shall deploy Cable Services throughout the Initial Service Area no later than twenty-eight (28) months from the start of physical construction of the System. Thereafter, Company shall not be required to extend Service beyond the Initial Service Area unless there is a minimum density equivalent of thirty (30) residential units per cable mile of System, as measured from the splice location on the Cable System.

(2) Where the density is less than that specified above, Company shall inform Persons requesting Service of the possibility of paying for installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) business days of such a request. The charge for installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.

(3) Any residential unit requiring a Standard Installation shall be connected to the System at no charge other than the Standard Installation charge. Company shall, upon request by any potential Subscriber requiring more than a Standard Installation, extend Service to such Subscriber provided that the Subscriber shall pay the net additional drop costs beyond the Standard Installation charge.

(4) For any installation that is not a free installation or a Standard Installation, Company shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply will subject Company to appropriate enforcement actions. This section does not apply to the introduction of new products and services when Company is utilizing a phased introduction.

## SECTION 11. EXTENSION BY ANNEXATION.

(1) Upon the annexation of any additional land area by the City, the annexed area shall become part of the Franchise Area. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) days of written notification by the City to Company. Such notice shall include a list of addresses if available to the City. In the event another cable operator is already serving the annexed area, Company shall have the option but not the obligation to extend its Cable System to the newly annexed area.

(2) Company acknowledges that the Lansing Annexation Area is currently served by Jaguar Communications. The Lansing Annexation Area is the area adjacent to each side of the Cedar River from the NE Power Plant Northwest, but not including Ramsey Golf Course. Roadways would include 4<sup>th</sup> Street Northeast (Co. Rd. 25) on the West to 14<sup>th</sup> Street Northeast on the East, 27<sup>th</sup> Avenue on the South to 39<sup>th</sup> Avenue on the North.

**SECTION 12. APPROVAL OF TRANSFER.** Any Franchise shall be a privilege to be held in personal trust by the Company. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, merger, consolidation, or otherwise, without prior consent of the City expressed by resolution. The said consent of the City may not be arbitrarily refused provided, however, the proposed assignee must show financial and technical responsibility and any new grantee must agree to comply with all provisions of this Franchise; and provided, further, that no such consent shall be required for a transfer in trust, mortgage or other hypothecation to secure an indebtedness. The provisions of 47 U.S.C. § 533 and § 537 and Minn. Stat. § 238.083 shall apply to all such transactions. The prior written consent of the City shall not be required under this Section 12 for internal corporate reorganizations involving any entity that is controlled or under common control with Company or pledges of the Franchise as collateral or security for any loan or other debt instrument.

## SECTION 13. CITY RIGHTS IN FRANCHISE.

(1) **Supervision and Inspection.** In accordance with the City Code, the City Engineer shall have the right to supervise all construction or installation work performed subject to the provisions of the Franchise and to make such inspections as he shall find necessary to ensure compliance with governing ordinances.

(2) **Procedure Upon Termination.** Unless City and Company mutually agree to abandonment of Company's facilities upon lawful termination or forfeiture of this Franchise, the Company shall, within a reasonable time, remove its cables, wires and appliances from publicly dedicated Streets, alleys or utility easements within the City. In the event of the failure of the Company to remove its cables, wires and appliances as above required, the City shall have the right to make written demand on the Company for such performance and, in the event of the

failure of the Company to commence the removal of such equipment within thirty (30) days from the date of such demand and to proceed with such removal expeditiously, the City shall have the right to remove the same and retain it as the City's property without accounting therefor to the Company, and the expense of such removal shall be charged to and paid by the Company, without credit for the value, if any, of the equipment so removed. Nothing in this section shall be construed as prohibiting or in any way limiting any separate contractual provisions with respect to removal of cables, wires and appliances nor or hereafter entered into by Company in separate pole agreements. If Company is lawfully providing services other than Cable Services or pursuant to Minn. Stat. § 237.01 et seq., City shall only have authority to seek removal of such segments of the Cable System that provide only Cable Services.

(3) Right of Acquisition by the City. In the event of any proposed sale or assignment pursuant to subparagraph (a) of this section City shall have the right of first refusal of any bona fide offer to purchase the System. Bona fide offer, as used in this section, means an offer received by the Company which it intends to accept subject to City's rights under this section. This written offer must be conveyed to City along with the Company's written acceptance of the offer contingent upon the rights of City provided for in this section. City shall be deemed to have waived its rights under this section in the following circumstances:

- (a) If it does not indicate to Company in writing, within sixty (60) days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or
- (b) It approves the assignment or sale of the Franchise as provided within this section.

(4) The City shall have such privileges to purchase a Cable System as are set forth in the Austin City Charter, Chapter 10, Section 8, providing it is consistent with federal law with respect to such acquisitions.

#### SECTION 14. PAYMENT TO CITY.

(1) Franchise Fees.

(a) During the term of the Franchise, Company shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.

(b) Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Company's fiscal quarters together with a report showing the basis for the computation in form and substance substantially the same as Exhibit A attached hereto.

(c) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) days after the date specified herein shall be delinquent and shall thereafter accrue interest at three quarter percent (.75 %) per month or the maximum amount permitted by law.

(d) All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. The period of limitation for recovery of any franchise fee payable hereunder shall be six (6) years from the date on which payment by the Company was due.

(e) The City shall have the right to inspect, upon reasonable notice which shall not be less than seven (7) working days, and during Normal Business Hours, copies of any records maintained by Company which relate specifically to Company's compliance with the requirements of this Franchise including specifically Company's revenue records. The City acknowledges that some of the records which may be provided by Company may be classified as trade secret and therefore may subject the Company to competitive disadvantage if made public. The City shall therefore maintain the confidentiality of any and all records provided to it by the Company. The Company will produce such books and records for the City's inspection at the Company's office or at such other mutually agreed upon location.

(2) Not Franchise Fees

(a) Company acknowledges and agrees that the Franchise Fees payable by Company to the City pursuant to Section 14(1) hereof shall take precedence over all other provisions of the Franchise and shall not be deemed to be a tax. The Franchise Fees payable by Company to City pursuant to this section shall be defined consistent with 47 U.S.C. § 542 (g).

**SECTION 15. RATES AND RATE CHANGE PROCEDURES SUBSCRIBER RATES.** In the event federal law permits cities to regulate Subscriber rates and charges, the City shall have the right to regulate such rates and charges to the extent and in the manner permitted by federal law.

**SECTION 16. PUBLICATION COSTS.** The Company shall reimburse the City for the actual cost to publish a summary of this Franchise as such publication may be required. A bill for the publication costs shall be presented to the Company by the City Administrator and shall be paid within thirty (30) days.

**SECTION 17. TERMINATION.** The City may terminate and cancel the Franchise and all rights and privileges of the Franchise if the Company substantially violates any material provision of the Franchise. Conditions or circumstances for the

municipality's termination of the Franchise shall be subject to Applicable Law and shall include, but not necessarily be limited to, the following:

- (1) If the Company should default in the performance of any of its material obligations under the Franchise and shall fail to act on the default within thirty (30) days after receiving written notice setting forth the specific nature of the default.
- (2) Provided, however, the Company shall not be deemed to be in default in the performance of any material provision of this Franchise, nor shall any forfeiture be invoked for any violation or failure to perform any material provision hereof due to strikes, lock-outs, insurrections, acts of God or any cause beyond the control of the Company.
- (3) If the City believes the Company has not complied with the terms of the Franchise, the City shall first informally discuss the matter with Company. If these discussions do not lead to resolution of the problem, the City shall provide the Company with a written notice of the specific cause for termination and its intention to terminate the Franchise, and shall allow the Company a minimum of thirty (30) days subsequent to receipt of the written notice in which to correct the violation. If, by the nature of violation, such default cannot be cured within the thirty (30) day period, as reasonably determined by City, the Company shall initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

**SECTION 18. PUBLIC HEARING.** If the Company fails to respond to the written notice of the violation received from the City, or if the violation is not remedied within the cure period set forth above, the City or its designee shall schedule a public hearing. The City shall provide the Company at least fourteen (14) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing. The Company shall have the right to present evidence and to question witnesses. The City shall determine if the Company has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Company may petition for reconsideration before any competent tribunal having jurisdiction over such matters. During the period any review is being taken, the Franchise shall remain in full force and effect.

**SECTION 19. REMEDIES.** In addition to the procedure set forth in Section 22 hereof, no provisions of this Franchise shall be deemed to bar the right of the City or Company from seeking any legally permissible remedy against the other party in any court of competent jurisdiction.

**SECTION 20. NON-ENFORCEMENT.** Company shall not be relieved of any obligation to comply with any of the provisions of the Franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the City or its officers, agents or employees to enforce prompt compliance.

## SECTION 21. COMMUNICATIONS WITH REGULATORY AGENCIES.

Copies of all petitions, applications, communications and reports submitted by Company to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a Cable System or Services provided through such a System, shall be filed with the City upon written request. Copies of responses or any other communications from the regulatory agencies to Company likewise shall be filed with the City upon written request.

## SECTION 22. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

(1) **Performance Bond.** Within thirty (30) days of Company's execution of this Franchise Company shall provide City with a Fifty Thousand Dollars (\$50,000) performance bond in a form and with such sureties as are mutually acceptable to the Parties. The performance bond shall ensure compliance with the Franchise. At such time as a majority of Company's construction is complete, the amount of the performance bond shall be reduced to Ten Thousand Dollars (\$10,000) for the remainder of the Franchise term.

(2) **Procedure for Franchise Enforcement.** Whenever the City finds that Company has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Company. The written notice shall describe in reasonable detail the alleged violation to afford Company an opportunity to remedy the violation. Company shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation. Company may, within thirty (30) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Company shall specify with particularity the matters disputed by Company and shall stay the running of the above-described time.

(a) City shall hear Company's dispute at the next regularly scheduled or specially scheduled Council meeting. Company shall have the right to speak and introduce evidence. The City shall determine if Company has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Company may petition for reconsideration.

(b) If after hearing the dispute, the claim is upheld by the City, then Company shall have thirty (30) days within which to remedy the violation before the City may seek to draw on the performance bond.

(c) Company may appeal any adverse decision by the City which shall stay the City's right to draw on the performance bond until such time as the action has been finally adjudicated by a court of competent jurisdiction.

(3) **Time for Correction of Violation.** The time for Company to correct any alleged violation may be extended by the City if the necessary action to correct

the alleged violation is of such a nature or character as to require more than thirty (30) days within which to perform provided Company commences corrective action within fifteen (15) days and thereafter uses reasonable diligence, as determined by the City, to correct the violation.

(4) Letter of Credit.

(a) If the City has reason to believe that the Company has defaulted in the performance of any provision of this Franchise, except as excused by force majeure, the City shall notify the Company in writing, by certified mail. Within fourteen (14) days of receipt of a written notice from the City of an alleged violation of this Franchise, Company shall provide the City with an irrevocable letter of credit in the sum of Twenty Thousand and No/100 Dollars (\$20,000). For purposes of this section written notice shall mean delivery by certified mail with return receipt.

(b) The letter of credit shall provide that funds will be paid to City, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this section. The letter of credit shall be provided by Company regardless of whether Company disputes the alleged violation. Any failure by Company to provide the letter of credit as required herein shall constitute a separate breach of this Franchise. Once the proceeding addressing the alleged violation has been completed the Company shall be relieved of maintaining the letter of credit until such time as another alleged violation notification is received by Company at which time the process shall begin again.

(c) The Company shall have thirty (30) days from the receipt of an alleged violation to:

(i) Respond to the City in writing, contesting the City's assertion of default and providing such information or documentation as may be necessary to support the Company's position; or

(ii) Cure any such default. The time for Company to correct any violation or liability shall be extended by City if the City determines that the necessary action to correct such violation or liability is of such a nature or character as to require more than thirty (30) days within which to perform, provided Company provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability.

(d) If the City finds the Company failed to respond to such an alleged violation to cure the default or to take reasonable steps to cure the default,

the City shall promptly schedule a public hearing to consider that matter. The City shall provide written notice, by certified mail, at least fourteen (14) days prior to the date of the hearing. The Company shall be provided reasonable opportunity to offer evidence and be heard at such public hearing.

(e) If the City, after public hearing, determines that a continuing state of default exists and that its cure is unlikely or untimely, the City may determine to pursue one (1) of the following:

- (i) assess liquidated damages in accordance with the schedule set forth in Section below;
- (ii) determine the amount of actual damages to the City of the default and draw upon all or any appropriate part of the letter of credit provided pursuant herein;
- (iii) seek specific performance of any provision in this Franchise which reasonably lends itself to such remedy, as an alternative to damages;
- (iv) pursue the procedures for revocation of the Franchise under the provisions contained herein and Applicable Law;
- (v) invoke any other lawful remedy available to the City.

(f) As an alternative to recovery of any monies owed by Company to City or any Person or damages to City or any Person as a result of any acts or omissions by Company pursuant to the Franchise, the City may charge to and collect from the letter of credit the following as liquidated damages:

- (i) For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150.00) per day for each day, or part thereof, such failure occurs or continues.
- (ii) Fifteen (15) days following notice from City of a failure of Company to comply with construction, operation or maintenance standards, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150.00) per day for each day, or part thereof, such failure occurs or continues.
- (iii) For failure to provide the Services Company has proposed, including, but not limited to, the implementation and the utilization of the access Channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be One

Hundred Fifty and No/100 Dollars (\$150.00) per day for each day, or part thereof, such failure occurs or continues.

(g) Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

(h) Whenever the letter of credit is drawn upon, Company may appeal such decision to a court of competent jurisdiction. All damages shall continue to accrue from the letter of credit during any appeal pursuant to this subparagraph (h).

(i) If City draws upon the letter of credit or any subsequent letter of credit delivered pursuant hereto, in whole or in part, the City shall provide written notice of such draw and the Company shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement letter of credit or certification of replenishment for the full amount stated. This shall be a continuing obligation for any draws upon the letter of credit.

(j) If any letter of credit is not so replaced or replenished, City may draw on said letter of credit for the whole amount thereof and use the proceeds as City determines in its sole discretion. The failure to replace or replenish any letter of credit may also, at the option of the City, be deemed a default by Company under this Franchise. The drawing on the letter of credit by City and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Company which are in default, shall not be a waiver or release of such default.

(k) Payment of liquidated damages mandated by the City in accordance with the terms of this Franchise shall be considered a cure and full and final resolution of the alleged violation for the time period specified and shall not thereafter be considered, for any purpose, as an event of noncompliance for such specified period. If the offending issues continue following payment of liquidated damages, the City may consider that as another violation of the Franchise. Nothing herein shall prevent the City from initiating another violation proceeding pursuant to the terms of this Franchise in the event another alleged violation of such provision of the Franchise should arise.

(5) Insurance.

(a) The Company shall obtain and continue to keep the same in full force and effect during the period of this grant, liability insurance policy or policies or indemnity as the Company may elect, conditioned for the benefit of Persons suffering injury, loss or damage in Person or property, by virtue of the negligent operation of said Cable System by said

Company. Such liability policy or policies or indemnity shall be in the minimum amounts of:

- (i) Commercial General Liability, One Million Dollars (\$1,000,000.00) per occurrence, Combined Single Limit for injury or death to any one (1) Person;
- (ii) Two Million Dollars (\$2,000,000.00) for the death or injury to all Persons affected by any one (1) accident; and
- (iii) One Million Dollars (\$1,000,000.00) per occurrence Combined Single Limit in the form of an umbrella policy.

(b) The following endorsements shall be attached to the liability policy:

- (i) The policy shall provide coverage on an "occurrence" basis;
- (ii) The policy shall cover personal injury as well as bodily injury;
- (iii) The policy shall include contractual liability coverage sufficient to meet the requirements of this Agreement, and to the extent aligned with and permissible under Applicable Law, no Contractual Liability Coverage Exclusion modifying or deleting the definition of "insured contract" from the unaltered ISO CG 00 01 Edition date 10/01 (CG 24 26 or similar);
- (iv) Broad form property damage liability shall be afforded.
- (v) City shall be named as an additional insured on the policy.
- (vi) An endorsement stating that the policy shall not be canceled without thirty (30) days' notice of such cancellation given to City (ten (10) days' notice for cancellation due to nonpayment).

(c) The Company shall also carry Workers' Compensation coverage for all its employees subject to such coverage. The Company shall submit to the City Administrator a certificate showing the insurance coverage, including Workers' Compensation coverage, is in effect.

## SECTION 23. UNLAWFUL CONNECTIONS, VIOLATIONS, PENALTIES.

(1) It shall be unlawful for any Person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, to any part of the franchised Cable System within this City for the purpose of enabling

anyone to receive any television, radio or data impulse signal, picture, sound or other transmission, without payment to the Company.

(2) It shall be unlawful for any Person, without the consent of the Company, willfully to tamper with, remove or injure any cable, wires or equipment used for distribution of television, radio or data impulse signals, pictures, sound or other transmission.

(3) Any Person violating or failing to comply with any of the provisions of Paragraphs (1), (2) or (3) of this section shall be guilty of a misdemeanor.

(4) Any Person, including Company, conducting digging, grading, leveling, excavating, blasting and similar operations shall comply with the requirements of Minn. Stat. § 216D.

(5) Nothing contained in the Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Company's equipment or facilities while such Person is performing any work connected with grading, regrading, changing the line of any Street or public place, or with the construction or reconstruction of any sewer or water system, or with respect to any overhead or aerial construction or other work near the Company's aerial facilities or with the City's use of the System for police and fire alarm purposes.

**SECTION 24. SUBSCRIBER PRIVACY.** The Company shall comply with all Applicable Laws related to the protection of a Subscriber's privacy including, but not limited to, 47 U.S.C. § 551.

## **SECTION 25. COMMUNITY ACCESS CHANNELS.**

(1) Company shall make two (2) Channels available to the City exclusively for shared PEG use ("PEG Channels"). The PEG Channels shall at all times remain on the Basic Cable Service tier or the lowest entry level tier of Cable Service if the Basic Cable Service tier is no longer offered by Company. Company shall endeavor to maintain the two (2) shared PEG Channels at Channel 180 and 181 throughout the term of the Franchise. The terms and conditions of Minn. Stat. § 238.084, Subd. 1(z) shall govern the provision of an additional PEG Channel. Company shall also make available one (1) additional Channel for PEG use (for a total of three (3) PEG Channels) upon advance written notice from the City, by vote of the City Council and no sooner than the fifth (5th) anniversary date of this Franchise, and activated within ninety (90) days of written notice by the City for activation. This third PEG Channel, if required by City, may be placed on a digital tier of service, if so desired by Company.

(2) The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Company may upon written request to City, utilize any PEG Channels for commercial or non-commercial programming when they are not scheduled for PEG use in accordance with Applicable Law. City shall

establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531). City may not request additional Channel capacity beyond the three (3) Channels for PEG use.

(3) City shall be responsible for all PEG Channel programming requirements, including but not limited to scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair.

(4) Company shall endeavor not to relocate the PEG Channels to a different Channel number. Company shall provide City and all Subscribers with at least thirty (30) days prior written notice of any relocation. In the event the PEG Channels are relocated, Company shall, in advance of the relocation, inform Subscribers of the new Channel location through bill inserts and bill messages.

(5) To the extent permitted by Company's billing process, Company shall allow the City to place bill stuffers in Company's Subscriber statements at a cost to the City not to exceed Company's cost, no less frequently than once per year upon the written request of the City and at such times that the placement of such materials would not materially and adversely affect Company's cost for the production and mailing of such statements. The City agrees to pay Company in advance for the actual cost of such bill stuffers.

(6) Digital and HD PEG Carriage Requirements.

(a) Company shall provide all of the PEG Channels on the Basic Cable Service tier or the lowest tier of service offered by Company in accordance with Applicable Law. Within ninety (90) days from the date of written request from the City, Company shall make one (1) PEG Channel designated by the City available in both high definition ("HD") format and standard definition ("SD") format, provided that Company receives an HD signal from the City that meets all required technical standards required under Applicable Law. Company shall provide, free of charge and at its sole cost and expense, any required HD server and related ancillary equipment necessary to allow the designated PEG Channel to be simulcast in both SD and HD over the Cable System.

(b) The City acknowledges that receipt of an HD format Channel may require Subscribers to buy or lease special equipment or pay additional HD charges applicable to all HD services provided by Company.

(c) No sooner than thirty-six (36) months after the acceptance of this Franchise, and upon ninety (90) days written notice to Company, the City may provide PEG Channels in only HD format to the demarcation point to provide the signal to Company, and as such the City will no longer provide the PEG Channels in SD format. Company shall provide all necessary transmission equipment from the demarcation point and

throughout Company's distribution system (including Company's headend), in order to deliver the PEG Channels.

(7) Access Fee.

(a) Upon commencement of Cable Service by Company to its first Subscriber in the City and through the end of the term of this Franchise, Company shall collect on behalf of the City and remit to the City a per Subscriber fee of fifty cents (50¢) per month, solely to fund PEG access related capital expenditures (hereinafter "Access Fee"). The City shall have the right to increase the Access Fee to fifty-five cents (55¢) per month upon ninety (90) days' notice to Company so long as the same Access Fee is also assessed against any other franchised cable operator serving the City.

(b) Any and all payments by Company to City in support of PEG access programming shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542). The Access Fee is not intended to represent part of the Franchise Fee and is intended to fall within one (1) or more of the exceptions in 47 U.S.C. § 542. The Access Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws.

(c) Company shall pay the Access Fee to the City quarterly at the same time as the payment of Franchise Fees under Section 14 of this Franchise. Company agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the Access Fee.

(d) The City, may at any time, increase or reduce the Access Fee upon ninety (90) days written notice to Company.

(e) Company agrees that if the City imposes a different Access Fee (higher or lower) upon any other cable operator holding a cable franchise issued by the City, Company shall match such Access Fee upon ninety (90) days advanced written notice from the City. The purpose of this provision is to ensure that all cable operators holding a cable franchise in the City will remit the same Access Fee to the City.

(f) Any PEG Access capital support amounts owing pursuant to this Franchise which remain unpaid more than forty-five (45) days after the date the payment is due shall be delinquent and shall thereafter accrue interest at three quarter percent (.75 %) per month or the maximum amount permitted by law.

(8) Service to Public Buildings. Upon the request of the City and for the entire term of this Franchise, the Company shall provide Basic Cable Service to a

single Drop, with one set-top box for each television located within the institutions, if necessary, one (1) outlet free of charge to all of the sites listed on Exhibit B attached hereto that are not currently receiving service from another franchised cable provider. The City, however, shall have the right to request the disconnection of the other cable franchised operator's complimentary services and require Company to provide complimentary service to that location provided the City maintains a fair distribution of service to public buildings between all franchised cable operators serving the City. Company shall provide sixty (60) days advance written notice to the City, and all of the sites listed on Exhibit B attached hereto prior to discontinuing the provision of complimentary service under this Section 25(8).

(9) In the event the Company elects to charge or offset the value of such service from the Franchise Fee payable to the City as may be permitted by Applicable Law, it may only do so under this Franchise if Company also imposes similar charges or offsets for all other local franchising authorities served by the Company in the state of Minnesota, and only then following one hundred twenty (120) days advance written notice to City.

(10) The Company shall provide at no charge one (1) full-time upstream video Channel via a dedicated cable from the Master Control Studio (located on the campus of Riverland Community College) to the Company's headend. This video channel shall then be placed on the specially designated educational access Channel referred to in subsection (1) of this section.

**SECTION 26. FRANCHISE ADMINISTRATOR.** The City Administrator shall be responsible for the continuing administration of this Franchise.

**SECTION 27. ABANDONMENT.** The Company may not abandon any portion of the Cable Service provided hereunder, without having given three (3) months' prior written notice to the City. Further, Company may not abandon any Cable Service or any portion of the Cable Service without compensating the City for any damages resulting from the abandonment.

**SECTION 28. SEVERABILITY.** Should any section, subsection, sentence, clause phrase or provision of this Franchise be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the Franchise as a whole or any part thereof, other than the part so declared invalid.

**SECTION 29. NOTICES.** All notices, reports or demands required to be given under this Franchise shall be in writing and shall be deemed to be given upon delivery if delivered personally to the person designated below, or on the fifth (5<sup>th</sup>) day following mailing if sent in accordance with the notice requirement of this section and deposited in the United States mail in a sealed envelope, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being

given, as follows.

If to the City:

City of Austin  
Attn: City Administrator  
500 4th Avenue NE  
Austin, Minnesota 55912-3773  
Email: craigc@ci.austin.mn.us

If to the Company:

CMN-RUS, Inc.  
ATTN: Legal Department  
8837 Bond Street  
Overland Park, KS 66214  
Email: John.Campbell@metronetinc.com

**SECTION 30. OTHER ORDINANCES.** All other ordinances and parts of ordinances in conflict herewith and regarding the subject matter hereof are hereby repealed.

**SECTION 31. MINNESOTA FRANCHISE STANDARDS.** This Franchise complies with the Minnesota Franchise Standards contained in Section 238.084 of the Minnesota Statutes.

**SECTION 32. GENERAL PROVISIONS.** City Code Chapter 1, entitled "General Provisions and Definitions Applicable to the Entire City Code Including Penalty for Violation" is hereby adopted in its entirety, by reference, as though repeated verbatim herein

**SECTION 33. FORCE MAJEURE** In the event Company's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof, provided Company has notified City in writing within ten (10) days of its discovery of the occurrence of such an event. Such causes beyond Company's reasonable control shall include, but shall not be limited to, acts of God, pandemics, disease, civil emergencies and labor unrest or strikes, untimely delivery of equipment, inability of Company to obtain access to an individual's property and inability of Company to secure all necessary permits to utilize utility poles and conduit so long as Company utilizes due diligence to timely obtain said permits.

**SECTION 34. EFFECTIVE DATE.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Company recorded on the signature page of this Franchise. This Franchise shall expire on June 30, 2031 unless extended by mutual agreement of the parties.

**SECTION 35. ENTIRE AGREEMENT.** This Franchise sets forth the entire agreement between the City and Company respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and

written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and are superseded hereby.

## SECTION 36. PUBLICATION AND ACCEPTANCE.

(1) Publication. This Franchise shall be published in accordance with Applicable Law. The Summary of Ordinance for Publication, attached hereto as Exhibit E, shall be published at least once in the official newspaper of the City, at Grantee's sole cost, to clearly inform the public of the intent of the ordinance.

(2) Acceptance.

(a) Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.

(b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

(c) The City's "Notice of Intent to Consider an Application for a Franchise" ("Notice") provided, consistent with Minn. Stat. §238.081 subd. 8, that applicants would be required to reimburse the City for all necessary costs of processing a cable communications franchise. Grantee submitted an application fee with its application to the City. The Notice further provided that any unused portion of the application fee would be returned, and any additional fees required to process the application and franchise, beyond the application fee, would be assessed to the successful applicant. The Grantee shall therefore submit to the City at the time of acceptance of this Franchise, a check made payable to the City of Austin, Minnesota for all additional fees and costs incurred by the City. Within thirty (30) days of City Council approval, the City shall provide Grantee with a letter specifying such additional costs following approval of this Franchise by the City Council.

(d) Grantee shall accept this Franchise in the following manner:

(i) This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

(3) With its acceptance, Grantee shall also deliver any performance bond and insurance certificates required herein.

PASSED by a vote of Yeas and Nays this \_\_\_\_ day of \_\_\_\_\_, 2021

YEAS \_\_\_\_\_ NAYS \_\_\_\_\_

ATTEST:

APPROVED:

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City Recorder

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Mayor

ACCEPTANCE: THIS FRANCHISE IS ACCEPTED ON THIS \_\_\_\_ DAY OF \_\_\_\_\_  
\_\_\_\_\_, 2021, AND WE AGREE TO BE BOUND BY ITS TERMS AND  
CONDITIONS.

CMN-RUS, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

SWORN TO BEFORE ME this  
\_\_\_\_ day of \_\_\_\_\_, 2021

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Notary Public

**EXHIBIT A**  
**FRANCHISE FEE PAYMENT WORKSHEET**

	Month/Year	Month/Year	Month/Year	Total
Cable Service Revenue				
Installation Charge				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Other Revenue				
Equipment rental				
<b>REVENUE</b>				
Fee Calculated				

Fee Factor: 5%

**EXHIBIT B**  
**SERVICE TO PUBLIC FACILITIES AND PRIVATE BUILDINGS**

1. City Hall	500 4 <sup>th</sup> Avenue Northeast
2. City Police Department	201 1 <sup>st</sup> Street Northeast
3. City Fire Department	122 1 <sup>st</sup> Avenue Northeast
4. County Sheriff Department	201 1 <sup>st</sup> Street Northeast
5. County and City Civil Defense Department	201 1 <sup>st</sup> Street Northeast
6. Austin Public Library	323 4 <sup>th</sup> Avenue Northeast
7. Youth Activity Center-Riverside Arena	501 2 <sup>nd</sup> Avenue Northeast
8. Mower County Senior Center	400 3 <sup>rd</sup> Avenue Northeast
9. Wastewater Treatment Plant	1205 South Main Street
10. Public Works Maintenance Warehouse	1601 11 <sup>th</sup> Drive Northeast
11. Mower County Emergency Management	201 First Street Northeast
12. Riverland Community College	1900 8 <sup>th</sup> Avenue Northwest
13. Austin High School	301 3rd Street Northwest
14. Banfield Elementary School	301 17 <sup>th</sup> Street Southwest
15. Ellis Middle School	1700 4 <sup>th</sup> Avenue Southeast
16. Neveln Elementary School	1918 Oakland Avenue East
17. Southgate Elementary School	1601 19 <sup>th</sup> Avenue Southwest
18. Woodson Kindergarten Center	1601 4 <sup>th</sup> Street Southeast
19. Pacelli High School	311 4 <sup>th</sup> Street Northwest
20. St. Augustine-St. Edward School	511 4 <sup>th</sup> Avenue Northwest
21. Community Learning Center	912 1 <sup>st</sup> Avenue Northeast
22. Sumner Elementary School	805 8 <sup>th</sup> Avenue Northwest

**EXHIBIT C**  
**CUSTOMER SERVICE OBLIGATIONS**

**Customer service obligations**

- (a) A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.
- (b) Nothing in this rule should be construed to prevent or prohibit:
  - (1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;
  - (2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;
  - (3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or
  - (4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this rule.
- (c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:
  - (1) Cable system office hours and telephone availability.
    - (i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
      - (A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
      - (B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
    - (ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers.

(i) Refunds. Refund checks will be issued promptly, but no later than either:

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

### **Customer service-general information**

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system; and
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

### **Customer service-rate and service changes**

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by § 76.1602.

(c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days' written notice to both subscribers and local franchising

authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

### **Charges for customer service changes**

If a cable operator establishes a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, as provided in § 76.980(d), the cable system must notify all subscribers in writing that they may be subject to such a charge for changing service tiers more than the specified number of times in any 12 month period.

### **Information on subscriber bills**

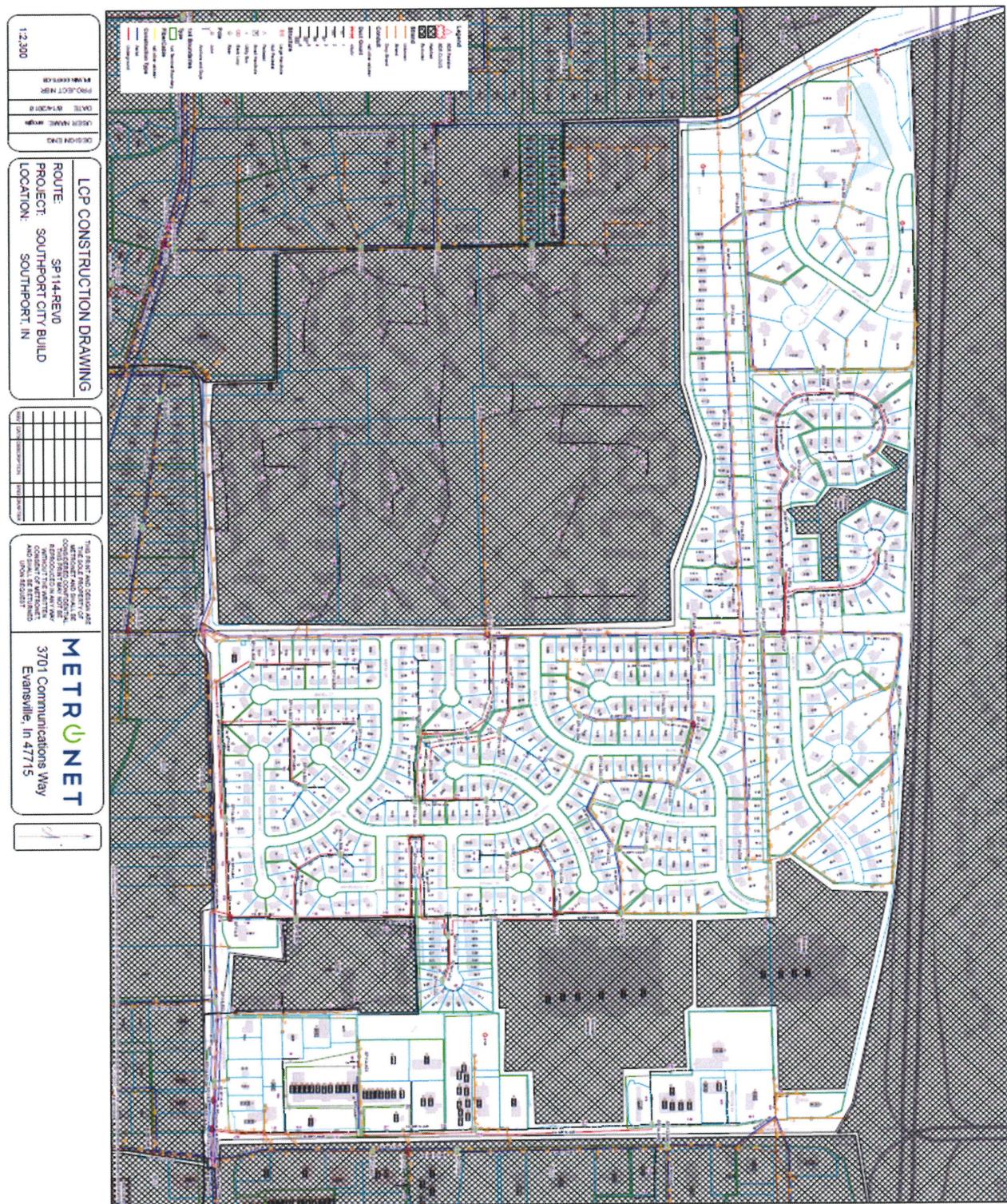
(a) Bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

## **EXHIBIT D**

### **SAMPLE CONSTRUCTION DRAWINGS**





## Example Aerial

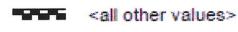
### Legend



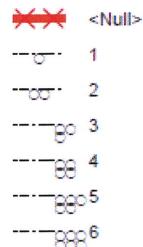
### Strand



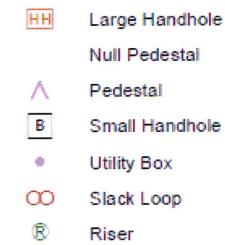
### Conduit



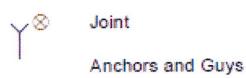
### Duct Count



### Structure



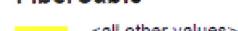
### Pole



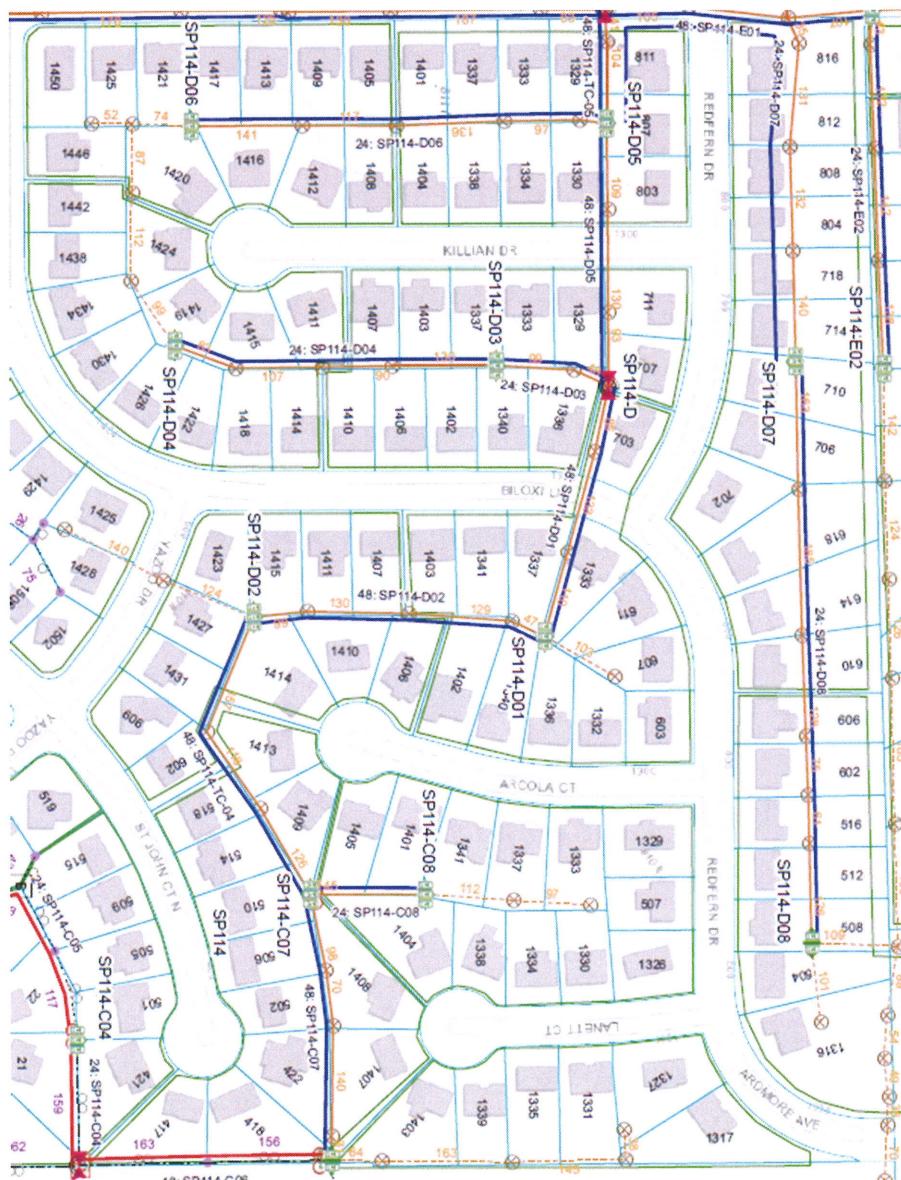
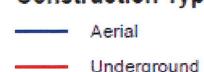
### 1x4 Boundaries



### FiberCable

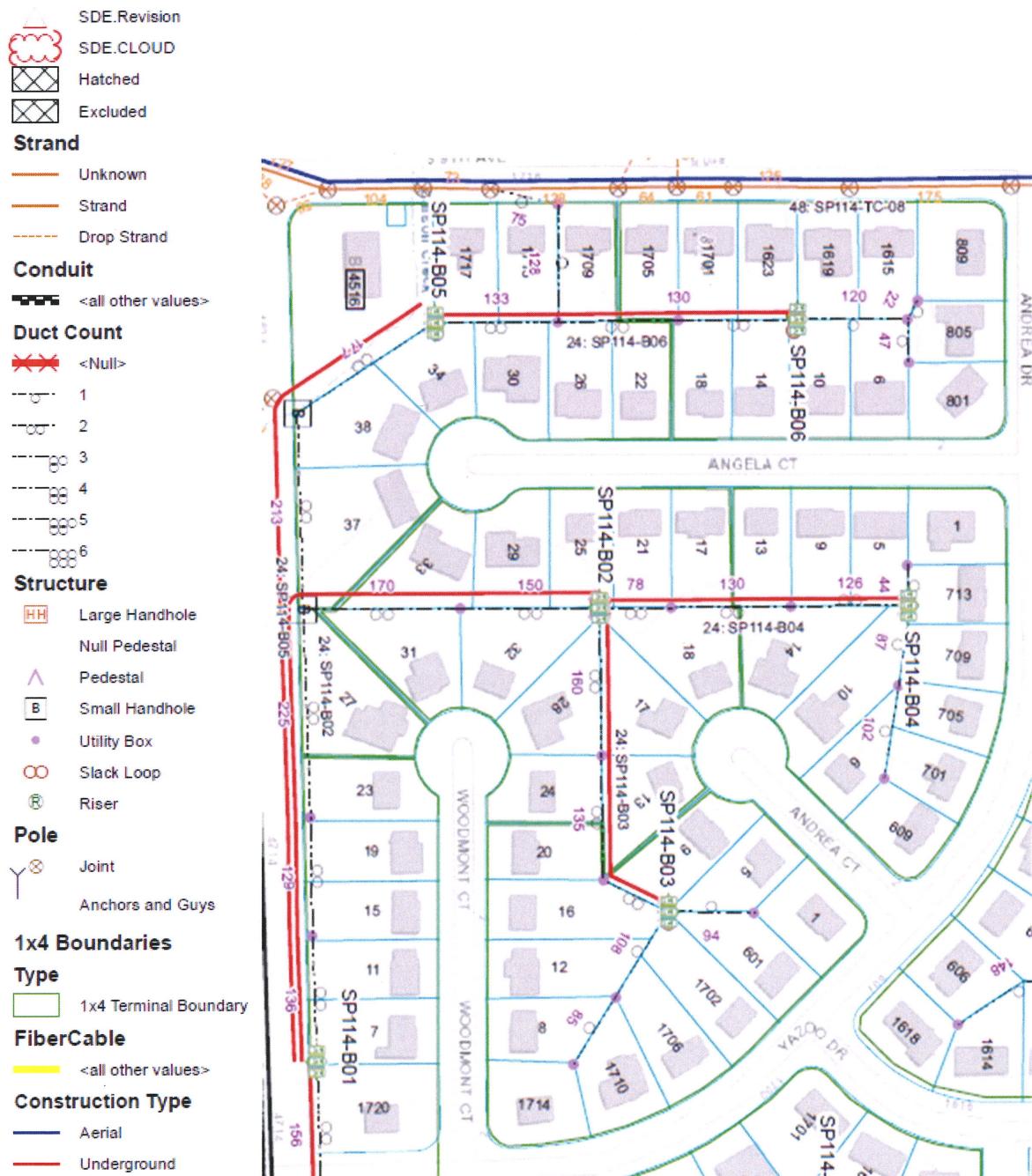


### Construction Type



## Example Rear Easement

## Legend



**EXHIBIT E**  
**SUMMARY OF ORDINANCE FOR PUBLICATION**

AN ORDINANCE GRANTING A FRANCHISE TO CMN-RUS, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF AUSTIN, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

On \_\_\_\_\_, 2021, the City of Austin, Minnesota (“City”) adopted an ordinance granting a Cable Television Franchise to CMN-RUS, Inc. (“Grantee”). The Franchise serves two (2) purposes. First, it is intended to provide for and specify the means to attain the best possible Cable Service for the public by providing requirements for cable with respect to technical standards, customer service obligations, and related matters. Second, it grants a non-exclusive Cable Television Franchise to Grantee, to operate, construct and maintain a Cable System within the City and contains specific requirements for Grantee to do so.

The Franchise includes the following: 1) a Franchise Fee of five percent (5%) of Grantee’s annual Gross Revenues; 2) a Franchise term of ten (10) years; 3) a list of schools and public buildings entitled to receive complimentary Cable Service; 4) dedicated channel capacity for Public, Educational and Governmental (“PEG”) access programming and provides financial support of such PEG Channels; 5) customer service standards regarding Grantee’s Cable Services; and 6) a performance bond to enforce Grantee’s compliance with the franchise.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of Ordinance No. \_\_\_\_\_. A copy of the entire ordinance shall be posted at the Austin City Hall.

It is hereby directed that only the above title and summary of Ordinance No. \_\_\_\_ be published, conforming to Minn. Stat. § 331A.01, with the following:

**NOTICE**

Persons interested in reviewing a complete copy of the ordinance may do so at the Austin City Hall at 500 Fourth Avenue NE, Austin, MN 55912 during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

	<u>Yes</u>	<u>No</u>
Mayor _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____

Passed by the Austin City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST: \_\_\_\_\_, Mayor

**City of Austin**  
Craig Clark,  
City Administrator



**500 Fourth Avenue N.E.**  
**Austin, Minnesota 55912-3773**  
**Phone: 507-437-9941**  
**[craigc@ci.austin.mn.us](mailto:craigc@ci.austin.mn.us)**  
**[www.ci.austin.mn.us](http://www.ci.austin.mn.us)**

**To: Mayor and Council Members**  
**From: Craig D. Clark, City Administrator**  
**RE: MetroNet Indefeasible Right of Use Agreement**

As a part of the MetroNet fiber buildout within the City of Austin by we are gaining use of a fiber connection to City facilities as part of an Indefeasible Right of Use Agreement (Exhibit 1) so long as we waive any fees which would normally be a part of our Right of Way ordinance. Right of Way inspection costs were approved by Council at their May 3<sup>rd</sup> meeting with SEH at a not to exceed amount of \$75,000.

This agreement provides for the following components:

- Waiver of Permit Fees
- Provide fiber connection to the Nature Center Interpretative building, Public Works Garage, and the Wastewater Treatment Plant to City Hall.
- Term of the agreement runs concurrently with the Franchise Agreement.
- Use of fiber connection is restricted to City use only.
- Establish a right to inspect and limitation of liability of MetroNet.
- Other provisions to secure the agreement by signatures and governing provisions of the agreement.

**Council action is requested to approve the agreement included as Exhibit 1 and thereby authorize the Mayor to sign and Recorder attest the agreement.**

## INDEFEASIBLE RIGHT OF USE AGREEMENT

THIS INDEFEASIBLE RIGHT OF USE AGREEMENT (“Agreement”) is made this 14th day of June, 2021, by and between the City of Austin, Minnesota (“City”) and CMN-RUS, Inc. and its affiliates (collectively “MetroNet”). City and MetroNet are referred to herein, individually, as a “Party” and, collectively, as the “Parties”.

WHEREAS, the Parties are party to a Letter Agreement dated April 23, 2021 expressing (i) MetroNet’s desire to construct a fiber-to-the-premises network (“Network”) within the corporate boundaries of the City, and (ii) the City’s desire to obtain dark fiber connections, and (iii) that MetroNet would provide such connections in exchange for the City’s waiver of all permit fees required for the construction of the Network. The Parties agreed to memorialize the terms of the exchange in a separate agreement, which is this Agreement.

NOW, THEREFORE, in consideration of the following mutual covenants and conditions and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**1. Waiver of Permit Fees.** The City shall waive all permit fees required for the construction of the Network.

**2. The Dark Fiber Indefeasible Right of Use.**

a. MetroNet will install and provide to the City an Indefeasible Right of Use (“IRU”) in dark fibers, the number and end point(s) of which are more specifically described in Exhibit A (“City Fibers”).

b. The City may access the City Fibers at the end points expressly authorized in Exhibit A and at no other location.

c. MetroNet will terminate the City Fiber at each location identified in Exhibit A (each a “Location”) at a point agreed to by the Parties.

d. MetroNet, at its expense, will perform routine maintenance of the City Fibers, provided, MetroNet is given the access to do so. MetroNet, at its expense, will also perform relocations imposed on other similarly situated right-of-way users. MetroNet will perform replacements, and non-routine maintenance (e.g. repairing any failure, interruption or impairment to the fiber for which cost reimbursement from a third party is not otherwise available) and the City will pay its pro rata share of the actual costs incurred by MetroNet in connection therewith. “Pro rata share” means the percentage of the total count of fiber strands that is represented by the City Fibers in the fiber route. Maintenance may be performed by a third-party on behalf of MetroNet. It is the understanding of the Parties that there is unlikely to be any recurring maintenance costs imposed on the City absent unforeseen damage to the City Fiber.

e. MetroNet will not “light” or monitor the City Fibers. Trouble can be reported to MetroNet by phone at 833.266.5812 or by email at [mf-noc@metronetinc.com](mailto:mf-noc@metronetinc.com).

f. The City will be responsible for any applicable taxes or other governmental assessments that may be imposed on and in connection with the City Fibers. MetroNet will be responsible for any taxes that may apply to the Network.

**3. Term.** This Agreement is coterminous with the term of the franchise agreement by and between the Parties dated June 8, 2021 (the “Franchise Agreement”), any renewal of the Franchise Agreement, or any subsequent franchise or similar agreement entered into between the Parties that replaces the Franchise Agreement. In the event there is a change in applicable law, and MetroNet no longer is required to enter into a franchise or similar agreement with the City to provide video services, upon the delivery of written notice from either Party to the other Party, the Parties will negotiate in good faith on an appropriate amendment to this Agreement that shall include a new term which shall not be less than ten (10) years.

**4. Use of City Fiber.** The City will have free use of the City Fiber exclusively for its own internal telecommunications and data transmission needs and for no other purposes, including, but not limited to providing commercial services to third parties or allowing third parties to use the City Fibers for commercial purposes. The City Fibers may not be assigned, leased, sublicensed or otherwise transferred by the City, nor may the City grant any rights to use the fibers to any third party.

**5. Right to Inspect and Test; Acceptance; Limitation of Liability.** THE CITY SHALL HAVE THE RIGHT TO INSPECT AND TEST THE FIBER AT CITY’S OWN EXPENSE. USE OF THE CITY FIBER SHALL BE DEEMED ACCEPTANCE OF THE CITY FIBER. THE CITY FIBER IS PROVIDED BY METRONET ON AN “AS IS,” “AS AVAILABLE” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. USE OF THE CITY FIBER IS AT CITY’S SOLE RISK. IN NO EVENT WILL METRONET, ITS AFFILIATES OR PARENT COMPANY, BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING LOST DATA, BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT OR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT THERE IS NEGLIGENCE ON THE PART OF METRONET AND WHETHER OR NOT METRONET HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

**6. Entire Agreement; Amendments; Signatures.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter contained herein and supersedes all prior offers, negotiations and other agreements concerning the subject matter contained herein. No revision of this Agreement shall be valid unless made in writing and signed by an officer of MetroNet and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original. An electronically delivered signature shall create a valid and binding obligation of a Party with the same force and effect as if it were an original thereof.

**7. Governing Law; Remedies; Interpretation.** The laws of Minnesota shall govern this Agreement. In the event of a default by either Party, the other Party shall have the rights and remedies available to it at law or in equity. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not construed against the drafter.

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

City of Austin, Minnesota

CMN-RUS, Inc.

---

Name: \_\_\_\_\_

Title: \_\_\_\_\_

---

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

MetroNet will provide an IRU in **two (2)** dark fibers between Location A and Location Z listed below. The City shall only have access to the fibers at Location A and Location Z end points.

Location A  
500 4<sup>th</sup> Avenue NE

Location Z  
1. 1601 11<sup>th</sup> Drive NE  
2. 1304 21<sup>st</sup> Street NE  
3. 1205 South Main Street

## RESOLUTION NO.

# APPROVING AN INDEFEASIBLE RIGHT OF USE AGREEMENT WITH CMN-RUS, INC.

WHEREAS, the City of Austin granted a cable franchise agreement to CMN-RUS, Inc.; and

WHEREAS, the City desires to enter into an indefeasible right of use agreement with CMN-RUS, Inc. for fiber connections to City facilities; and

WHEREAS, the City shall waive all right-of-way permit fees for the installation of the city-wide cable and fiber system.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Austin hereby approves the indefeasible right of use agreement with CMN-RUS, Inc. and authorizes the Mayor and City Recorder to execute said agreement.

Passed by the Austin City Council this 21st day of June, 2021.

## YEAS

## NAYS

ATTEST:

APPROVED:

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## 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:** June 9, 2021  
**Subject:** Flood Acquisition, 304 22<sup>nd</sup> Street SW

We were successful in receiving a federal grant through Homeland Security Emergency Management for the acquisition of 304 22<sup>nd</sup> Street SW. The grant will cover 75% of the costs for acquisition, asbestos abatement and demolition of the structure. The total budget for the project is \$270,583. The details of the grant are as follows:

Grantor: HSEM  
 Grantee: City of Austin  
 Grant Funds: 75% eligible costs up to \$202,937.25, requirement for local match  
 Effective date: 3/18/2021  
 Expiration date: 3/18/2024  
 Grant Use: Property acquisition, environmental and demolition  
 Declaration: DEED restriction for limiting sale and future use of the property  
 Contracts: Requirement for use of prevailing wages for all construction contracts and lobbying certification from contractors

Authorized Representatives:

- Jennifer Davis, State Hazard Mitigation Officer
- Steven Lang, City Engineer

I would recommend Council approve the attached grant agreement and authorize the City Engineering to execute all necessary project documents. If you have any questions, feel free to contact me.

<b>Total Project Cost</b>	<b>\$ 270,583.00</b>
75% HSEM	\$ 202,937.25
25% Local	\$ 67,645.75 (50% LOST and 50% DNR)

## IMPORTANT SIGNATURE REQUIREMENTS

Authorization to execute grant agreements/amendments can be conferred by:

- 1) Statute, 2) Bylaws, or 3) Resolution

Resolution is not needed if the authorized officials below are signing the grant agreement. These officials may confer their grant signing authority to others by resolution, and they are the only acceptable signature on a resolution:

Statutory Cities

Mayor and City Clerk

County

Board Chair and Clerk of the Board

Non-Profit

Board Chair, or official authorized in bylaws

**Legal authority for signing contracts for cities and counties is identified in statute.** If not signed by the office/official(s) identified in statute, the authority may be delegated by resolution from the city council or county board. If a resolution delegates to more than one person and if the word “**and**” is used between the names, then **all named individuals must sign**. If a resolution uses the word “**or**” between the names, then **either individual may sign** the contract.

**Statutory Cities:** MS. 412.201 Execution of instruments

“Every contract, conveyance, license or other written instrument shall be executed on behalf of the city by the mayor and clerk, with the corporate seal affixed, and only pursuant to authority from the council.”

<https://www.revisor.leg.state.mn.us/statutes/?id=412.201>

**Home Rule Charter Cities:** MS. 410. Minneapolis, St. Paul and Duluth are the three Home Rule Charter Cities, sometimes referred to as “Cities of the First Class”. All three cities pass Resolutions that name an office/official(s) as authorized to sign a contract.

**County Board:** MS. 375.13 Chair

“The county board, at its first session in each year, shall elect from its members a chair and a vice-chair. The chair shall preside at its meetings and sign all documents requiring signature on its behalf. The chair’s signature, attested by the clerk of the county board, shall be binding as the signature of the board. In case of the absence or incapacity of the chair, the vice-chair shall perform the chair’s duties. If the chair or the vice-chair are absent from any meeting, all documents requiring the signature of the board shall be signed by a majority of it and attested by the clerk.”

<https://www.revisor.leg.state.mn.us/statutes/?id=375.13>



<b>Minnesota Department of Public Safety (“State”)</b> Homeland Security and Emergency Management Division 445 Minnesota Street, Suite 223 St. Paul, MN 55101-2190	<b>Grant Program:</b> Hazard Mitigation DR-4442  <b>Grant Contract Agreement No.:</b> <u>A-HMGP-DR4442-AUSTINCI-004</u>
<b>Grantee:</b> City of Austin 500 4 <sup>th</sup> Avenue NE Austin, MN 55912	<b>Grant Contract Agreement Term:</b> <b>Effective Date:</b> 3/18/2021 <b>Expiration Date:</b> 3/18/2024
<b>Grantee’s Authorized Representative:</b> Steven Lang, Public Works Director City of Austin 500 4 <sup>th</sup> Avenue NE Austin, MN 55912 E-mail: <a href="mailto:slang@ci.austin.mn.us">slang@ci.austin.mn.us</a> Phone: 507-437-9949	<b>Grant Contract Agreement Amount:</b> Original Agreement \$ 202,937.25 Matching Requirement \$67,645.75
<b>State’s Authorized Representative:</b> Jennifer Davis, State Hazard Mitigation Officer Homeland Security and Emergency Management 445 Minnesota Street, Suite 223 St. Paul, MN 55101-2190 E-mail: <a href="mailto:Jennifer.e.davis@state.mn.us">Jennifer.e.davis@state.mn.us</a> Phone: 651-201-7427	Federal Funding: CFDA 97.039 FAIN: 4442DRMNP00000005 State Funding: None Special Conditions: None

Under Minn. Stat. § 299A.01, Subd 2 (4) the State is empowered to enter into this grant contract agreement.

**Term:** The creation and validity of this grant contract agreement conforms with Minn. Stat. § 16B.98 Subd. 5. Effective date is the date shown above or the date the State obtains all required signatures under Minn. Stat. § 16B.98, subd. 7, whichever is later. Once this grant contract agreement is fully executed, the Grantee may claim reimbursement for expenditures incurred pursuant to the Payment clause of this grant contract agreement. Reimbursements will only be made for those expenditures made according to the terms of this grant contract agreement. Expiration date is the date shown above or until all obligations have been satisfactorily fulfilled, whichever occurs first.

The Grantee, who is not a state employee will:

Perform and accomplish such purposes and activities as specified herein and in the Grantee’s approved Hazard Mitigation DR-4442 Application (“Application”) which is incorporated by reference into this grant contract agreement and on file with the State at 445 Minnesota Street, Suite 223. St. Paul, MN 55101-2190. The Grantee shall also comply with all requirements referenced in the Hazard Mitigation DR-4442 Guidelines and Application which includes the Terms and Conditions and Grant Program Guidelines (<https://app.dps.mn.gov/EGrants>), which are incorporated by reference into this grant contract agreement.

**Budget Revisions:** The breakdown of costs of the Grantee’s Budget is contained in Exhibit A, which is attached and incorporated into this grant contract agreement. As stated in the Grantee’s Application and Grant Program Guidelines, the Grantee will submit a written change request for any substitution of budget items or any deviation and in accordance with the Grant Program Guidelines. Requests must be approved prior to any expenditure by the Grantee.

**Matching Requirements:** (If applicable.) As stated in the Grantee’s Application, the Grantee certifies that the matching requirement will be met by the Grantee.



**Payment:** As stated in the Grantee's Application and Grant Program Guidance, the State will promptly pay the Grantee after the Grantee presents an invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services and in accordance with the Grant Program Guidelines. Payment will not be made if the Grantee has not satisfied reporting requirements.

**Certification Regarding Lobbying:** (If applicable.) Grantees receiving federal funds over \$100,000.00 must complete and return the Certification Regarding Lobbying form provided by the State to the Grantee.

**1. ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. § 16A.15.*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Grant Contract Agreement No. A-HMGP-DR4442-AUSTINCI-004/ P.O. No.: 3000073190Project No.: N/A**2. GRANTEE**

*The Grantee certifies that the appropriate person(s) have executed the grant contract agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution: DPS/FAS  
Grantee  
State's Authorized Representative

## Organization: Austin, City of

## Budget Summary (Report)

Budget	Award	Match
Budget Category		
Pre-Award Costs	\$0.00	\$1,186.00
Pre Award	\$0.00	\$1,186.00
<b>Total</b>		
Property Appraisals	\$1,100.00	\$0.00
Appraisal	\$1,100.00	\$0.00
<b>Total</b>		
Demolition / Asbestos Abatement	\$1,100.00	\$0.00
Asbestos Survey	\$1,125.00	\$375.00
Disconnect Utilities	\$4,949.25	\$1,649.75
Structure Demolition	\$7,174.25	\$2,024.75
<b>Total</b>		
Site Restoration	\$1,740.00	\$560.00
Site Restoration	\$1,740.00	\$560.00
<b>Total</b>		
Acquisition Costs (Property / Closing Fees)	\$191,250.00	\$63,750.00
Property Acquisitions Costs	\$91,250.00	\$63,750.00
<b>Total</b>		
Legal Fees	\$100.00	\$0.00
Closing	\$275.00	\$0.00
Legal Costs	\$100.00	\$0.00
Recording	\$375.00	\$125.00
Survey	\$823.00	\$0.00
Title Insurance	\$1,673.00	\$125.00
<b>Total</b>		
<b>Total</b>	\$202,937.25	\$67,645.75
Allocation	\$202,937.25	\$67,645.75
Balance	\$0.00	\$0.00

**CERTIFICATION REGARDING LOBBYING**  
For State of Minnesota Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S.Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Organization Name

---

Name and Title of Official Signing for Organization

By: \_\_\_\_\_  
Signature of Official

---

Date

**RESOLUTION NO.**

**ACCEPTING A HOMELAND SECURITY EMERGENCY  
MANAGEMENT GRANT FOR THE PURCHASE OF 304 22ND STREET SW**

WHEREAS, the City of Austin has identified the property at 304 22<sup>nd</sup> Street SW as a property near the flood plain that the City would like to acquire;

WHEREAS, the purchase of the property would be beneficial for the removal of public infrastructure and removal of the structure; and

WHEREAS, the City had received a grant from the Homeland Security Emergency Management for 75% of the cost of acquisition, asbestos abatement and demolition of the structure up to \$202,937.25.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Austin, Minnesota accepts the Homeland Security Emergency Management Grant for the purchase of 304 22<sup>nd</sup> Street SW.

Passed by the City Council this 21st day of July, 2021.

YEAS

NAYS

ATTEST:

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City Recorder

APPROVED:

---

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:** June 16<sup>th</sup>, 2021  
**Subject:** Hwy 105 Maintenance Agreement

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Attached is an agreement for routine maintenance between the Minnesota Department of Transportation and the City of Austin on Highway 105. The current agreement with MnDOT expires in June of 2021. Execution of this document would provide for an extension to June 30<sup>th</sup>, 2023.

As part of the agreement, the City of Austin provides routine maintenance to the roadway mainly involving snowplowing, sanding and minor patching. In return, MnDOT reimburses the City a lump sum about annually. Listed below are the lump sum amounts the City has been reimbursed in the recent past and the proposed rates for the term of this agreement.

		<u>Increase</u>			<u>Increase</u>
FY2012	\$8,504.66	0%	FY2022	\$10,723.74	3.5%
FY2013	\$8,504.66	0%	FY2023	\$11,099.07	3.5%
FY2014	\$8,759.81	3%			
FY2015	\$9,022.59	3%			
FY2016	\$9,203.04	2%			
FY2017	\$9,387.09	2%			
FY2018	\$9,574.83	2%			
FY2019	\$9,766.32	2%			
FY2020	\$10,059.33	3%			
FY2021	\$10,361.08	3%			

MnDOT has proposed a 3.5% increase annually for this 2-year agreement. I would recommend approval of the agreement. If you have any question, please contact me.

**STATE OF MINNESOTA**  
**DEPARTMENT OF TRANSPORTATION**  
**And**  
**CITY OF AUSTIN**  
**ROUTINE MAINTENANCE**  
**AGREEMENT**

<b>Routine Maintenance Performed by the City</b>	<b>Total Agreement Amount</b>
on:	<u><b>\$21,822.81</b></u>
<b>Trunk Highway Number (T.H.):</b> <u>105</u>	<b>Amount Encumbered (Fiscal Year 2022)</b>
	<u><b>\$10,723.74</b></u>
	<b>Amount Encumbered (Fiscal Year 2023)</b>
	<u><b>\$11,099.07</b></u>

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

**Recitals**

1. The State requests the City perform routine maintenance on certain trunk highway(s) located within the corporate city limits, and the City is willing to perform the routine maintenance; and
2. The State will reimburse the City for the routine maintenance performed; and
3. Under Minnesota Statutes § 161.38, subdivision 3, the State and the City wish to enter into an agreement that will provide routine maintenance performed by the City on certain trunk highway(s) located within the City limits; and
4. Minnesota Statutes § 161.20, subdivision 2, authorizes the Commissioner of Transportation to make agreements with and cooperate with any governmental authority for the purposes of constructing, maintaining, and improving the trunk highway system.

**Agreement**

**1. Term of Agreement; Survival of Terms**

- 1.1. **Effective Date.** This Agreement will be effective on July 1, 2021 or the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2, whichever is later.
- 1.2. **Expiration Date.** This Agreement will expire on June 30, 2023, or when all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3. **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 7. Liability; Worker Compensation Claims; Insurance; 10. State Audits; 11. Government Data Practices; 12. Governing Law; Jurisdiction; Venue; and 14. Force Majeure.

## 2. Agreement Between the Parties

### 2.1. *Maintenance by the City.*

A. **Location.** The City will perform routine maintenance of the following portions of the trunk highway system within the Corporate City limits:

- i. On Trunk Highway No. 105 (Oakland Avenue West) from the east entrance ramp to Trunk Highway No. 90 easterly to 12th Street Southwest, consisting of 2.90 lane miles. This does not include the portion described in Article 2.1.A.ii.
- ii. On Trunk Highway No. 105 (Oakland Avenue West) from 170 feet west of 15<sup>th</sup> Street Southwest easterly to 12th Street Southwest, consisting of 0.56 lane miles (This is the southern portion of the roadway split that occurs 170 feet west of 15<sup>th</sup> Street Southwest).
- iii. On Trunk Highway No. 105 (12<sup>th</sup> Street Southwest) from the north junction of Oakland Avenue West southerly to the south side of 11<sup>th</sup> Avenue Southwest, consisting of 1.40 lane miles.

B. **Total Mileage.** The total trunk highway mileage for the routine maintenance performed under this Agreement is 2.43 miles consisting of 4.86 lane miles.

### 2.2. *Maintenance Responsibilities (Reimbursable).* The City will perform the following routine maintenance duties to the satisfaction of the State's District Maintenance Engineer at Owatonna. All materials used in the performance of said routine maintenance must comply with the State's current "Standard Specifications for Construction".

- A. Maintain the trunk highway(s) to keep them smooth and in good repair for the passage of traffic and free from all obstructions and impediments to traffic. This includes all necessary preventative maintenance to preserve the roadbed in its present condition, such as proper and timely crack sealing of the surface, restoration of utility openings, and all necessary patching of the roadbed.
- B. Keep the traveled roadway free and clear of ice, snow, litter, debris, and any other foreign matter of any nature.
- C. Sand, salt, or chemically treat the traveled roadway as necessary to provide for safe public travel.
- D. Maintain the roadside vegetation and landscaping in a neat and orderly fashion by mowing, trimming, and providing for noxious weed control according to Minnesota Statutes § 160.23.
- E. Dispose of all snow, litter, debris, and any other foreign matter collected upon, along, or adjacent to the trunk highway proper and within the Trunk Highway Right-of-Way limits and State roadside development facilities (i.e. rest areas) according to all applicable laws, ordinances, and regulations.
- F. Maintain roadway markings, traffic control devices and safety devices in operating and usable condition. The State will place, install, and maintain at all times suitable guide signs, warning signs, route markers, and center lines for the guidance of traffic on the trunk highway(s).
- G. Furnish all labor, materials, tools, equipment, and any other necessary items to perform the routine maintenance duties covered under this Agreement.

### 2.3. *Other Maintenance Responsibilities; Agreements (Non-Reimbursable).* The City is responsible for performing the following routine maintenance duties, without cost or expense to the State:

- A. Keep the pedestrian user areas of the walkways, medians, pedestrian ramps, and curb and gutter free and clear of ice, snow, litter, debris, and any other foreign matter of any nature.

- B. Sand, salt, or chemically treat, and repair joints and panels in the pedestrian user areas of the walkways, medians, pedestrian ramps, and curb and gutter.
- C. Maintain any other facilities located within the Trunk Highway Right-of-Way that are covered under other agreements or Limited Use Permits. This Agreement does not supersede any other agreements between the parties.

**2.4. *Traffic Control.***

- A. The City may partially block the trunk highway to perform the routine maintenance under this Agreement. In cases of emergency, the City may block the trunk highway and prevent passage of traffic thereon. At no time, however, may the City continue to obstruct the free passage of traffic on the trunk highway for a longer period of time than is reasonably required for making the necessary repairs.
- B. The City may close the trunk highway to travel as necessary for the repair or installation of water or gas mains, electric or telephone cables, or sewers. The City must give the State ten days written notice and obtain a permit before such repairs or installation, except for extraordinary emergencies.
- C. The City will not close any portion of the trunk highway to traffic for reasons other than those set forth above and in no event for a time longer than necessary to complete the required maintenance work. In the event of the total blocking or closing of the trunk highway, the City must provide a suitable detour during such time.
- D. The City must conduct all trunk highway partial and total closures in conformance with the current Minnesota Manual on Uniform Traffic Control Devices (MNMUTCD) and Temporary Traffic Control Zone Layouts - Field Manual.

**2.5. *Maintenance of Route Change of Trunk Highway.*** If there is a change in the routing of the trunk highway, a substitution of a new route for the trunk highway, or a variation from the present location of the trunk highway, the City will maintain the new trunk highway in accordance with this Agreement after such changes, substitution, or variation and will be paid the amount to which it is entitled under this Agreement. If the State relocates any portion of the trunk highway and the roadway reverts to the City, the City will maintain the reverted portion at its sole expense.

**2.6. *City's Failure to Adequately Maintain.*** If the City fails to perform any of the routine maintenance according to the terms of this Agreement, the State may reduce the amount payable to the City by either an amount judged to be fair and equitable for such routine maintenance, or, if the State performs such routine maintenance, by the actual cost of the maintenance performed by the State in accordance with this Agreement.

**2.7. *Extraordinary Maintenance.*** The City is not required to perform any extraordinary maintenance, construction or reconstruction under this Agreement. If the City is willing to perform extraordinary maintenance, and the State's District Maintenance Engineer at Owatonna approves such performance, the parties to this Agreement must enter into a separate agreement therefore. No expenses may be incurred on the extraordinary maintenance prior to the full execution of such an agreement as governed by Minnesota Statutes § 16A.15, subdivision 3.

**2.8. *Inspection of City Performed Maintenance.*** Authorized representatives of the City and the State will jointly inspect the involved trunk highways on a regular basis during the life of this Agreement to determine if the routine maintenance is being performed according to the terms of this Agreement.

### 3. Basis of State Cost

The State's payment to the City for routine maintenance will be based on the number of lane miles times the dollar value to be paid per lane mile per State fiscal year. Fractional miles (to the hundredth of a mile) will be used in computing the amounts payable under this Agreement.

### 4. State Cost and Payment by the State

**4.1. State Cost.** **\$21,822.81** is the State's estimated total cost for the routine maintenance covered under this Agreement based on the data below:

- A. **Fiscal Year 2022:**  $\$10,723.74 = 4.86 \text{ lane miles times } \$2,206.53 \text{ per lane mile}$
- B. **Fiscal Year 2023:**  $\$11,099.07 = 4.86 \text{ lane miles times } \$2,283.76 \text{ per lane mile}$

**4.2. Conditions of Payment.** The State will make a lump sum payment to the City for routine maintenance performed, on a quarterly basis, on or after September 30, December 31, March 31, and June 30 of each State fiscal year after the following conditions have been met:

- A. Encumbrance by the State of the necessary funds for the routine maintenance payment amount.
- B. Execution of this Agreement and transmittal to the City.
- C. The State's receipt of an invoice from the City for the applicable quarter, signed by the State's authorized representative attesting that all routine maintenance has been performed in full conformity with this Agreement.
  - i. The invoice must indicate the amount, if any, deducted from the estimated quarterly payment under Article 2.5 and Article 2.6 of this Agreement.
  - ii. The City will keep records and accounts that enable it to provide the State, when requested, with documentation itemizing the labor, materials, and equipment used to perform the routine maintenance.

### 5. Authorized Representatives

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

**5.1.** The State's Authorized Representative will be:

Name, Title: Tim Zierden, Maintenance Supervisor (or successor)  
 Address: 1010 21<sup>st</sup> Avenue Northwest, Owatonna, MN 55060  
 Telephone: 507-456-5348  
 E-Mail: tim.zierden@state.mn.us

**5.2.** The City's Authorized Representative will be:

Name, Title: Steven Lang, Public Works Director (or successor)  
 Address: 500 Fourth Avenue Northeast, Austin, MN 55912  
 Telephone: 507-437-9940  
 E-Mail: slang@ci.austin.mn.us

### 6. Assignment; Amendments; Waiver; Contract Complete

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

- 6.2. Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.
- 6.3. Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.
- 6.4. Contract Complete.** This Agreement contains all prior negotiations and agreements, with respect to routine maintenance, between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

## **7. Liability; Worker Compensation Claims; Insurance**

- 7.1.** Each party is responsible for its own acts, omissions, and the results thereof to the extent authorized by law and will not be responsible for the acts, omissions of others, and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City. Notwithstanding the foregoing, the City will indemnify, hold harmless, and defend (to the extent permitted by the Minnesota Attorney General) the State against any claims, causes of actions, damages, costs (including reasonable attorneys fees), and expenses arising in connection with the project covered by this Agreement, regardless of whether such claims are asserted by the City's contractor(s) or consultant(s) or by a third party because of an act or omission by the City or its contractor(s) or consultant(s).
- 7.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
- 7.3.** The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

## **8. Nondiscrimination**

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

## **9. Title VI/Non-discrimination Assurances**

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

## **10. State Audits**

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

## **11. Government Data Practices**

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement, and as it applies to all data created,

collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the City or the State.

## **12. Governing Law; Jurisdiction; Venue**

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

## **13. Termination**

**13.1. By Mutual Agreement.** This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below

**13.2. Termination for Insufficient Funding.** The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the City. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the City will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.

## **14. Force Majeure**

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

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**STATE ENCUMBRANCE VERIFICATION**

Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and 16C.05.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

SWIFT Purchase Order: \_\_\_\_\_

**CITY OF AUSTIN**

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

Approved:

By: \_\_\_\_\_  
(District Engineer)

Date: \_\_\_\_\_

**COMMISSIONER OF ADMINISTRATION**

By: \_\_\_\_\_  
(With Delegated Authority)

Date: \_\_\_\_\_

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

## CITY OF AUSTIN

### RESOLUTION

IT IS RESOLVED that the City of Austin enter into MnDOT Agreement No. 1046449 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for routine maintenance by the City upon, along, and adjacent to Trunk Highway No. 105, the limits of which are defined in said Agreement.

IT IS FURTHER RESOLVED that the \_\_\_\_\_  
(Title)  
and the \_\_\_\_\_  
(Title)  
are authorized to execute the Agreement and any amendments to the Agreement.

### CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Austin at an authorized meeting held on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2021, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this _____ day of _____, 2021	_____ (Signature)
Notary Public _____ My Commission Expires _____	_____ (Type or Print Name) _____ (Title)

_____ (Signature)
_____ (Type or Print Name)
_____ (Title)

**RESOLUTION NO.**

**STATE OF MINNESOTA ROUTINE MAINTENANCE AGREEMENT  
FOR TRUNK HIGHWAY No. 105**

**IT IS RESOLVED** that City of Austin enter into MnDOT Agreement No. 1046449 with the State of Minnesota Department of Transportation for the following purposes;

To provide for routine maintenance by the City upon, along and adjacent to Trunk Highway No. 105, the limits of which are defined in said Agreement.

**IT IS FURTHER RESOLVED** that the Mayor and the City Recorder are authorized to execute the Agreement and any amendments to the Agreement.

Passed by a vote of yeas and nays this 21st day of June, 2021.

YEAS

NAYS

ATTEST:

---

City Recorder

APPROVED:

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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.  
**Cc:** Craig Clark  
**Date:** June 17, 2021  
**Subject:** WWTP Bonding Request\_revised

---

As we work to develop our possible funding sources for the planned Waste Water Treatment Plant improvements, we have identified state bonding dollars as a possible source. Together with funding from local industry, user rates, PSIG and sewer bonds we are looking to fund \$77 million in WWTP improvements.

Our story in Austin is unique and we will need to tell that story to justify the financial need. We were successful in receiving \$7.45 million in the 2020 bonding bill for engineering design and construction. We have identified an additional need of ~~\$13~~ 14.5 million in bonding dollars to be used for construction costs.

As part of the bonding application, we would ask Council to approve a resolution of support for a ~~\$13~~ 14.5 million state bonding request for the WWTP improvements. If approved, this resolution will be included with our funding application to Minnesota Management and Budget (MMB). If you have any questions, feel free to contact me.

\*\* We are requesting this be revised from \$13 million to \$14.5 million to account for the current volatility related to construction materials and labor.

**RESOLUTION NO.**

RESOLUTION RESCINDING RESOLUTION No. 16295

**WHEREAS**, the City Council passed resolution no. 16295 on June 7, 2021; and,

**WHEREAS**, the Council desires to rescind the resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Austin that Resolution No. 16295 is hereby rescinded in all respects.

Passed by a vote of yeas and nays this 21st day of June, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

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City Recorder

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Mayor

**Resolution No.**

**RESOLUTION OF SUPPORT TO SECURE STATE BONDING FOR  
THE CITY OF AUSTIN'S WASTE WATER TREATMENT PLANT**

**WHEREAS**, the City of Austin will soon be required to upgrade its Waste Water Treatment Plant; and

**WHEREAS**, preliminary estimates for the required upgrades are projecting the cost to be \$77 million dollars; and

**WHEREAS**, the City plans on funding the upgrades with local industry contributions, increasing sewer user rates, applying for Point Source Implementation Grants and issuing sewer bonds; and

**WHEREAS**, other Minnesota cities have previously received State bonding allocations for upgrading their waste water treatment plants; and

**WHEREAS**, the City of Austin believes that \$14.5 million dollars would be an appropriate allocation for State bond proceeds for upgrading the Waste Water Treatment Plant.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN THAT** the City of Austin supports a state appropriation of \$14,500,000 from Minnesota State bond proceeds for improvements at the Waste Water Treatment Plant.

Passed by a vote of yeas and nays this 21st day of June, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

---

City Recorder

---

Mayor

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](mailto:hollyw@ci.austin.mn.us)

## Memorandum

**To:** Mayor & City Council

**From:** Austin Planning Commission

**Date:** June 17, 2021

**Re:** Final Plat Approval of Nature Ridge Third Subdivision

---

During the June 15, 2021, meeting of the Austin Planning Commission, the commission reviewed the Nature Ridge Third Plat. This area consists of 26 lots covering approximately 11 acres, located West of the Hormel Nature Center.

After review, the Planning Commission, with 7 members present, voted unanimously to recommend approval, 7 ayes, 0 nays.

Approval was contingent upon compliance review by city staff and Austin Utilities, completion of the development agreement, approval of the extension of 17<sup>th</sup> St NE by Austin Port Authority and approval of petitions for gas, water and electric by Austin Utility. The Plat and development agreement meet city and AU requirements and the Port Authority and Austin Utility Board met June 15<sup>th</sup>, prior to the Planning Commission, approving the road extension and petitions respectively.

Requested action:

To approve or deny the Plat and development agreement for Nature Ridge Third.

Please let me know if you have any questions.

**Petitioner:** Nature Ridge Properties of Austin Co.  
300 1<sup>st</sup> St NW, Austin MN 55912

**Location of Property:** 17th St NE and 12th Ave NE, Austin MN 55912

**Legal Description:** See plat.

**Requested Action:** The petitioner is requesting approval of a final plat.

**Present Land Use:** Undeveloped/Agricultural.

**Surrounding Land Use:** North (outside city limits), West (I-1, light industrial), South and East (R-1, single family)

#### **REQUESTED**

**ACTION:** The petitioner is requesting approval of a preliminary plat for 26 new single family residential lots.

**REASON FOR REQUEST:** Residential subdivision  
**SITE SUMMARY:**

- Gross Area: 11.5 acres
- The area is the third phase of a multi-phase subdivision plan. The second phase (13 lots, all sold) was approved in 2019.

#### **Analysis and Conditions of Approval:**

##### **1. Comprehensive Plan:**

Future land use map: This area is designated as "Suburban Low Density Residential Neighborhood" defined as "...densities that generally range from two to four units per acre. Areas classified as Suburban Residential will be predominately single-family detached homes on 1/2 to 1/4 acre lots with the potential for some twin homes and other low density attached homes. Overall density between 2-5 units/acre."

Housing goals and policies: (see pg. 38 for complete text)

Goal – Identify the most appropriate locations for development and redevelopment.

Policies -

- Promote controlled and orderly growth consistent with the Comprehensive Plan and Zoning Ordinance.
- Encourage traditional patterns and practices of urban design and preserve Austin's identity and sense of place through quality building, site and infrastructure design.

2. The preliminary plat was approved by City Council May 17, 2021.
3. The final plat has been reviewed by city staff and Austin Utilities and is conforming with the city subdivision ordinance.
4. A proposed development agreement, executed by the developer is attached.

**Staff Recommendations:**

The final plat is consistent with applicable provisions of Chapter 13, Subdivision Regulation and compatible with the topography and adjacent property. Should the Planning Commission recommend approval of this plat, staff recommends the following conditions before approval, which would allow lots to be sold:

1. Approval should be contingent upon Port Authority approval of the extension of 17th St NE, which will include a portion of the adjacent Port Authority property.

**Suggested Motion to Approve:**

“I move the Planning Commission recommend approval of the final plat request for a 26 lot single family residential subdivision, commonly known as Nature Ridge Third, subject to the conditions listed in the staff report.”

Attachments:

Final Plat  
Development Agreement  
Civil drawings  
Aerial

## 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: North of 14th Ave NE and West of 18th Drive NE

Legal Description of Property: See plat

Owner: Name Nature Ridge Properties of Austin Co. Phone 508-433-7394

Address 300 First Street NW

City Austin State MN Zip 55912

Type of Request: Variance CUP IUP Rezone XX Other Plat

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

Description of Request Residential subdivision plat approval

Reason for Request Residential subdivision plat approval

Present Zoning Classification R-1 single family residential

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?

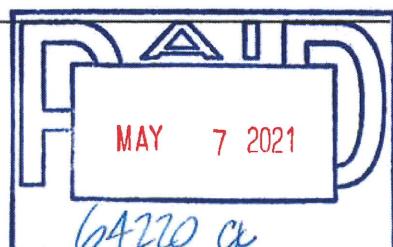
Signature of Applicant Paul V. Sween Date May 7, 2021

Approved   Denied   by the Planning Commission on \_\_\_\_\_ (date)

Approved   Denied   by the Common Council

Comments \_\_\_\_\_





OFFICIAL PLAT

NATURE RIDGE THIRD

IN OUTLOT D & OUTLOT 3, NATURE RIDGE  
AND NE1/4 SE1/4 SECTION 35-T103N-R18W  
AUSTIN, MOWER COUNTY, MINNESOTA

CERTIFICATE OF DEDICATION

KNOW ALL MEN BY THESE PRESENTS: That Nature Ridge Properties of Austin Co. and The Austin Port Authority, a Minnesota Municipal Corporation, a owner and proprietor of the following described property situated in the City of Austin, County of Mower, State of Minnesota, to-wit:

All that part of Outlot D & Outlot 3, Nature Ridge as the same is platted and recorded in the office of the County Recorder of Mower County, Minnesota and the NE1/4 SE1/4 Section 35-T103N-R18W, described as follows:

Commencing at the northwest corner of said Outlot D, thence South 00°55'46" East a distance of 30.15 feet on an assumed bearing on the west line of said Nature Ridge, to the south line of the north 30.15 feet of said Nature Ridge, which is point of beginning;

thence South 00°55'46" East a distance of 596.55 feet on said west line;

thence South 88°14'46" West a distance of 33.04 feet;

thence South 02°45'26" East a distance of 330.20 feet, to the south line of said NE1/4 SE1/4;

thence North 89°14'46" East a distance of 22.51 feet on said south line, to the southwest corner of said Nature Ridge;

thence North 00°55'46" West a distance of 47.50 feet on the west line of said Nature Ridge, to the southwest corner of said Outlot E;

thence North 89°05'11" East a distance of 42.01 feet on the south line of said Outlot E;

thence North 02°45'26" West a distance of 15.01 feet, to the north line of said Outlot E;

thence North 89°05'11" East a distance of 541.16 feet on the north line of said Outlot E, to the southwest corner of Lot 1, Block 3 in said Nature Ridge;

thence northerly and northeasterly on the northwesterly line of Block 3 in said Nature Ridge, described as follows;

North 00°43'59" West a distance of 92.92 feet;

North 08°08'08" East a distance of 129.42 feet;

North 22°41'03" East a distance of 120.47 feet;

North 36°23'15" East a distance of 85.46 feet;

thence North 30°28'33" West a distance of 188.53 feet;

thence North 53°13'00" West a distance of 67.70 feet;

thence North 40°57'13" West a distance of 146.80 feet;

thence North 57°53'01" East a distance of 101.23 feet;

thence North 00°15'38" East a distance of 111.53 feet, to the south line of said north 30.15 feet;

thence South 89°05'11" West a distance of 527.47 feet on said south line, to the point of beginning.

having caused the above described premises to be surveyed and platted as shown herein, to be known as NATURE RIDGE THIRD, do by these presents dedicate to the public use forever and for the use of the public utilities, the tracts or parcels appearing herein, and also the utility easement appearing herein, for the installation and maintenance of facilities resulting in and over said easements to serve adjacent or other premises in the vicinity.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Michael Meiten, President of Nature Ridge Properties Lee Hansen, Secretary of Nature Ridge Properties

Jerry McCarthy, President of Austin Port Authority

STATE OF MINNESOTA  
COUNTY OF MOWER

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Paul V. Sweet.

Notary Public  
My Commission Expires \_\_\_\_\_

SURVEYOR'S CERTIFICATE

I, Steven J. Thompson, do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary lines, corners, and other features shown thereon; that the title and all requirements contained on this plat have been, or will be, fully set forth within one year; that all water boundaries and wetlands, as defined in Minnesota Statutes, Section 505.01, Sub. 3, as of the date of this certificate are shown and labeled on this plat, and all public ways are shown and labeled on this plat.

Dated \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Licensed Land Surveyor  
Minnesota Licensed No. 22705

STATE OF MINNESOTA  
COUNTY OF MOWER  
This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by Steven J. Thompson.

My Commission Expires 1-31-2023, Notary Public

TITLE OPINION

I, \_\_\_\_\_ licensed attorney, State of Minnesota, do hereby certify that the Owner, as indicated herein, represents all ownership interests in the land encompassed by this plat.

CITY APPROVAL

We do hereby certify that the within plat of NATURE RIDGE THIRD, was duly accepted and approved by the City Council of the City of Austin, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Attest  
Mayor City Clerk

CITY RECORDER'S CERTIFICATE

I, the duly appointed, qualified and acting City Recorder of the City of Austin, Mower County, Minnesota, and the person having official charge of all the minutes, resolution and ordinance books of said City, do hereby certify that a regular meeting of the Common Council of the City of Austin, on \_\_\_\_\_, 2021, by Resolution No. \_\_\_\_\_, was held, and that the said Council did duly accept and approve the above described plat of NATURE RIDGE THIRD, in said County, and that said resolution was duly published in the official newspaper in the City of Austin on \_\_\_\_\_.

City Recorder

COUNTY AUDITOR & TREASURER CERTIFICATE

Pursuant to Minnesota Statutes, Section 205.01, Sub. 8, taxes payable in the year 2021 on the land hereinbefore described have been paid. Also, pursuant to Minnesota Statutes, Section 272.12, there are no delinquent taxes and transfer entered this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

County Auditor & Treasurer, Mower County, MN

COUNTY RECORDER'S CERTIFICATE

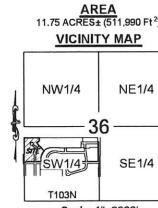
County Recorder, County of Mower, State of Minnesota

I hereby certify that this plat of NATURE RIDGE THIRD was filed in the office of the County Recorder for public record on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and was duly filed in Book \_\_\_\_\_ of Plats, Page \_\_\_\_\_ as Document Number \_\_\_\_\_.

County Recorder, Mower County, Minnesota

By \_\_\_\_\_

Deputy



LEGEND

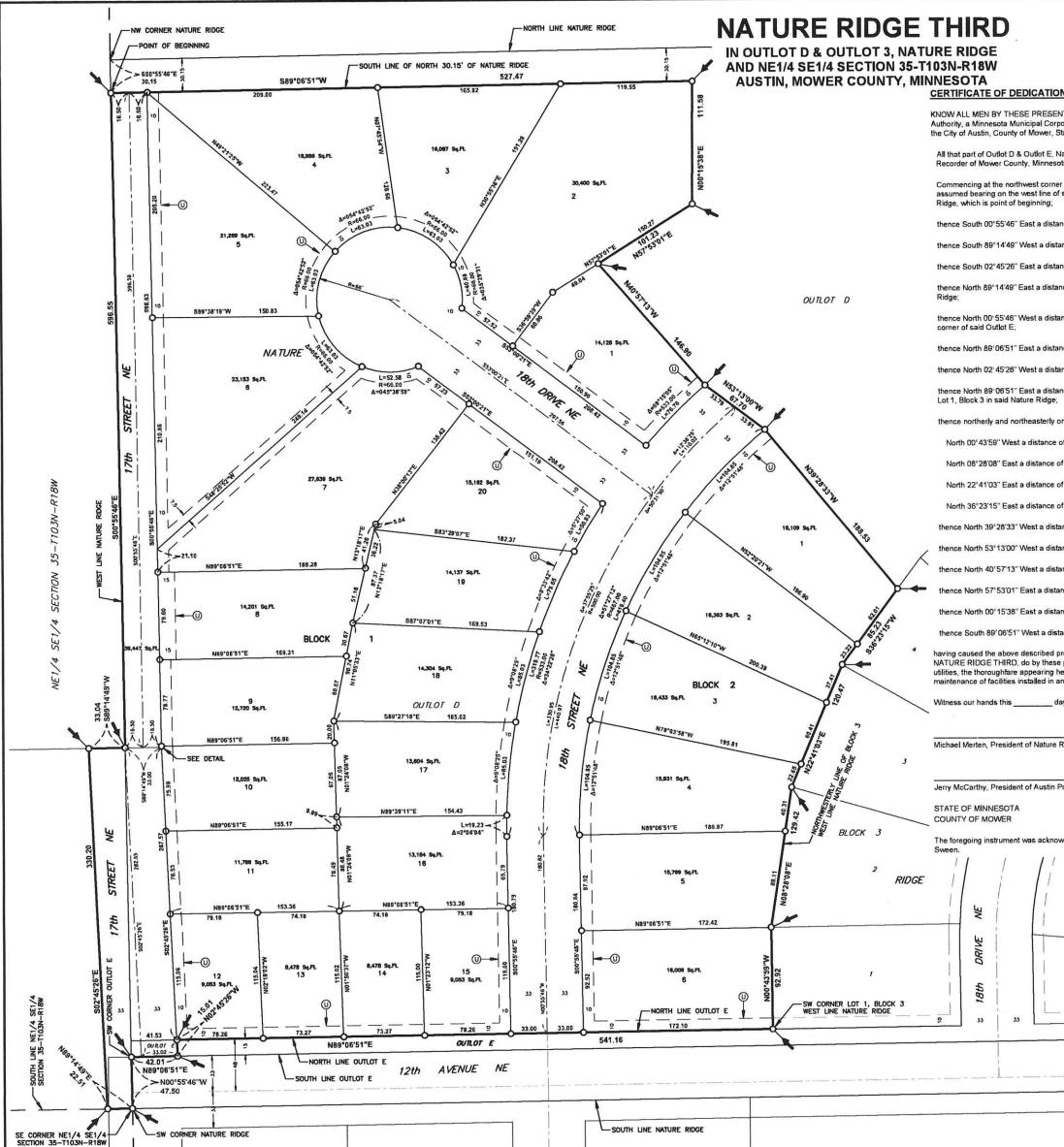
- = 58 Inch X 16 Inch iron stake monument (Crown or flat top)
- = Iron stake monument - Found
- = Subdivision Plat Corner
- ◎ = Utility Easement

JONES, HAUGH & SMITH INC.  
CONSULTING ENGINEERS & LAND SURVEYORS  
515 SOUTH WASHINGTON AVENUE ALBERT LEA,  
MINNESOTA 56007

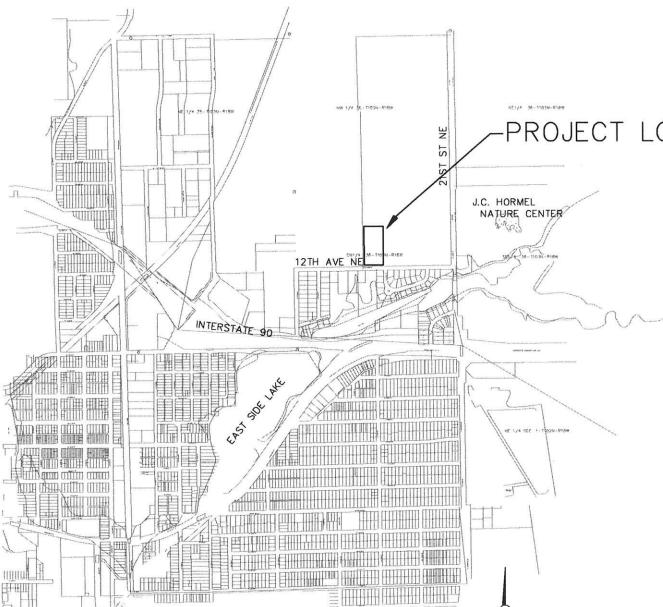
MAY 2021

DRAWN BY ANDY MCGOWAN  
20-440\_FRev5.dwg

SHEET NO. 1 OF 1 SHEETS



NATURE RIDGE – PHASE 3  
 2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS  
 SW 1/4 SECTION 36-T103N-R18W  
 AUSTIN, MINNESOTA



LEGEND

○	= 5/8" O X 16" iron stake monument
●	= Iron stake monument-Found
W	= Water Main
S	= Sanitary Sewer
ST	= Storm Sewer
GS	= Gas Main
UT	= Underground Telephone
OT	= Overhead Telephone
FO	= Fiber-Optics
UE	= Underground Electric
OE	= Overhead Electric
X	= Chain Link Fence
○	= Control Access
◎	= Gate Post
◎	= Bollards
□	= Electric Meter
○	= Gas Meter
F	= Fiber Optics Box
T	= Telephone Pedestal
■	= Light Tower
■	= Silt Fence
F&I	= Furnish & Install
1272	= Existing Elevation Contour Line
1272	= Proposed Elevation Contour Line



GENERAL NOTES

DEVELOPED CONTRACTOR AND ALL SUBCONTRACTORS SHALL COMPLY WITH ALL APPLICABLE CODES AND ORDINANCES GOVERNED BY STATE AND LOCAL GOVERNMENT.  
 PROUD EROSION CONTROL PER MINNESOTA REQUIREMENTS INCLUDING BUT NOT LIMITED TO INSTALLATION OF PERIMETER SILT FENCE ON ALL RUNOFF DISCHARGE LOCATIONS ON THE SITE AND CONSTRUCTION OF TEMPORARY ROCK ENTRANCES AT ALL EXITS FROM THE SITE.  
 ANY ALTERATIONS OR REVISIONS TO THE CONSTRUCTION PLAN AS SHOWN SHALL NOT BE THE RESPONSIBILITY OF JONES, HAUGH & SMITH INC. AND SHALL RELEASE JONES, HAUGH & SMITH INC. OF ANY LIABILITY FOR ANY DAMAGES CAUSED THEREFROM UNLESS WRITTEN AUTHORIZATION OR PLAN REVISION HAS BEEN APPROVED BY JONES, HAUGH & SMITH INC. PRIOR.  
 COORDINATE ALL CONSTRUCTION PHASING WITH OWNER.

SPECIFICATIONS WHICH APPLY  
 ALL CONSTRUCTION AND MATERIALS SHALL COMPLY WITH THE MOST RECENT EDITION OF MINNESOTA STATE SPECIFICATIONS FOR CONSTRUCTION, INCLUDING PUBLISHED TECHNICAL MEMORANDA, AND WITH THE CITY ENGINEERING STANDARD SPECIFICATIONS FOR WATERMAIN & SERVICE LINE, SANITARY SEWER AND STORM SEWER INSTALLATION (PER STANDARD UTILITIES SPECIFICATIONS BY THE CITY ENGINEERS ASSOCIATION OF MINNESOTA), EXCEPT AS MODIFIED BY ANY SPECIAL PROVISIONS OR AS SHOWN ELSEWHERE ON THIS PLAN.

NOTES:  
 EXCAVATED MATERIAL FROM STORMWATER POND SHALL REMAIN ON SITE.

WATERMANS SHALL BE LAID AT LEAST 10 FEET HORIZONTALLY FROM ANY SANITARY SEWER, STORM SEWER OR SEWER MANHOLE, WHEREVER POSSIBLE.

WHEN LOCAL CONDITIONS PREVENT A HORIZONTAL SEPARATION OF 10 FEET, WATERMAIN MAY BE LAID CLOSER TO A STORM OR SANITARY SEWER PROVIDED THAT:  
 1) THE BOTTOM OF THE WATERMAIN IS AT LEAST 18 INCHES ABOVE THE TOP OF THE SEWER; OR  
 2) WHERE THIS VERTICAL SEPARATION CANNOT BE OBTAINED, THE WATERMAIN IS TO BE BURIED IN A TRENCH WITH JOINTS THAT ARE EQUIVALENT TO WATERMAIN STANDARDS OF CONSTRUCTION AND SHALL BE PRESSURE TESTED TO ASSURE WATERTIGHTNESS PRIOR TO BACKFILLING.

EXTEND ALL UNDERGROUND UTILITIES TO THE STREET R/W LINE, OR FRONTAL EASEMENT LINE AS DIRECTED BY THE ENGINEER.

WATER SERVICE LINES AND CURBSTOP SHALL BE INSTALLED IN ACCORDANCE WITH STANDARD CITY PROCEDURES. A

ADJUST ALL FRAME AND LID CASTINGS AS NECESSARY, INCLUDING WATER MAIN.

RADI FOR NEW CONSTRUCTION ARE TO BACK OF CURB, ALL CURB RADII ARE 20 FEET, UNLESS OTHERWISE NOTED.

ACCESS FOR LOCAL RESIDENTS SHALL ALWAYS BE MAINTAINED.

A ROCK CONSTRUCTION ENTRANCE IS REQUIRED AT ALL HARD PAVED ENTRANCES TO THE PROJECT SITE.

EROSION AND SEDIMENT CONTROL PLAN

Contractor shall provide for temporary erosion and sediment control during the construction and development of the site. Contractor shall file and obtain a permit for temporary and specifications for temporary and permanent erosion control, including but not limited to, silt fences, bale checks, turf establishment and sedimentation basins.

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a registered professional Engineer under the laws of the State of Minnesota.

Brian J. Johnson  
 License No. 42744  
 Date: 3/18/21

FOR: NATURE RIDGE PROPERTIES – PAUL SWEENEY

CITY OF AUSTIN, MN		SHEET
NATURE RIDGE – PHASE 3		1
2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS		OF
TITLE SHEET		11

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No responsibility is accepted for the location of  
 utilities shown herein. Verification of actual locations  
 should be requested prior to the commencement of  
 construction or the taking of any other action relying  
 on the actual location.

COPPER STATE ONE-CALL: 1-800-252-1166

REV. BY DATE JONES, HAUGH & SMITH INC.  
 CONSULTING ENGINEERS & LAND SURVEYORS  
 PH. 507-373-4876  
 515 SOUTH WASHINGTON AVENUE  
 ALBERT LEA, MINNESOTA 56007  
 FILE NO. 20-44009

DESIGNED: BJU

DRAWN: JHS

CHECKED: JHS

DATE: 3/18/21

FILE NO. 20-44009

INDEX TO SHEETS

SHEET	SUBJECT
1	TITLE SHEET & LOCATION MAP
2-3	SWPPP NOTES & DETAILS
4-5	TYPICAL SECTIONS & DETAILS
6	UTILITY PLAN
7	GRADING PLAN
8-9	PLAN & PROFILES
10-11	CROSS SECTIONS

THIS SET OF PLANS CONTAINS 11 SHEETS

# SWPPP NARRATIVE

## CONSTRUCTION ACTIVITY INFORMATION

PROJECT NAME: NATURE RIDGE - PHASE 3

PROJECT LOCATION: SW 1/4 SECTION 36  
CITY OF AUSTIN  
LANSING TWP, MOWER COUNTY

PROJECT SIZE: 6 DISTURBED ACRES  
PROJECT TYPE: RESIDENTIAL SITE GRADING, UTILITY, AND STREET CONSTRUCTION

MAJOR SOIL TYPE: CLAY

CUMULATIVE IMPERVIOUS SURFACE:  
BEFORE CONSTRUCTION - 0.0 ACRES  
POST CONSTRUCTION - 0.75 ACRES

DIRECT DISCHARGE FROM IMPERVIOUS SURFACE: 0.00 ACRES

RECEIVING WATERS:

DOBBS CREEK

DATES OF CONSTRUCTION: SUMMER 2021

OWNER: NATURE RIDGE PROPERTIES LLC

UNDERGROUND UTILITY CONTRACTOR:

TBD

PARTY RESPONSIBLE FOR LONG TERM D&M:  
CITY OF AUSTIN

## GENERAL SITE INFORMATION

IMMEDIATELY FOLLOWING GRADING OF SLOPES OF 3:1 OR GREATER, SLOPES MUST BE STABILIZED WITH WOOL FIBER BLANKET (OR OTHER METHOD APPROVED BY THE ENGINEER) OVER APPROVED SEED MIXTURE AND A MINIMUM OF 4" OF TOPSOIL.

ALL EROSION CONTROL MEASURES SHALL REMAIN IN PLACE AND BE MAINTAINED UNTIL THE SLOPES HAVE BEEN RE-VEGETATED, AT WHICH TIME THE CONTRACTOR MAY REMOVE NECESSARY SLOPING TO CONDUCT ROADWAY WORK. MAINTAINING SLOPES IS THE CONTRACTOR'S RESPONSIBILITY. SUFFICIENT TOPSOIL SHALL BE STOCKPILED OR IMPORTED TO ALLOW FOR THE MAINTENANCE OF A MINIMUM OF 4" OF TOPSOIL FOR DISTURBED AREAS TO BE RE-VEGETATED.

CONTRACTOR SHALL SCHEDULE SITE GRADING, UTILITY INSTALLATION, AND ROADWAY CONSTRUCTION SO THAT THE GENERAL CONTRACTOR IS UNDISTURBED AND RE-SEEDS SOON AFTER DISTURBANCE. DISTURBED AREAS SHALL BE SEDED AND MULCHED OR SODDED WITHIN 7 DAYS.

INSPECT SILT FENCES AND BALE CHECKS AFTER EACH RAIN EVENT AND DAILY DURING A PROLONGED RAINFALL - IMMEDIATELY REPAIR FAILED OR FAILING MEASURES.

REMOVE SEDIMENT DEPOSITS FROM SILT FENCE AND BALE CHECKS AS SOON AS THE SEDIMENT REACHES APPROXIMATELY 1/3 THE HEIGHT OF THE BARRIER.

BARRIERS WILL BE REPLACED WHEN THEY DECAY OR BECOME INEFFECTIVE BEFORE THE BARRIERS ARE NO LONGER NECESSARY. AND THE CONTRACTOR WILL RE-SEED THE AREA. BARRIERS THAT ARE NO LONGER NECESSARY WILL BE DRESSED TO CONFORM TO EXISTING GRADE, AND PREPARED AND SEDED WITH THE APPROPRIATE SEED MIX, AS USED BY THE CONTRACTOR.

IN THOSE AREAS WHERE WOOL FIBER BLANKET OR OTHER SLOPE STABILIZATION METHODS HAVE FAILED, THE SLOPE SHALL BE RE-ESTABLISHED, SEED, AND TOPSOIL REPLACED, AND ADDITIONAL SLOPES SHALL BE INSTALLED.

BARRIERS WILL BE REMOVED WHEN FINAL STABILIZATION OF THE SLOPES HAS BEEN COMPLETED AS DETERMINED BY THE ENGINEER.

NO STORMWATER MITIGATION MEASURES ARE REQUIRED AS A PART OF ENVIRONMENTAL, MICROBIOLOGICAL, OR OTHER REQUIRED LOCAL, STATE, OR FEDERAL REVIEW OF THIS PROJECT.

THIS PROJECT IS NOT LOCATED IN A KARST AREA NECESSITATING MEASURES TO PROTECT DRINKING WATER SUPPLY.

THIS PROJECT DOES NOT DISCHARGE WATER TO AN IMPAIRED WATER.

PROVIDE SILT FENCE AROUND ALL SOIL STOCKPILES

## SWPPP IMPLEMENTATION CHAIN OF RESPONSIBILITY

EACH CONTRACTOR ON-SITE WILL DESIGNATE AN EMPLOYEE AS ITS PROJECT SWPPP OFFICER. A LIST OF THESE OFFICERS WITH CONTACT INFORMATION WILL BE AVAILABLE ON-SITE. IT WILL BE THE SWPPP OFFICER'S RESPONSIBILITY TO ENSURE THAT ALL ON-SITE ACTIVITIES PERFORMED BY ITS COMPANY COMPLY WITH THE SWPPP. THE GENERAL CONTRACTOR'S SWPPP OFFICER WILL HAVE AUTHORITY OVER ALL SUB-CONTRACTOR'S SWPPP OFFICERS FOR WORK PERTAINING TO COMPLIANCE.

SHOULD A SWPPP OFFICER FAIL TO ENSURE COMPLIANCE, THAT OFFICER'S FOREMAN OR DIRECT SUPERVISOR WILL ASSUME ALL RESPONSIBILITY FOR COMPLIANCE.

SHOULD A SUB-CONTRACTOR FAIL TO COMPLY WITH THE SWPPP, THE GENERAL CONTRACTOR WILL ASSUME ALL RESPONSIBILITY FOR COMPLIANCE.

## EROSION PREVENTION PRACTICES

CONTRACTOR SHALL PLAN CONSTRUCTION, MAINTAIN VEGETATIVE BUFFER STRIPS, AND PROVIDE HORIZONTAL SLOPE STAKING IN ORDER TO MINIMIZE EROSION.

SILT FENCE SHALL BE INSTALLED BEFORE WORK BEGINS. SILT FENCE LIMITS SHALL CONCIDE WITH DOWNGRADING GRADING LIMITS UNLESS OTHERWISE SPECIFIED.

THIS PROJECT DOES NOT HAVE EXPOSED POSITIVE SLOPES WITHIN 200' OF SURFACE WATER.

THE WETTED PERIMETER OF DRAINAGE SWALES WILL BE STABILIZED WITH WOOL FIBER BLANKETS AND/OR WETTED PERIMETER OF DITCHES USED FOR 24 HOURS.

TEMPORARY EROSION DITCHES THAT ARE BEING USED AS A SEEDING CONTAINMENT SYSTEM DURING CONSTRUCTION MUST BE STABILIZED WITHIN 24 HOURS AFTER NON-USE.

PIPE OUTLETS MUST HAVE EROSION DISPERSAL IN PLACE WITHIN 24 HOURS OF INSTALLATION.

THE CONTRACTOR WILL USE THE APPROPRIATE SIZE OF DRAINAGE DITCH OR SWALE SIZE WITH A CONTINUOUS SLOPE GREATER THAN 2%

## SEDIMENT CONTROL PRACTICES

CONTRACTOR SHALL FURNISH, INSTALL, AND MAINTAIN SEDIMENT CONTROLS FOR TEMPORARY AND PERMANENT DRAINAGE BASINS AND DRAINAGE DITCHES THAT ARE A PART OF THIS DESIGN

CHECK FOR EXISTING WOOL FIBER BLANKETS TO ENSURE SHEET FLOW AND PREVENT RUNOFF FOR SLOPES LENGTHS GREATER THAN 75' WITH A SLOPE OF 3:1 OR GREATER.

SILT FENCE AT ALL DOWN GRADIENT PERIMETERS INSTALLED PRIOR TO ALL LAND DISTURBING ACTIVITIES

INLET PROTECTION AT ALL DRAIN INLETS

SILT FENCING AROUND TEMPORARY SOIL STOCKPILES

## ROCK CONSTRUCTION SITE ENTRANCES

STREET SWEEPING OF TRACKED SEDIMENT ON PAVED SURFACES

SEEDING CONSTRUCTION PRACTICES ARE PLACED IN ALL DOWN GRADIENT PERIMETERS AND UPGRADIENT OF ALL WORK ZONES. ALL DOWN GRADIENT PERIMETERS ARE ESTABLISHED AT THE BASE OF STOCKPILES

STOCKPILES ARE LOCATED OUTSIDE OF NATURAL BUTTERFS OR SURFACE WATER, AND ARE LOCATED OUTSIDE OF THE 100-YEAR FLOODPLAIN AND 100-YEAR EROSION PASS.

THIS PROJECT DOES NOT INCLUDE SWALE OR BURNING BASINS. PERMANENT SEDIMENT BASINS WILL BE USED AS TEMPORARY BASINS DURING CONSTRUCTION

## ADDITIONAL BWD'S FOR SPECIAL WATERS

THIS PROJECT DOES NOT DISCHARGE TO SPECIAL WATERS OR HAVE SIGNIFICANT IMPACTS TO WETLANDS.

## INSPECTIONS AND MAINTAINANCE

CONTRACTOR SHALL INSPECT AND MAINTAIN MEASURES AT MINIMUM ONCE EVERY (7) DAYS DURING ACTIVE CONSTRUCTION, AND MINIMUM TWICE DURING MAINTENANCE ACTIVITIES, AND AT LEAST ONCE DURING EROSION PREVENTION ACTIVITIES.

INSPECTIONS WILL INCLUDE STABILIZED AREAS, EROSION PREVENTION AND SEDIMENT CONTROLS, AND INFILTRATION AREAS.

INSPECTIONS WILL INCLUDE EROSION PREVENTION AND SEDIMENT CONTROL FOR INSPECTION LOG REQUIREMENTS.

MAINTENANCE RECORDS SHOULD INCLUDE: DATES & TIMES OF INSPECTION, NAME OF PERSON CONDUCTING THE INSPECTION, DESCRIPTION OF ACTIVITIES, PARTS OF CONSTRUCTION, MAINTENANCE ACTIVITIES, DATES & AMOUNT OF RAINFALL, AND EROSION PREVENTION AND SEDIMENT CONTROL RECORDS.

COPIES OF THE SWPPP MUST BE RETAINED ON SITE BY THE PERMITTE

SWPPP AMENDMENTS

AMENDMENTS MADE IN THE FIELD TO THE SWPPP SHOULD BE UPDATED ON THE SWPPP. REFER TO THE PROCEDURES OUTLINED IN SECTION 8.1 OF THE PERMIT.

**SOLID WASTE:**  
COLLECTED SEDIMENT, ASPHALT AND CONCRETE MILLINGS, FLOATING DEBRIS, PAPER, PLASTIC, FABRIC, CONSTRUCTION AND DEMOLITION DEBRIS AND OTHER WASTES MUST BE DISPOSED OF PROPERLY AND MUST COMPLY WITH MPCA DISPOSAL REQUIREMENTS.

**CONCRETE AND OTHER WASHOUTS:**  
PERFORM ALL CONCRETE TRUCK WASHOUTS IN PROPER CONTAINMENT FACILITIES. SOLID AND LIQUID WASHOUT WASTE FROM OTHER MATERIALS (STUCCO, PAINT, ETC.) WILL BE DISPOSED OF IN A PROPERLY DESIGNATED LANDFILL.

PERFORM ALL WASHOUTS INCLUDING HANDTOOLS IN A LEAKPROOF CONTAINMENT FACILITY OR IMPERMEABLE LINER THAT PREVENTS RUNOFF ONTO ADJACENT SOILS. DEBRIS/SEDIMENT WILL NOT CONTACT THE GROUND SURFACE.

A SIGN REQUIRING USE OF PROPER WASHOUT FACILITIES WILL BE INSTALLED ADJACENT TO SITE FACILITIES.

**HAZARDOUS MATERIALS:**  
GASOLINE, PAINT AND ANY HAZARDOUS SUBSTANCES MUST BE PROPERLY STORED, INCLUDING SECONDARY CONTAINMENT TO PREVENT SPILLS, LEAKS, OR OTHER DISCHARGE. RESTRICTED ACCESS TO STORAGE AREAS MUST BE PROVIDED TO PREVENT VANDALISM. STORAGE AND DISPOSAL OF HAZARDOUS WASTE MUST BE IN COMPLIANCE THE MPCA REGULATIONS.

EXTERNAL WASHING OF TRUCKS AND OTHER CONSTRUCTION VEHICLES MUST BE LIMITED TO A DEFINED AREA OF THE SITE. RUNOFF MUST BE CONTAINED AND WASTE PROPERLY DISPOSED OF. NO ENGINE DEGREASING IS ALLOWED ON SITE.

THE GENERAL CONTRACTOR SHALL PROVIDE A TRAINED, CERTIFIED, KNOWLEDGEABLE PERSON WHO SHALL SERVE AS THE SITE'S EROSION CONTROL INSPECTOR. THIS PERSON SHALL BE RESPONSIBLE FOR INSPECTION AND MAINTENANCE OF EROSION AND SEDIMENT CONTROL BMP'S, AND SHALL MAINTAIN THE INSPECTION LOG AT THE PROJECT SITE.

EACH SUBCONTRACTOR ON-SITE WILL DESIGNATE AN EMPLOYEE AS ITS PROJECT SWPPP OFFICER. A LIST OF THESE OFFICERS WITH CONTACT INFORMATION WILL BE AVAILABLE ON-SITE. IT WILL BE THE SWPPP OFFICER'S RESPONSIBILITY TO ENSURE THAT ALL ON-SITE ACTIVITIES PERFORMED BY ITS COMPANY COMPLY WITH THE SWPPP. THE GENERAL CONTRACTOR'S SWPPP INSPECTOR WILL HAVE AUTHORITY OVER ALL SUB-CONTRACTOR'S SWPPP OFFICERS FOR WORK PERTAINING TO COMPLIANCE.

SHOULD A SWPPP OFFICER FAIL TO ENSURE COMPLIANCE, THAT OFFICER'S FOREMAN OR DIRECT SUPERVISOR WILL ASSUME ALL RESPONSIBILITY.

SHOULD A SUB-CONTRACTOR FAIL TO COMPLY WITH THE SWPPP, THE GENERAL CONTRACTOR WILL ASSUME ALL RESPONSIBILITY FOR COMPLIANCE.

SHOULD THE GENERAL CONTRACTOR FAIL TO COMPLY WITH THE SWPPP, THE OWNER WILL ASSUME ALL RESPONSIBILITY FOR COMPLIANCE.

## CHANGES IN PERMIT AND NOTICE OF TERMINATION

THE CONTRACTOR WILL BE A CO-PERMITTEE DURING THE CONSTRUCTION OF THE PROJECT. AFTER THE GRAVEL SWEEPING OF THE SITE HAS BEEN COMPLETED AND THE TEMPORARY VEGETATION COVER HAS BEEN ESTABLISHED OVER THE PERVERSUS AREAS OF THE SITE, AND THE WARRANTY PERIOD HAS ELAPSED, THE CONTRACTOR MAY SUBMIT A MPCA (NOTP) FORM TO THE OWNER FOR SIGNATURE AND SUBMIT TO THE MPCA.

THE OWNER WILL SUBMIT A NOTICE OF TERMINATION (NOT) AFTER ONE (1) YEAR OF ESTABLISHMENT OF THE PERVERSUS SURFACES ACCORDING TO THE MPCA GENERAL PERMIT REQUIREMENTS.

NOTIFICATION OF THE MPCA IN CASE OF POLLUTION  
IT IS THE DUTY OF THE CONTRACTOR TO NOTIFY THE MPCA IMMEDIATELY OF ANY DISCHARGE, ACCIDENTAL OR OTHERWISE, OF ANY LIQUID, SOLID, OR GASEOUS MATERIAL WHICH, IF NOT RECOVERED, MAY CAUSE POLLUTION OF WATERS OF THE STATE, AND THE CONTRACTOR SHALL RECOVER AS RAPIDLY AND THOROUGHLY AS POSSIBLE. THE CONTRACTOR SHALL NOTIFY THE MPCA IMMEDIATELY SUCH OTHER ACTION AS MAY BE REASONABLY POSSIBLE TO MINIMIZE OR ABATE POLLUTION OF WATERS OF THE STATE CAUSED THEREBY.

SEDITION LEAVING THE CONSTRUCTION SITE AND ENTERING A PUBLIC WATER IS CAUSE FOR NOTIFICATION.

MPCA DUTY OFFICER: 800-422-0798

## QUALIFIED SWPPP PERSONNEL INFORMATION

SWPPP DESIGNER: BRIAN J. JOHNSON, PE

JONES HAUGH & SMITH INC

1515 SOUTH WASHINGTON AVENUE

ALBERT LEA, MN 56007

(507) 373-4876

SWPPP INSTALLER: NAME: \_\_\_\_\_

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

SWPPP INSPECTOR: NAME: \_\_\_\_\_

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

GRADING CONTRACTOR: NAME: \_\_\_\_\_

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

OTHER LAND DISTURBING CONTRACTOR: NAME: \_\_\_\_\_

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

OTHER LAND DISTURBING CONTRACTOR: NAME: \_\_\_\_\_

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

THIS PLAN IS MEANT AND PROVIDED AS A GUIDE IN THE PROVISION OF SEDIMENT AND EROSION CONTROL (ESC) BMP'S AS REQUIRED BY THE NPDES PERMIT. ADDITIONAL EROSION AND SEDIMENT CONTROL MEASURES, ALTHOUGH NOT SHOWN, MAY BE REQUIRED TO COMPLY WITH THE PROVISIONS OF THE NPDES PERMIT. MAINTENANCE AND OPERATION OF EROSION AND SEDIMENT CONTROL BMP'S IN ACCORDANCE WITH THE NPDES PERMIT IS THE RESPONSIBILITY OF THE CONTRACTOR, REGARDLESS OF WHAT IS SHOWN ON THIS PLAN. MAINTENANCE OF ESC BMP'S IS INCENTIVE TO THE UNIT PRICE BID. NO ADDITIONAL PAYMENT WILL BE MADE FOR ADDITIONAL EROSION CONTROL BMP'S AS REQUIRED BY THE NPDES PERMIT.

NOT TO SCALE

by JONES, HAUGH & SMITH INC  
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COPPER STATE ONE-CALL: 1-800-252-1166

REV. BY DATE

JHS

507-373-4876

515 SOUTH WASHINGTON AVENUE

ALBERT LEA, MINNESOTA 56007

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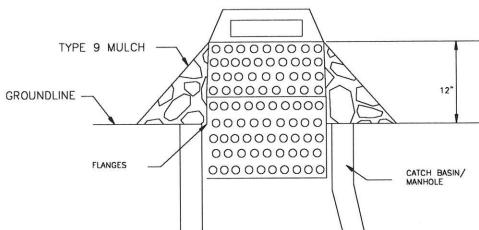
507-373-4876

507-373-4876

CITY OF AUSTIN, MN  
NATURE RIDGE - PHASE 3  
2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS  
SWPPP NOTES

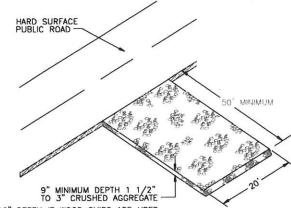
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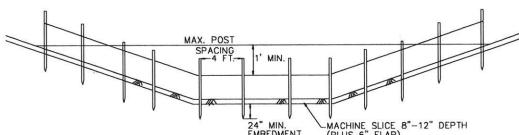
SEDIMENT CONTROL INLET HAT

NOTE:  
THE SEDIMENT CONTROL BARRIER SHALL BE A METAL  
OR PLASTIC/POLYETHYLENE RISER SIZED TO FIT INSIDE  
THE CATCH BASIN/MANHOLE; HAVE PERFORATIONS TO ALLOW  
FOR WATER INFILTRATION; HAVE AN OVERFLOW OPENING,  
FLANGES AND A LID/COVER.

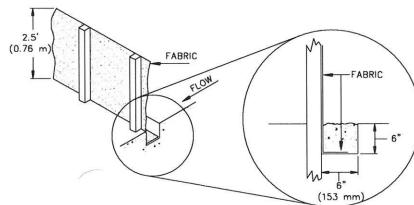


FABRIC SHALL BE PLACED UNDER ROCK TO STOP MIGRATION OF MUD THROUGH  
CHIPS USED FOR CONSTRUCTION ENTRANCES MUST BE BOX NOT LESS THAN 2  
INCHES DEEP AND 10 FEET BY 10 FEET. NO CHIPPED OR MANUFACTURED  
WOOD OR CHEMICAL TREATED WOOD IS ALLOWED.  
FABRIC MUST BE REGULARLY CHECKED AND MAINTAINED TO PREVENT SEDIMENTATION ON  
HIGHWAYS. FUGITIVE ROCK OR WOOD CHIPS WILL BE REMOVED FROM ADJACENT  
DAILY OR MORE FREQUENTLY AS NECESSARY.

**EROSION CONTROL PROTECTION AT CONSTRUCTION ACCESS**



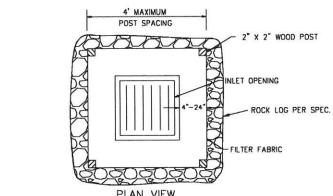
SPACING OF CHECKS:



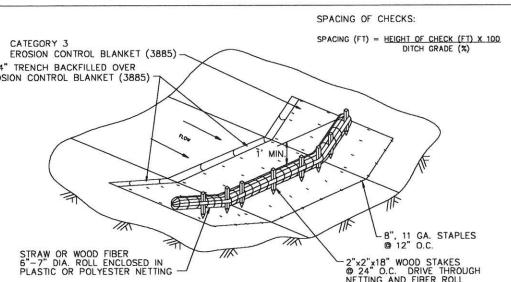
**NOTES:**

- PLACE BOTTOM EDGE OF FENCE INTO 6" (153 mm) DEEP
- POSTS SHALL BE:
  - 4' (1.22 m) ON CENTER
  - 2" (50.8 mm) x 2" (50.8 mm) HARDWOOD, PINE OR STANDARD STEEL FENCE POSTS
  - DRIVEN 2' (.61 m) INTO THE GROUND.

EROSION CONTROL FENCE  
(MACHINE SLICED)

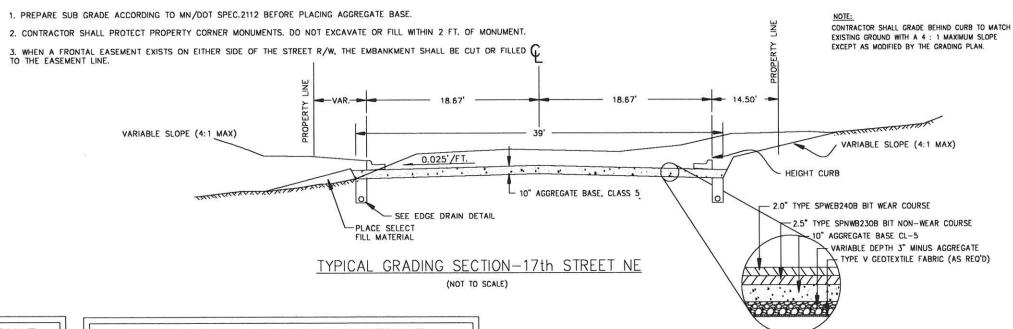
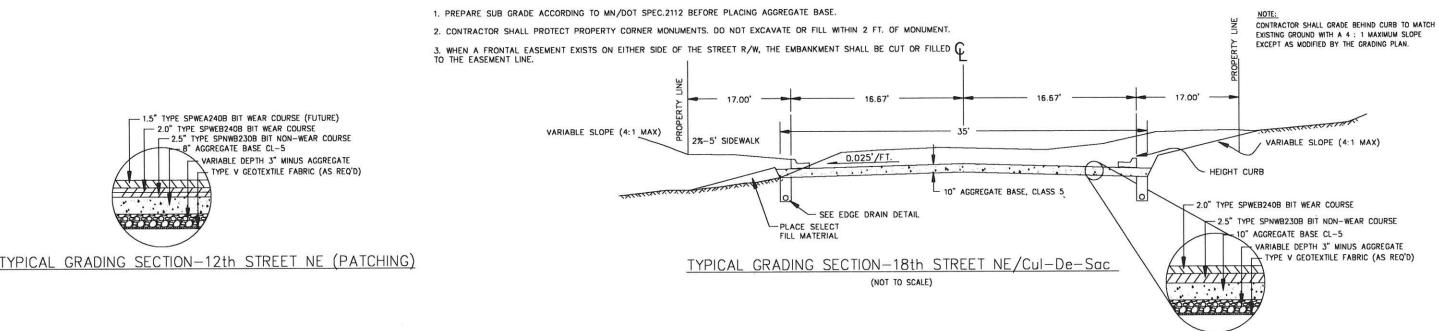


SECTIONAL VIEW



**BIO-BOLI BLANKET DITCH CHECK**

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			<p style="margin: 0;">SHEET 3 OF 11</p>									



SANITARY SEWER MANHOLE SCHEDULE								
NO.	R/W EL	INVERT EL	DEPTH	CASTING A	CASTING B	CASTING C	DESIGN	REMARKS
A	1217.42	1205.14	12.28	X			M4007C-4B	
B	1218.34	1206.26	12.08	X			M4007C-4B	
C	1217.08	1206.78	10.30	X			M4007C-4B	
D	1216.90	1205.98	10.92	X			M4007C-4B	
E	1225.18	1213.61	11.57	X			M4007C-4B	
F	1225.18	1213.61	11.57	X			M4007C-4B	
G	1226.40	1214.88	11.52	X			M4007C-4B	

STORM SEWER MANHOLE SCHEDULE								
NO.	R/W/GRATE EL	INVERT EL	DEPTH	CASTING A	CASTING B	CASTING C	DESIGN	REMARKS
MH 1	1217.03	1211.06	6.97	X			4B-4020	
MH 2	1218.14	1211.83	5.30	X			4B-4020	
C81	1217.89	1213.80	4.19		X	2X3		
C82	1216.64	1212.67	3.97		X	2X3		
C83	1216.64	1212.55	4.09		X	2X3		
C84	1216.40	1212.7	3.70		X	2X3		
C85	1216.40	1212.4	4.00		X	2X3		

CASTING SCHEDULE		
TYPE	CASTINGS	STRUCTURE
A	NEENAH 1550 CONCEALED PICK	SANITARY MANHOLE
B	NEENAH 1550 OPEN PICK	STORM MANHOLE
C	NEENAH R-3067	CATCH BASIN

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CONSULTING ENGINEERS & LAND SURVEYORS  
PH. 507-373-4876  
515 SOUTH WASHINGTON AVENUE  
ALBERT LEA, MINNESOTA 56007

NOTICE: I hereby certify that this plan, specification, or report was prepared under the supervision of a duly licensed Professional Engineer under the laws of the state of Minnesota.

DESIGNED: 8/11  
DRAWN: JHS  
CHECKED: JHS  
DATE: 8/18/21  
FILE NO. 20-4408954  
Brian J. Johnson  
License No. 42744  
Date: 8/18/21

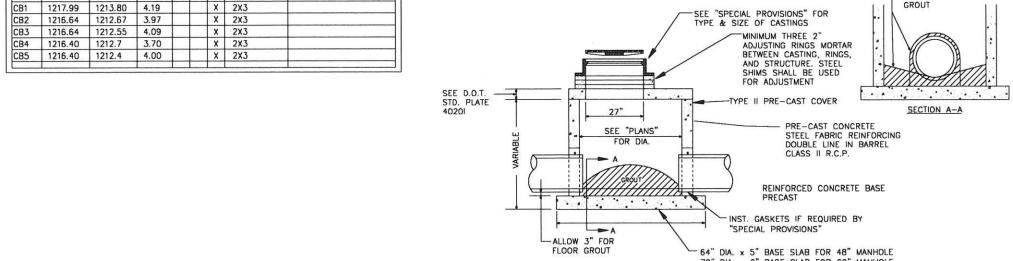
**CITY OF AUSTIN, MN**  
NATURE RIDGE - PHASE 3  
2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS  
TYPICAL SECTION & DETAILS

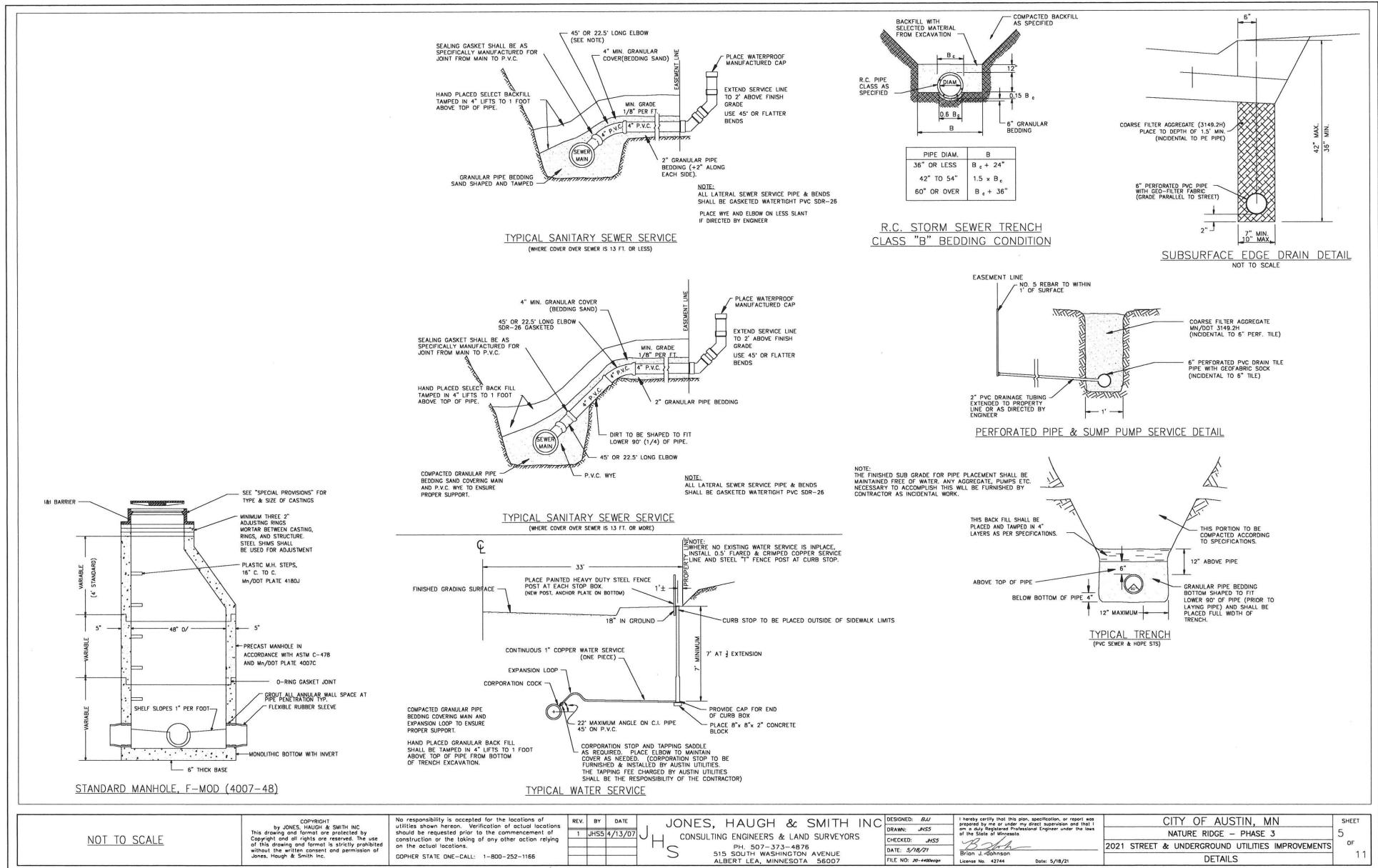
**SHEET 4 OF 11**

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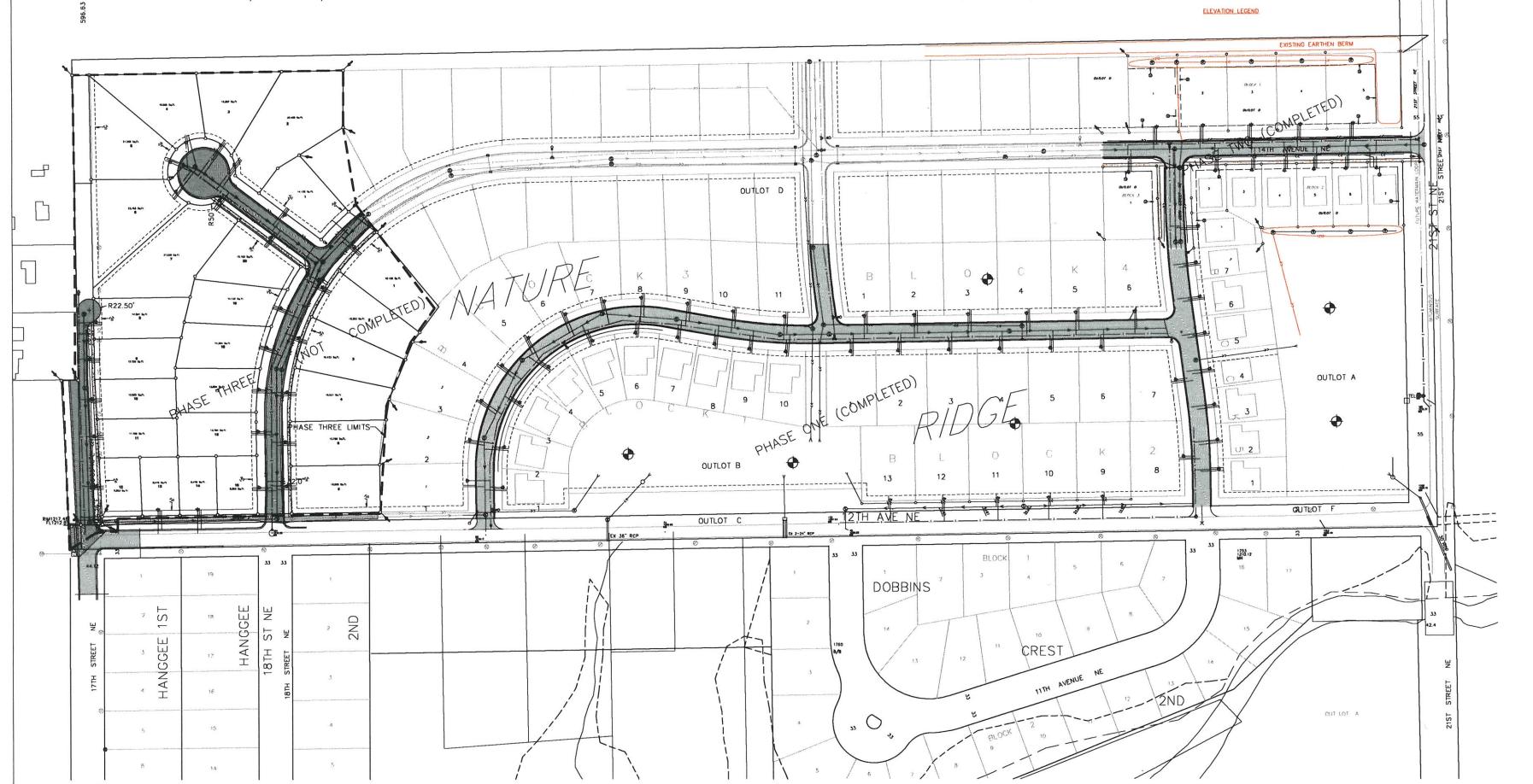




NW1/4 SW1/4 SEC 36-T103N-R18W

NE1/4 SW1/4 SEC 36-T103N-R18W

ELEVATION LEGEND



100 0 100  
HORIZ. SCALE FEET

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REV. BY DATE

J H S

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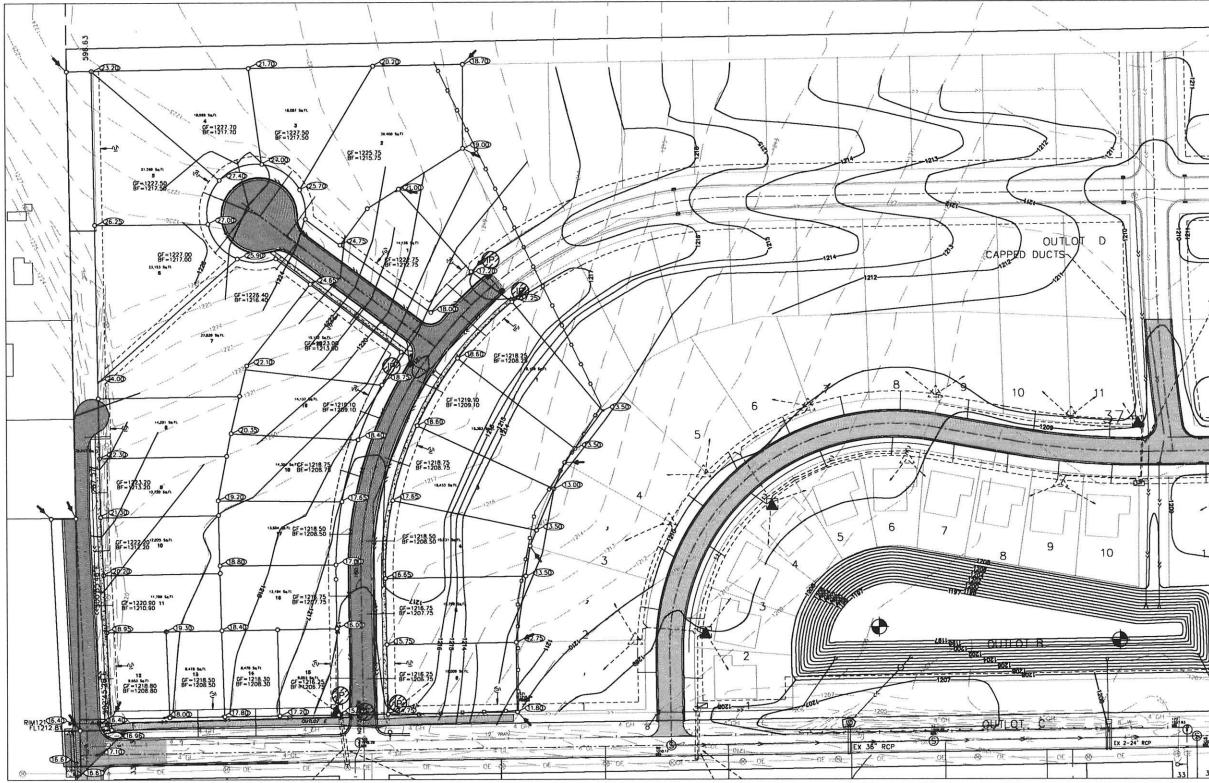
DESIGNED: JHSS  
DRAWN: JHSS  
CHECKED: BJU  
DATE: 3/16/21  
FILE NO. 20-440Design  
Brian J. Johnson  
License No. 42744

I hereby certify that this plan, specification, or report was  
prepared by me or under my direct supervision and that I  
am a registered Professional Engineer under the laws  
of the State of Minnesota.

CITY OF AUSTIN, MN  
NATURE RIDGE - PHASE 3  
2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS  
UTILITY PLAN

SHEET  
6  
OF  
11

<u>SWPPP LEGEND</u>	<u>QUANTITY</u>
 = ROCK CONSTRUCTION ENTRANCE	1 EA
 = INLET PROTECTION	5 EA
 = SILT FENCE	1200 LF
 = TEMPORARY SEDIMENT/DEWATERING BASIN	
 = RAPID STABILIZATION (MN/DOT METHOD 1)	
 = RAPID STABILIZATION - (MN/DOT METHOD 4)	
 = TEMPORARY DIVERSION MOUND	
 = DITCH CHECKS	
 = RIPRAP ENERGY DISSIPATION	0 CY



\*STRIP TOPSOIL  
BELOW AREAS OF FILL

UTILIZE PERMANENT STORM POND FOR SEDIMENT CONTROL DURING CONSTRUCTION WHENEVER POSSIBLE. WHEN THE PERMANENT STORMWATER POND IS USED FOR TEMPORARY SEDIMENTATION, THE SEDIMENT TRAPPED DURING CONSTRUCTION SHALL BE REMOVED AND DISPOSED OF ON-SITE (INCIDENTAL) PRIOR TO FINAL ACCEPTANCE.

## FEARHTWORK NOTES:

CONTRACTOR TO FURNISH ON SITE GEOTECHNICAL CONSULTING ENGINEER AS REQUIRED.  
SOIL CORRECTIONS UNDER THE PROPOSED CONCRETE & ASPHALTIC PAVEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, REMOVAL OF ALL TOPSOIL AND VISIBLY ORGANIC FILL MATERIAL.  
CONTRACTOR TO FURNISH ON SITE GEOTECHNICAL CONSULTING ENGINEER TO COORDINATE SOIL CORRECTIONS UNDER PAVEMENTS. SOILS SHALL BE GRADED TO THE CONTOURS SHOWN AND TO PROVIDE THE DAMAGE PATTERN SHOWN.

THIS PLAN IS MEANT AND PROVIDED AS A GUIDE IN THE PROVISION OF SEDIMENT AND EROSION CONTROL (ESC) BMP'S AS REQUIRED BY THE NPDES PERMIT. ADDITIONAL EROSION AND SEDIMENT CONTROL MEASURES, THOUGH NOT SHOWN HERE, MAY BE REQUIRED TO COMPLY WITH THE PROVISIONS OF THE PERMIT. PROVISION AND MAINTENANCE OF EROSION AND SEDIMENT CONTROL BMP'S IN ACCORDANCE WITH THE NPDES PERMIT IS THE RESPONSIBILITY OF THE CONTRACTOR, REGARDLESS OF WHAT IS SHOWN ON THIS PLAN. MAINTENANCE OF ESC BMP'S IS INCIDENTAL TO THE USE OF THE CONTRACTOR'S EQUIPMENT. NO PAYMENT WILL BE MADE FOR ADDITIONAL EROSION CONTROL BMP'S AS REQUIRED BY THE NPDES PERMIT.



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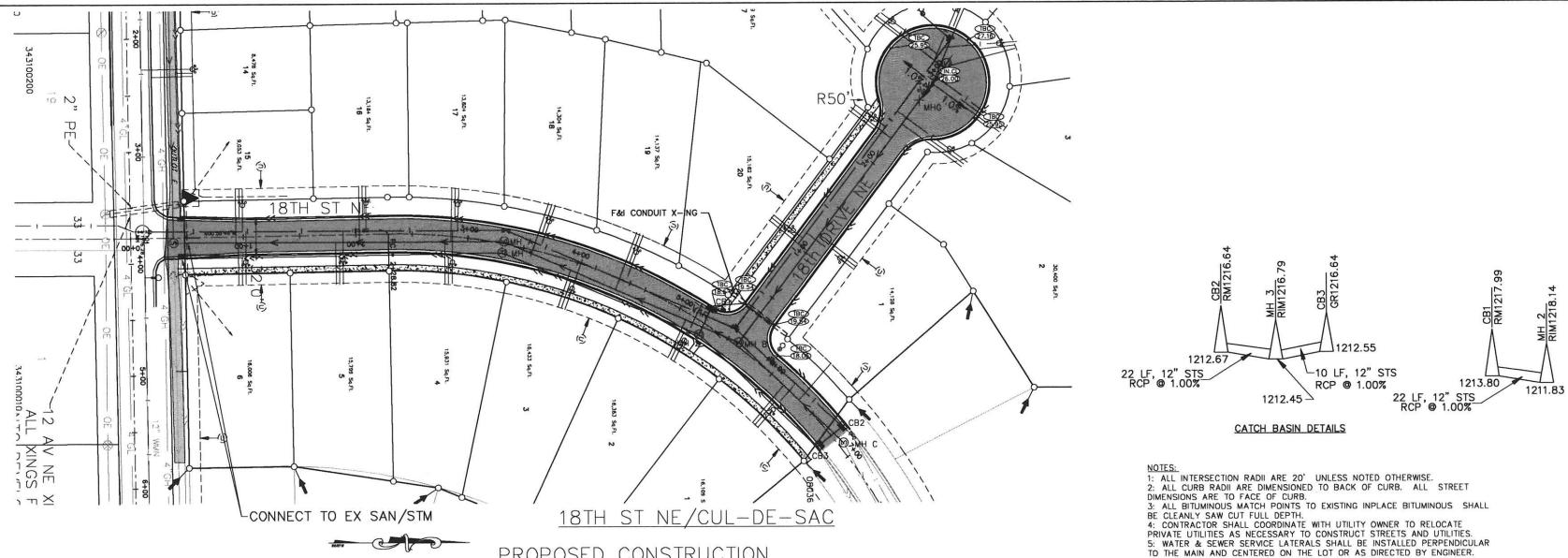
REV.	BY	DATE

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CONSULTING ENGINEERS & LAND SURVEYORS  
PH. 507-373-4876  
515 SOUTH WASHINGTON AVENUE  
ALBERT LEA, MINNESOTA 56002

DESIGNED: <u>JHSS</u>	I hereby certify prepared by on a duly of the State
DRAWN: <u>BJU</u>	 Brian J. Ullman License No. <u>100-000000000000000000</u>
CHECKED: <u>JHSS</u>	
DATE: <u>5/18/21</u>	
FILE NO: <u>20-440</u>	

**CITY OF AUSTIN, MN**  
**NATURE RIDGE - PHASE 3**  
**2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS**  
**SWPPP & GRADING PLAN**

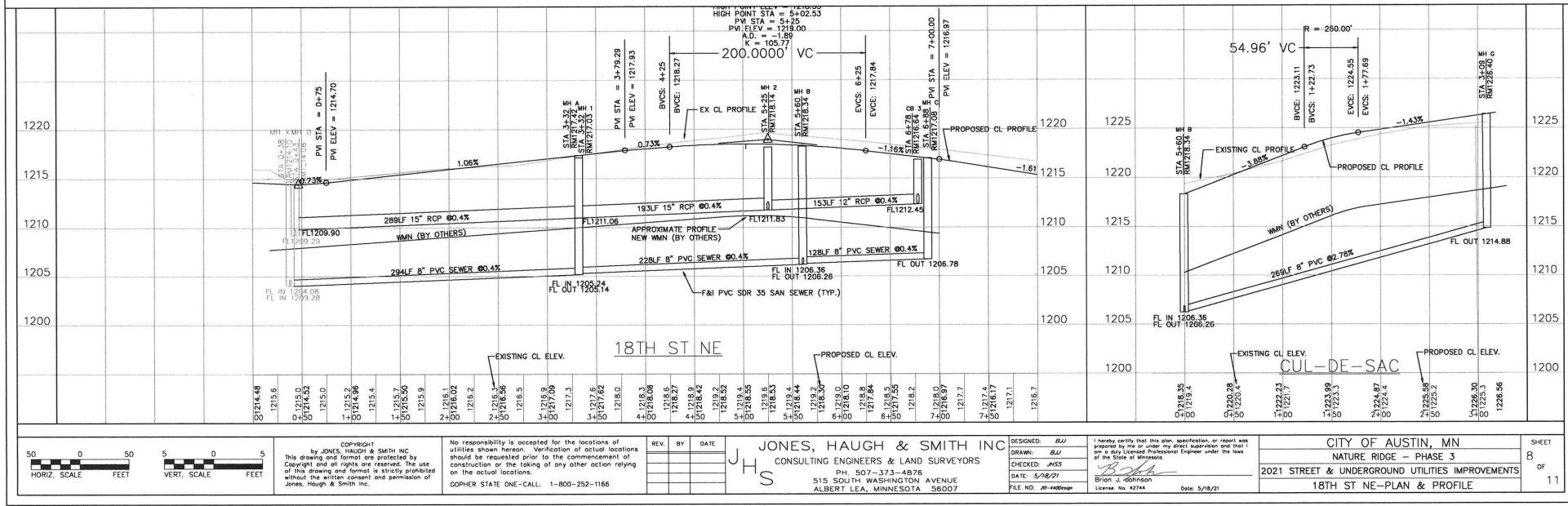
SHEET  
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OF  
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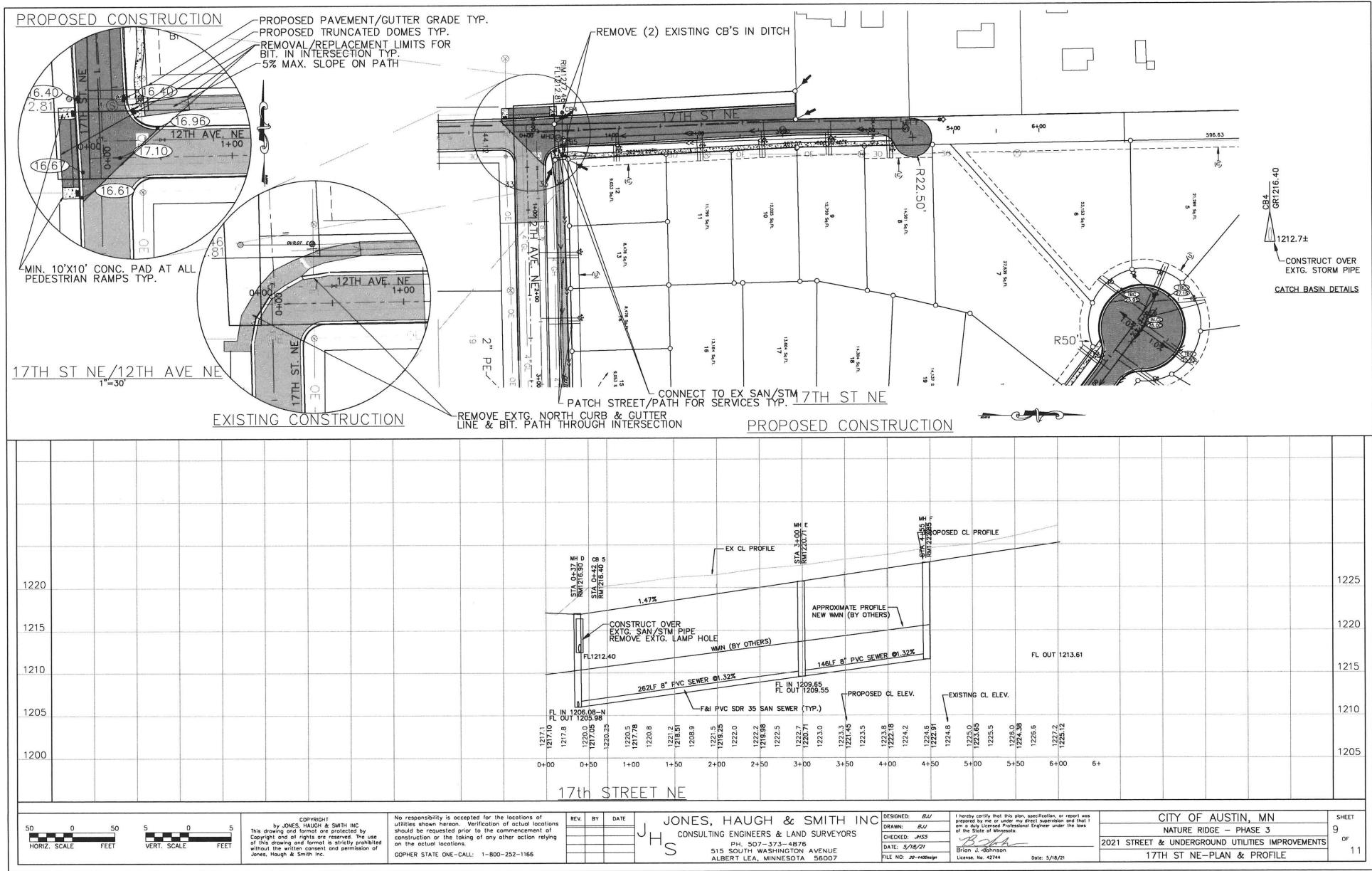


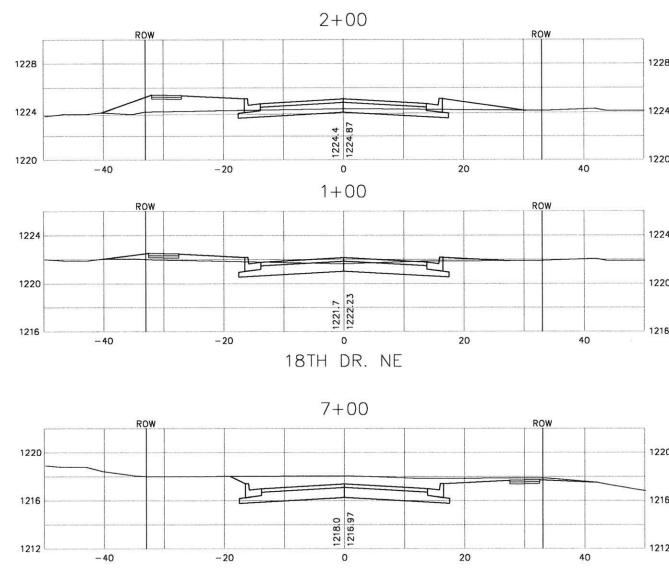
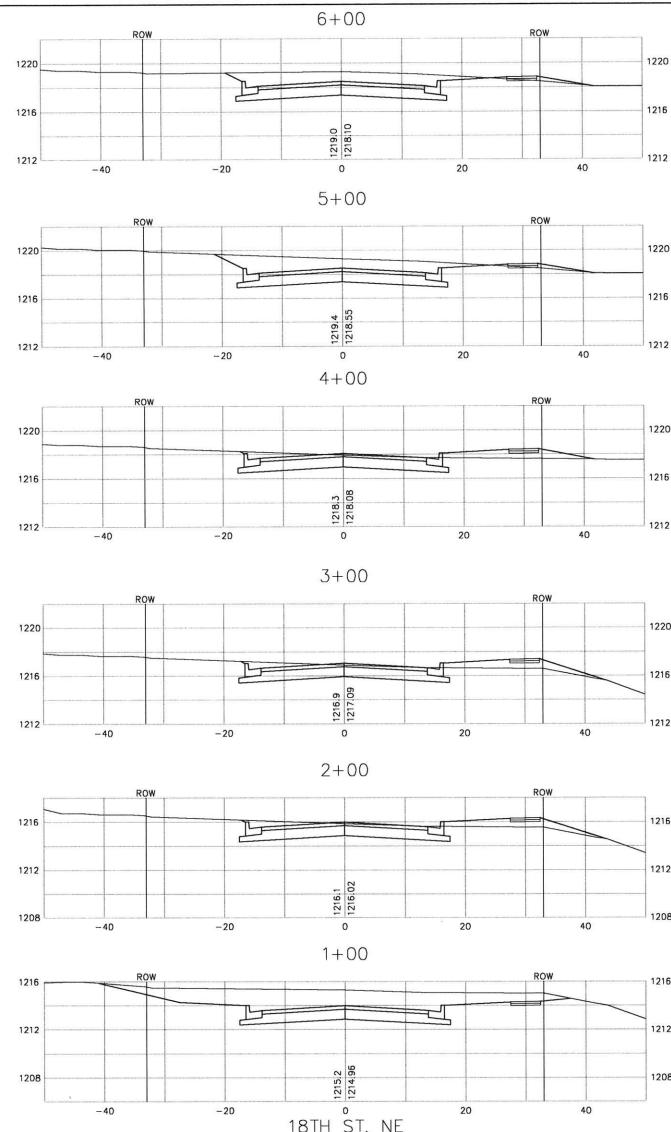
## PROPOSED CONSTRUCTION

NOTES:

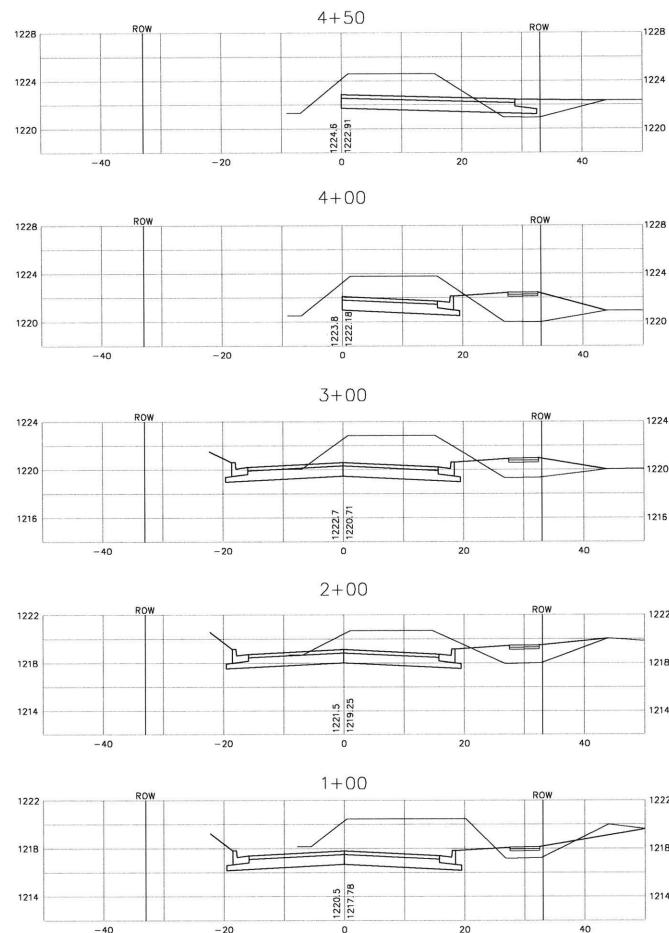
- 1: ALL INTERSECTION RADII ARE 20' UNLESS NOTED OTHERWISE.
- 2: ALL CURB RADII ARE DIMENSIONED TO BACK OF CURB. ALL STREET DIMENSIONS ARE TO CENTER OF CURB.
- 3: ALL BITUMINOUS MATCH POINTS TO EXISTING INPLACE BITUMINOUS SHALL BE CLEANLY SAW CUT FULL DEPTH.
- 4: CONTRACTOR SHALL COORDINATE WITH UTILITY OWNER TO RELOCATE PRIVATE UTILITIES AS NEEDED TO CONSTRUCT STREETS AND UTILITIES.
- 5: WATER & SEWER SERVICE LATERALS SHALL BE INSTALLED PERPENDICULAR TO THE MAIN AND CENTERED ON THE LOT OR AS DIRECTED BY ENGINEER.







10 0 10 HORIZ. SCALE FEET	5 0 5 VERT. SCALE FEET	COPYRIGHT This drawing and format are protected by Copyright and other laws. Any unauthorized use of this drawing and format is strictly prohibited without the written consent and permission of Jones, Haugh & Smith Inc.	No responsibility is accepted for the locations of utilities shown hereon. Verification of actual locations should be requested prior to the commencement of construction. The use of any information contained in this drawing and format is strictly prohibited on the actual locations.	REV. BY DATE	JONES, HAUGH & SMITH INC CONSULTING ENGINEERS & LAND SURVEYORS P.H. 507-373-4876 515 SOUTH WASHINGTON AVENUE ALBERT LEA, MINNESOTA 56007	DESIGNED: BU DRAWN: BU CHECKED: JHSS DATE: 5/17/21 FILE NO: 20-448304W Reg. No. 42744	I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a registered professional engineer under the laws of the State of Minnesota. B.J. Johnson B.J. Johnson Reg. No. 42744 Date:	CITY OF AUSTIN, MN NATURE RIDGE - PHASE 3 2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS 18TH ST NE/18TH DR. NE CROSS SECTIONS	SHEET 10 OF 11
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17TH ST. NE



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construction or the taking of any other action relying  
on the actual locations.  
COPPER STATE ONE-CALL: 1-800-252-1166

REV.

BY

DATE

J H S

JONES, HAUGH & SMITH INC  
CONSULTING ENGINEERS & LAND SURVEYORS  
P.O. 507-373-4876  
515 SOUTH WASHINGTON AVENUE  
ALBERT LEA, MINNESOTA 56007

DESIGNED:

BU

DRAWN:

BU

CHECKED:

HS

APPROVED:

BS

DATE:

5/12/21

FILE NO.:

20-440800W

Reg. No.

42744

Date:

CITY OF AUSTIN, MN  
NATURE RIDGE - PHASE 3  
2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS  
17TH ST NE CROSS SECTIONS

SHEET  
11  
OF  
11

**DEVELOPER'S AGREEMENT**  
**Nature Ridge Third**

This agreement dated this 10th day of June, 2021, between Nature Ridge Properties of Austin Co., hereinafter called "Owner/Developer", the City of Austin, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City", and Austin Utilities, a Public Body Corporate and Politic Created by the Charter of the City of Austin, hereinafter referred to as "Austin Utilities".

**Whereas**, the Owner/Developer, contemplates development of its land, legally described in Exhibit A, and is in need of streets, storm sewer, sanitary sewer and other municipal improvements and services in order to properly develop said area. It is, therefore, necessary to define the services needed and what the obligation of the Owner/Developer will be with respect to such improvements. Said improvements for the development of the proposed Nature Ridge Third, pursuant to the plans and specifications detailed on attached Exhibit B (Developer Improvements as defined in paragraph B1) and Exhibits C, D and E (utility improvements).

**Now Therefore**, it is hereby agreed between the Owner/Developer, the City, and the Austin Utilities, for the necessary improvements within Nature Ridge Third. The Owner/Developer agrees to comply with the requirements outlined in City Code of Ordinances, Chapter 13: Subdivision Regulations and this document as follows:

- A. Right to Proceed – Within the plat and the land to be platted, the Owner/Developer may not grade or otherwise disturb the earth, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings until all the following conditions have been satisfied:
  - 1) This Agreement has been fully executed by all parties and filed with the City and Austin Utilities.
  - 2) The necessary security has been received by the City.
  - 3) The Plat has been filed with the Mower County Recorder's Office.
  - 4) The City Engineer has issued a letter that all conditions have been satisfied and that the Owner may proceed.
- B. The Owner/Developer shall construct the following described improvements as designated herein. Said work shall be done under the direction of the City with reference to street construction, sanitary sewer, storm sewer, and storm sewer retention ponds. Gas, water and electric utilities are to be constructed to the specifications of and under the direction of the Austin Utilities.
  - 1) The Owner/Developer shall provide complete plans and specifications to the City Engineer's Office and they must be approved by the City Engineer before commencement of the improvements are allowed. The plans and specifications shall include the following and subject to other comments herein:
    - a. Grading plans and Erosion Control
      - Set lowest basement floor elevations (BF)
      - Set lowest ground elevation around structure (GND)
      - Set lot corner elevations
    - b. Sanitary sewer
      - Service stub out with riser pipe to the surface
    - c. Storm Sewer w/ calculations
    - e. Complete Street Design
      - Aggregate Base, Asphalt/Concrete Pavement, Curb & Gutter
      - Subsurface Drainage Tile
      - Pedestrian Facilities, sidewalks & trails
      - Street Lighting

These plans shall encompass all work required to provide necessary services to Nature Ridge Third, Lots 1-20, Block 1; Lots 1-6, Block 2; including the proposed right-of-way extensions of 17<sup>th</sup> Street NE, 18<sup>th</sup> Street NE and 18<sup>th</sup> Drive NE.

- 2) Grade the site and street within Nature Ridge Third to grade as required per the pre-approved plans and specifications.
- 3) Owner/Developer shall construct all roadways to meet the following urban design:
  - a. Roadway urban design
    - Local Classification: 7-ton design

- Width: 30-36 feet face to face
  - 4" asphalt & 8" aggregate base (typ.)
- Collector Classification: 9-ton design
  - Width: 40-44 feet face to face
  - 6" asphalt & 8" aggregate base (typ.)
- Arterial Classification: 10-ton design
  - Width: to be determined by Engineer
  - 6" asphalt, 8" aggregate base & 12" granular borrow (typ.)

b. 17<sup>th</sup> Street NE, 18<sup>th</sup> Street NE and 18<sup>th</sup> Drive NE will be designated as a Local roadway subject to the comments herein.

- 17<sup>th</sup> Street NE shall be designed as a future through street at a width of 36 feet face to face.
- 17<sup>th</sup> St. NE shall be constructed full width from 12<sup>th</sup> Ave. NE to the north property line of Lot 10, Block 1. From the north property line of Lot 10, Block 1 to the north property line of Lot 8, Block 1, the easterly one-half of 17<sup>th</sup> St. NE shall be constructed.
- Near the north property line of Lot 8, Block 1 a turn-around shall be constructed for 17<sup>th</sup> St. NE with a 45-foot diameter paved surface.

c. Street lighting shall be a cobra head style galvanized pole with 40 WLED design. Lighting shall be spaced a maximum of 300 feet and at road intersections.

d. Pedestrian facilities: 

	<u>Sidewalk</u>	<u>Trail</u>
● Single Family:	5 feet	8 feet
● Multi Family	6 feet	10 feet
● Commercial	8 feet	10 feet

4) Install all sanitary sewer including manholes as directed by the City Engineer, per pre-approved plans and specifications. Owner/Developer will be responsible for MPCA Sanitary Sewer Extension Permit and associated fees for entire development as set forth in the plans and specifications provided by the developer and approved by the City Engineer.

Installed PVC sanitary sewer pipe shall be televised to verify the condition of the pipe and to obtain locations of the service wyes. The televising shall include a digital log and video. Any defects in the pipe found on the televising record shall be repaired by the contractor at their expense. Televising shall be done not less than thirty (30) calendar days after installation.

All service wye and lateral locations shall be field located prior to backfill with GPS and locations provided to the City. Included, but not limited to: sanitary, water, and sump pump lines.

5) Owner/Developer shall pay the Austin Utilities in advance for construction of all gas, water and electric utility mains. Such work is to be completed as per Austin Utilities specifications, rules, and regulations as petitioned for in Exhibits C, D and E (Utility Agreements), incorporated herein by reference.

6) Owner/Developer shall be responsible for the costs associated with underground electrical. Such work is to be done by Austin Utilities pursuant to their specifications, rules and regulations and per pre-approved plans and specifications. As part of this work, Austin Utilities agrees to reconstruct the existing overhead electric line on 17<sup>th</sup> Street NE, north of 12<sup>th</sup> Avenue to underground.

7) Owner/Developer is responsible for costs and installation of all street signage.

8) The Owner/Developer shall be responsible for all engineering and inspection costs necessary to complete all required plans, specifications, materials testing, construction oversite/inspection and final certification.

Construction oversite/inspection may be provided by either a private engineering firm or by the City and shall include the following:

- a. Daily on-site construction inspection of public infrastructure work
- b. Project daily diary documenting work progress

Materials certification and testing shall be completed by a company qualified to complete such work. Material certification and testing shall include:

- a. Material gradation testing
- b. Trench inspection and density testing
- c. Materials certification for asphalt and concrete materials
- d. Testing of cast in place concrete, such as, air, slump and cylinder compressive strength

- 9) The Owner/Developer hereby grants the City and Austin Utilities, its agents, employees, officers and contractors, a license to enter the platted property to perform all work and inspections deemed appropriate by the City and Austin Utilities in conjunction with plat development.
- 10) The plat will be developed as shown on Exhibit "A" (plat and legal description). The City may refuse to approve subsequent phases if the Owner/Developer has breached this Agreement and the breach has not been remedied. Development of subsequent phases may not proceed until addendums to this Agreement, or a new Agreement for each additional phase are approved by the City, outlining further improvements and the necessary security. The City Engineer must approve any subsequent phases before the Owner/Developer may proceed with the improvements, and said approval shall not be unreasonably withheld.
- 11) Owner/Developer is required to maintain the integrity of any existing tile system. This means tile lines cannot be cut off without re-routing or connecting to the storm sewer system. Such a change to the existing tile system must meet the approval of the City Engineer.
- 12) The Owner/Developer is responsible for the costs and construction of all public infrastructure listed in this agreement. (See "Exhibit B")
- 13) The Owner/Developer shall be required to obtain all necessary easements outside the subdivision, in the name of the City of Austin.
- 14) Owner/Developer shall design a Stormwater management plan, which includes final site grading, storm sewer collection system, rainfall storage/treatment pond, and building/lot elevations. The Stormwater management plan shall meet all requirements and be approved by the City Engineer and Cedar River Watershed District prior to commencing construction.
- 15) If and when the improvements referred to above are completed, the Owner/Developer agrees at such time as the work is completed either by the City crews, or by independent contractor under contract with the City that the Owner/Developer will reimburse the City for its costs (including funds paid to the independent contractor), of said improvement as agreed upon through approved assessment policy after receiving a statement from the City Recorder or from the Austin Utilities as the case may be.
- 16) Owner/Developer and Port Authority shall develop a separate agreement for the cost share of public improvements on 17<sup>th</sup> Street NE for said improvements completed along shared property line. Owner/Developer will not be responsible for providing security for Port Authority portion of costs.
- 17) Milestones:
  - a. The Owner/Developer agrees to complete the public improvements on or before July 1<sup>st</sup>, 2022. In the event the Owner/Developer believes an extension is warranted, the Owner/Developer shall request an extension in writing to the City, the County, and Austin Utilities and specify the reason and length for the requested extension. The City and Austin Utilities shall not unreasonably withhold the requested extension. The City of Austin and Austin Utilities reserve the right to review and modify the costs associated with a granted extension. Construction of the final lift of asphalt may be delayed until July 1<sup>st</sup>, 2023.
  - b. Prior to issuance of any Building Permits the following must be complete:
    - All Owner/Developer underground utility construction.

- All Austin Utilities work including gas, water & electric.
- All roadway grading and aggregate base.

c. Prior to issuance of any Certificate of Occupancy the following must be complete:

- All Owner/Developer underground utility construction.
- All Austin Utilities work including gas, water & electric.
- All roadway construction including, grading, aggregate base, pavement and curb & gutter.
- Submit to the City Engineer documentation from the Engineer of record for Nature Ridge Phase 3 verifying compliance to the approved stormwater management plan which shall include final site grading, erosion control, turf establishment, structure finished floor and lot elevations.

C. Security and Enforcement

1) Letter of Credit: To guarantee compliance with the terms of the Agreement, the Owner/Developer shall furnish the City with an irrevocable letter of credit ("letter of credit") or cash deposit held in escrow whereas withdrawals may be made as said improvements proceed for 100% of the estimated costs of the development. The estimated costs must be approved by the City Engineer. The format of the letter of credit and bank is subject to approval by the City Attorney. This letter of credit is to come from a pre-approved bank, or cash forwarded to the Austin Director of Finance in the amount of \$ 471,350. The amount of the security is calculated as follows:

Park Dedication Fee	- 0 -
Street Lighting	\$ 9,000
Street Signage	\$ 1,500
Sanitary Sewer	\$ 65,000
Storm Sewer	\$ 20,000
Pavement, Aggregate Base, Curb & Gutter	\$ 200,000
Grading & Retention Ponds	\$ 15,000
Pedestrian Trail/Sidewalk	\$ 30,000
Erosion Control	\$ 15,000
Water Services	\$ 58,000
Miscellaneous	\$ 15,000
10% Contingency	\$ 42,850
<b>TOTAL</b>	<b>\$ 471,350</b>

The security provided in accordance herewith shall be released following the City Engineer's acceptance of said improvements. Provided that the Owner/Developer is in compliance with other terms of this Agreement, and has reimbursed to the City all of the City's costs and expenses incurred in connection with the approval of the subdivision and construction of the Owner's/Developer's improvements. The City may, in its discretion, release all or part of the security following acceptance of the Owner/Developer improvements if the City determines the entire amount is not necessary to secure the City for the guarantee period or if the City approves alternative security to be provided by the Owner/Developer.

2) In the event the Owner/Developer fails to comply with said Agreement and make the improvements as aforesaid to pay for the same as aforesaid, the City of Austin and Austin Utilities shall have the right to pursue any of the following remedies or a combination thereof:

- a. The City of Austin shall have the right to sue and collect from the Owner/Developer or their successors or assigns in ownership of the benefited property for all its costs in constructing the improvements above referred in civil action, or damages for breach of this contract, together with interest thereon, costs and disbursements, and other costs of collection, including reasonable attorney fees.
- b. The City shall have the right to make the improvements and assess the cost thereof to the property owners of the property benefited by the improvements, together with the interest thereon at the rate of interest determined by the City which rate shall approximately the same rate charged to other improvement projects which are assessed at that time. The Owner/Developer and successor or assigns hereby waives

any right to object to such assessment other than to verify the amount of cost attributable to the improvement. The Owner/Developer, their successor or assigns in ownership waives any notice of the proposed assessment other than is required by local improvement code (Minn. Statutes Chapter 429) for assessment.

- D. Claims – In the event that the City of Austin receives claims for labor, material men, or others that work required by this Agreement has been performed, the sums due them have not been paid, and the laborers, material men, or others seeking payment from the City, the Owner/Developer hereby authorizes the City to commence an inter pleader action pursuant to Rule 22, Minnesota Rules of Civil Procedure for the District Courts, to draw upon the letters of credit in an amount up to 125% of the claim(s) and deposit the funds in compliance with the Rule, and upon such deposit, the Owner/Developer shall release, discharge, and dismiss the City from any further proceedings as it pertains to the letters of credit deposited with the District Court, except that the Court shall retain jurisdiction to determine attorney's fees pursuant to this Agreement.
- E. Owner/Developer shall indemnify and hold the City and Austin Utilities, their officers, agents, employees and assigns, harmless from claims made by the Owner/Developer or any other parties for any damages, costs, or liability relative to Nature Ridge Third, all construction thereon, all operations and actions of contractors and subcontractors, and all matters pertaining to the developed property and this Agreement. This indemnify shall survive all transactions and inspections between Owner/Developer and the City/Austin Utilities. Except as it relates to any negligence of the City or Austin Utilities including warranty work provided by Austin Utilities.
- F. Upon completion of the work and construction required by this Agreement, the improvements lying within public easements and roadways shall become City property. The improvements shall not be accepted until the Owner/Developer has reasonably complied with all the terms of this Agreement and any amendments thereto; the Owner/Developer has submitted "as-built" plans and utility locations, a surveyor's certificate and a final title opinion or title insurance policy; all required construction and installation work have been completed to the satisfaction of the City and a certificate so stating has been signed by the City Engineer; and all monies required to be paid by the Owner/Developer have been paid in full.
- G. Owner/Developer agrees to maintain all public improvements within Nature Ridge Third (and if applicable, any roads outside Nature Ridge Third constructed to serve the subdivision) at all times prior to acceptance of the improvements by the City. Such maintenance shall be conducted in a workmanlike manner and shall include without limitation grading, paving, pavement repair, snow plowing, and maintenance of any culverts and signs. Owner/Developer agrees to indemnify and hold City harmless from any and all liability and/or damages of any kind whatsoever relative to maintenance of any public improvements prior to acceptance by the City.
- H. Warranty – The Owner/Developer warrants all improvements required to be constructed by it pursuant to this Agreement against poor material and faulty workmanship. The warranty period for streets is one (1) year. If all improvements are installed by one contractor, the warranty period shall commence after the final wear course has been completed and the streets have been accepted by the City Engineer. If streets and underground utilities are installed by separate contractors, the warranty period on streets shall commence after the final wear course has been installed and accepted by the City Engineer and the warranty period on underground utilities shall commence following their completion and acceptance by the City Engineer. The Owner/Developer shall post maintenance bonds to secure the warranties. The City shall retain ten percent (10%) of the security posted by the Owner/Developer until bonds are furnished by the City or until the warranty period has been completed, whichever first occurs. The retainage may be used to pay for warranty work.
- I. Responsibility of Costs – "The Owner/Developer shall indemnify the City and its officers, employees, and agents for all costs, damages, or expenses which the City incurs in consequence of such claims, including attorney's fees. The Owner/Developer shall reimburse the City for costs incurred in the enforcement of this Agreement, including engineering and attorney's fees. The Owner/Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all special assessments referred to in this Agreement. The Owner/Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within thirty (30) days after receipt, unless otherwise specified. If the bills are not paid on time, the City may halt development and construction until the bills are

paid in full. Bills not paid within thirty (30) days shall accrue interest at the rate of 12 percent per year.

The Owner/Developer shall reimburse Austin Utilities for costs incurred in the enforcement of this Agreement, including attorney's fees. The Owner/Developer shall pay in full all bills submitted to it by Austin Utilities for obligations incurred under this Agreement within thirty (30) days after receipt, unless otherwise specified. If the bills are not paid on time, the City may halt development and construction until the bills are paid in full. Bills not paid within thirty (30) days shall accrue interest at the rate of 12 percent per year."

Recording of Agreement – This agreement shall be binding on the undersigned Owners/Developer, their heirs, successors and assigns and shall be construed as a covenant running with the land until all requirements have been completed. This Agreement shall be recorded with the County Recorder of Mower County, Minnesota. After the requirements have been completed to the reasonable satisfaction of the City Council on the respective lots and paid for by Owner/Developer or successor, the City Engineer shall issue a certificate of completion with respect to the lot or lots involved executed by him which shall be recorded with the County Recorder stating that all requirements have been complied with to the reasonable satisfaction of the Council. The filing of said certificate of completion shall be considered as a satisfaction of all of the requirement with respect to the lots described and paid for by the Owner/Developer listed above and shall release the Owner/Developer, their heirs, successors and assigns from any further obligations required by this Agreement with respect to the property involved.

IN WITNESS WHEREOF, the undersigned parties have hereunto set their hands this

10<sup>th</sup> day of June, 2021

IN PRESENCE OF:

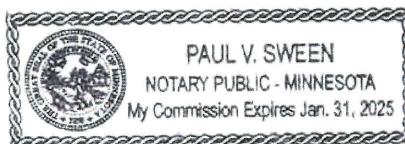
BY:

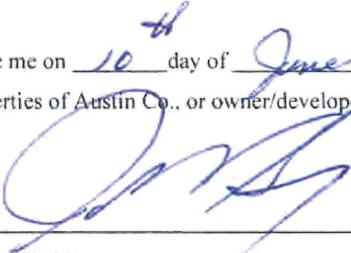


Michael Merten, President  
Nature Ridge Properties of Austin Co.

STATE OF MINNESOTA )  
COUNTY OF Mower )  
ISS

This instrument was acknowledged before me on 10<sup>th</sup> day of June, 2021 by  
Michael Merten, President of Nature Ridge Properties of Austin Co., or owner/developer.



  
Notary Public

IN PRESENCE OF:

CITY OF AUSTIN

---

BY: \_\_\_\_\_

MAYOR

---

BY: \_\_\_\_\_

CITY RECORDER

STATE OF MINNESOTA )

COUNTY OF \_\_\_\_\_)SS

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Stephen King, Mayor and Tom Dankert, City Recorder, of the City of Austin, Minnesota, a home rule charter city under the laws of the State of Minnesota.

---

Notary Public

IN PRESENCE OF:

AUSTIN UTILITIES

---

BY: \_\_\_\_\_

PRESIDENT OF BOARD

---

BY: \_\_\_\_\_

SECRETARY

STATE OF MINNESOTA )

COUNTY OF \_\_\_\_\_)SS

This foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Steve Greenman, President of the Board of Directors and Mark Nibaur, Secretary, for the Austin Utilities, on behalf of the Austin Utilities

---

Notary Public

EXHIBIT A

(legal description)

EXHIBIT B

(plans & specifications)

EXHIBIT C, D & E

(gas, water & electric utility agreements)



**EXHIBIT C**

**AUSTIN UTILITIES**  
Austin, Minnesota

**AGREEMENT FOR GAS MAIN EXTENSION**  
Nature Ridge Third Addition

The petitioner(s) hereto respectfully represent and state that they are the owners of the lands shown in the description set after their respective name(s), and that it is necessary that a gas main be constructed on the following described areas or on such part thereof as the Austin Utilities shall deem proper, for industrial, commercial and residential use.

On 18th St NE from 12th Av NE north approx. 480 feet, on 18 Dr NE from 18 St NE NW approx. 290 feet.

In case such gas main or part thereof is to be constructed, then each of the petitioners hereto, in front of whose land such line is to be constructed, agrees to immediately sign a contract for a service line to the described property. The Board shall determine the feasibility of gas main extensions. The Board may require the petitioners to contribute a one-time payment before the project is considered feasible.

**Gas Service Lines:** Austin Utilities will install all gas service lines from the main to the building as stated in the AU Gas Department Operations and Maintenance Manual. Costs for service extensions will be paid prior to the installation and at the current costs as listed in the O & M Manual. Costs for service extensions are not a part of this main extension petition.

**The petitioner(s) shall provide or perform, prior to Austin Utilities construction of gas main:**

1. Provide plans and information about the development as needed for AU to design and engineer gas facilities.
2. Review, discuss, change as needed, and approve locations of proposed AU gas main.
3. Pay to the Austin Utilities the contribution to cost of service extension.
4. Grant or acquire from others, the necessary easement(s) for gas construction.
5. Provide staking of right-of-way, easements, and property lines per AU request.
6. Install curb but not road surface, and grade areas where gas construction is proposed to final grade.

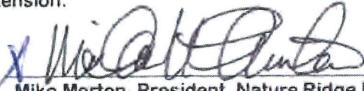
**The petitioner(s) shall meet the following conditions:**

1. The petitioner(s) shall hire and pay a contractor to replace any pavement at street openings necessary for the installation of gas main and services.
2. Protect gas facilities installed from damage during construction of the remainder of the development. Any facilities requiring repair will be billed to the contractor that damaged the facility or the petitioner(s).
3. Austin Utilities will not be responsible for failure of the gas trench due to poor soil conditions. Any remedial measures (such as additional backfill, etc.) will be the responsibility of the petitioner(s)
4. If final grade changes from what was indicated at time of gas main installation, any rework necessary (lowering of main, etc.) will be billed to the petitioner(s).

**Austin Utilities reserves the following rights:**

1. AU shall determine final design of installed gas facilities.
2. AU shall determine the final placement of installed gas facilities, and may refuse extension through areas determined by AU Staff to be unsuitable for gas installation, such as, but not limited to: wetlands, sites with buried waste or debris, or any similar conditions.
3. AU shall determine methods for installation of gas facilities according to current AU policies and practices, as well as Federal Regulations.

The undersigned, therefore, requests that the number of feet of extension required be checked and that they be notified as to the feasibility of such extension.

**PETITIONERS TO THIS AGREEMENT**   
Mike Merten, President, Nature Ridge Properties

Date: 6-10-21

Name & Address	Addition	Block	Lot	Extension Cost
Nature Ridge Properties of Austin Co. 300 1 St NW, Austin, MN 55912	Nature Ridge Third	1	1-20	\$ 13,272.00
"	"	2	1-6	
			Total	\$ 13,272.00

Dated: June 8, 2021  
 for construction year 2021  
 Prices good for 90 days from issue

**EXHIBIT D**

**AUSTIN UTILITIES**  
 Austin, Minnesota

**AGREEMENT FOR WATER MAIN EXTENSION**  
 Method 1 – Property Frontage  
 Nature Ridge Third Addition

The petitioner(s) hereto respectfully represent and state that they are the owners of the lands shown in the description set after their respective name(s), and that it is necessary that a water main be constructed on the following described areas or on such part thereof as the Austin Utilities shall deem proper, for industrial, commercial and domestic use and for fire protection.

On 18<sup>th</sup> St NE from 12<sup>th</sup> Av NE north approx. 480 feet, on 18 Dr NE from 18 St NE NW approx. 290 feet.

The connection charge shall be \$24.00 per foot for each foot of lot front width (or side lot width for corner lots). In addition to the connection charge, the Owner shall pay the regular tapping charges, prior to the tap.

**The petitioner(s) shall provide or perform, prior to Austin Utilities construction of water main:**

1. Provide plans and information about the development as needed for AU to design and engineer water facilities.
2. Review, discuss, change as needed, and approve locations of proposed AU water main.
3. Pay to the Austin Utilities the contribution to cost of service extension.
4. Grant or acquire from others, the necessary easement(s) for water construction.
5. Provide staking of right-of-way, easements, and property lines per AU request.
6. Remove topsoil and grade areas where water construction is proposed to final grade, or provide final grade information.

**The petitioner(s) shall meet the following conditions:**

1. The petitioner(s) shall hire a City of Austin licensed plumber to install water services and stub-ins to plumbing code and AU specifications.
2. The petitioner(s) shall hire and pay a contractor to replace any pavement at street openings necessary for the installation of water main. The paving contractor hired by the petitioner(s) shall raise and adjust any manholes to grade at the time of paving.
3. Protect water facilities installed from damage during construction of the remainder of the development. Any facilities requiring repair will be billed to the contractor that damaged the facility or the petitioner(s).
4. AU installs frames and lids on all manholes during installation of water main, set to be at or below final grade. The developer's contractor shall be responsible to raise these frames and lids to final grade of pavement. Any missing frames and lids at the time of pavement installation shall be the contractor's responsibility to purchase replacements – All water frames and lids must meet current AU specifications.
5. Austin Utilities will not be responsible for failure of the water main trench due to poor soil conditions. Any remedial measures (such as additional backfill, etc.) will be the responsibility of the petitioner(s).
6. If final grade changes from what was indicated at time of water main installation, any rework necessary (lowering of main, hydrant extensions, etc.) will be billed to the petitioner(s).

**Austin Utilities reserves the following rights:**

1. AU shall determine final design of installed water facilities.
2. AU shall determine the final placement of installed water facilities, and may refuse extension through areas determined by AU Staff to be unsuitable for water installation, such as, but not limited to: wetlands, sites with buried waste or debris, or any similar conditions.
3. AU shall determine methods for installation of water facilities according to current AU policies and practices, as well as State of MN mandated practices.

PETITIONERS TO THIS AGREEMENT

*X / Mike Merten*  
 Mike Merten, President, Nature Ridge Properties

Date: 6-10-21

Name & Address	Addition	Block	Lot	Lot Width	Extension Cost
Nature Ridge Properties of Austin Co. 300 1 St NW, Austin, MN 55912	Nature Ridge Third	2	1	104.85	\$2,516.40
"	"	2	2	104.85	\$2,516.40
"	"	2	3	104.85	\$2,516.40
"	"	2	4	104.85	\$2,516.40
"	"	2	5	87.92	\$2,110.08
"	"	2	6	92.92	\$2,230.08
		2		Sub-Total	\$14,405.76

See Page 2 for Additional Lots and Total

Name & Address	Addition	Block	Lot	Lot Width	Extension Cost
Nature Ridge Properties of Austin Co. 300 1 St NW, Austin, MN 55912	Nature Ridge Third	1	1	84.90	\$2,037.60
"	"	1	2	128.40	\$3,081.60
"	"	1	3	63.03	\$1,512.72
"	"	1	4	63.03	\$1,512.72
"	"	1	5	63.03	\$1,512.72
"	"	1	6	63.03	\$1,512.72
"	"	1	7	109.81	\$2,635.44
"	"	1	8	79.60	\$1,910.40
"	"	1	9	78.77	\$1,890.48
"	"	1	10	75.98	\$1,823.52
"	"	1	11	76.53	\$1,836.72
"	"	1	12	78.26	\$1,878.24
"	"	1	13	73.27	\$1,758.48
"	"	1	14	73.27	\$1,758.48
"	"	1	15	78.26	\$1,878.24
"	"	1	16	85.02	\$2,040.72
"	"	1	17	85.03	\$2,040.72
"	"	1	18	85.03	\$2,040.72
"	"	1	19	79.65	\$1,811.60
"	"	1	20	85.19	\$2,044.56
		1		Sub Total	\$38,618.16
	Nature Ridge Third	1 & 2		Total	\$53,023.92

Dated: June 8, 2021  
for construction year 2021  
Prices good for 90 days from issue

**EXHIBIT E**

**AUSTIN UTILITIES**  
Austin, Minnesota

**AGREEMENT FOR ELECTRIC DISTRIBUTION LINE EXTENSION**  
**Nature Ridge Third Addition**

The petitioner(s) hereto respectfully represent and state that they are the owners of the lands shown in the description set after their respective name(s). It is requested that electric distribution extension be constructed on the property and/or right of way described below, or such part thereof as you shall deem proper, for domestic or commercial use.

On 18<sup>th</sup> St NE from 12<sup>th</sup> Av NE north approx. 480 feet, on 18 Dr NE from 18 St NE NW approx. 290 feet.

**The petitioner(s) shall provide or perform, prior to Austin Utilities construction of electric facilities:**

1. Provide plans and information about the development as needed for AU to design and engineer electric facilities.
2. Review, discuss, change as needed, and approve locations of proposed AU electric facilities.
3. Pay to the Austin Utilities the contribution to cost of service extension.
4. Grant or acquire from others, the necessary easement(s) for electric construction.
5. Provide staking of right-of-way, easements, and property lines per AU request.
6. Install crossings at locations required by AU to AU specifications.
7. Install curb but not road surface, and grade areas where electric construction is proposed to final grade. Grade shall be 8" above top of curb at the ROW line unless otherwise requested by AU staff.
8. Water, sanitary sewer, and storm sewer is installed and marked.

The petitioner(s) shall meet the following conditions:

1. Coordinate plans for street lighting with AU and the City of Austin. The petitioner(s) shall hire installation of required street lighting by a licensed electrician at the cost of the petitioner(s).
2. Petitioner(s) and AU will attempt to coordinate installation of electric, telephone, and cable television facilities in a joint trench where possible.
3. Electric service laterals installed by the petitioner's electrician shall be in duct if the development is multi-family residential or commercial.
4. The petitioner(s) shall hire a contractor to replace any pavement at street openings necessary for installation of electric facilities.
5. Protect electric facilities installed from damage during construction of the remainder of the development. Any facilities requiring repair will be billed to the contractor that damaged the facility or the petitioner(s).

Austin Utilities reserves the following rights:

1. AU shall determine final design of installed electric facilities.
2. AU shall determine the final placement of installed electric facilities, and may refuse extension through areas determined by AU Staff to be unsuitable for electric installation, such as, but not limited to: wetlands, sites with buried waste or debris, or any similar conditions.
3. AU shall determine methods for installation of electric facilities according to current AU policies and practices, as well as State of MN and NECC mandated procedures.

**PETITIONERS TO THIS AGREEMENT**

Date: 6-10-21

Mike Merten, President, Nature Ridge Properties

**RESOLUTION NO.**

**ACCEPTING FINAL PLAT  
FOR NATURE RIDGE THIRD SUBDIVISION**

**WHEREAS**, a plat entitled Nature Ridge Third Subdivision has been duly filed with the City Recorder pursuant to the appropriate resolution of the City Council, a hearing on the acceptance or rejection of said final plat was held in the Council Chambers on June 21, 2021 at 5:30 p.m. Notice of said hearing was duly given in the official newspaper of the City of Austin, Minnesota. At the time and place specified in said notice, said matter was duly considered.

**WHEREAS**, the Council hereby accepts said plat; and

**WHEREAS**, the property described in the legal description attached hereto shall now be platted as Nature Ridge Third Subdivision.

**NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF AUSTIN, MINNESOTA**, that the City Recorder, upon passage, approval, and acceptance of this resolution, file its certified copy thereof in the office of the County Recorder and County Auditor of Mower County.

Passed by a vote of Yeas and Nays this 21st day of June, 2021.

YEAS

NAYS

ATTEST

APPROVED:

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City Recorder

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Mayor

**RESOLUTION NO.**

**RESOLUTION APPROVING A DEVELOPMENT AGREEMENT  
WITH NATURE RIDGE PROPERTIES OF AUSTIN CO.**

BE IT RESOLVED that the Mayor and City Council of the City of Austin do hereby approve a contract for development with Nature Ridge Properties of Austin Co. for the development of streets and extension of public infrastructure for Nature Ridge Third Addition as detailed in the development agreement on file in the Office of the City Clerk for Austin, Minnesota.

Passed by the Austin City Council this 21st day of June, 2021

YEAS

NAYS

ATTEST:

APPROVED:

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City Recorder

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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 Lang, PE  
**Date:** June 16, 2021  
**Subject:** Bids – Pavement Striping

We currently have a vacancy in the Sign & Traffic Department. In order to cover our responsibilities of maintaining clear pavement markings for the traveling public, we have solicited bids for mainline pavement striping. Quotes for centerline striping of our State Aid roadways were received on June 15, 2021. Work will consist of centerline striping of approximately 25 miles of roadway with the following:

- Dashed yellow
- Solid yellow
- Dashed white
- Solid white

The bids are summarized below.

<b><u>Contractor</u></b>	<b><u>Quote</u></b>
AAA Striping Service Co.	\$ 8,800.00
Traffic Marking Service	\$10,485.00
Warning Lites	\$ No Bid

We would recommend awarding the Base Bid to AAA Striping Service Co. The work will be funded through the Sign & Traffic Department. If you have any questions, please contact me.

Miscellaneous pavement striping will be completed by the Street Dept. staff, such as;

- Crosswalks
- Turn Arrows
- Yellow Curb (No Parking)
- Parking Lots

**RESOLUTION NO.**  
**AWARDING BID FOR PAVEMENT STRIPING**

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

Pavement Striping

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

Bidder	Bid Amount
AAA Striping Service Co.	\$ 8,800.00
Traffic Marking Service	\$10,485.00

**WHEREAS**, it appears AAA Striping Service Co. is the lowest responsible bidder.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Austin, Minnesota:

That the bid of AAA Striping is hereby accepted and the Mayor and City Recorder are hereby authorized and directed to enter into a contract with AAA Striping Service Co. in the name of the City of Austin for the following:

Pavement Striping

Passed by a vote of yeas and nays this 21st day of June, 2021

Yea  
Nays

ATTEST:

APPROVED

---

City Recorder

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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](mailto:slang@ci.austin.mn.us)

# Memorandum

**To:** Mayor & Council  
**From:** Mitch Wenum, PE  
**Date:** June 17, 2021  
**Subject:** Bids – 10<sup>th</sup> Place NE Sanitary Sewer Extension  
CP 21203

On June 16, 2021, the City of Austin received bids for the extension of sanitary sewer on 10<sup>th</sup> Place NE. Work will consist of extending a sanitary sewer main 700 feet west from the 10<sup>th</sup> Place and 20<sup>th</sup> St NE intersection. The project will provide a sanitary sewer connection for two properties on 10<sup>th</sup> Place NE. The bids are summarized below.

<b>Contractor</b>	<b>Total Bid Amount</b>
Hodgman Drainage Company, Inc.	\$ 66,562.50
Alcon Excavating	\$ 69,325.75
SL Contracting Inc.	\$ 99,700.00
Heselton Construction, LLC	\$127,295.00
Engineer's Estimate	\$71,975.00

The project will be funded using Local Fund 61 and sewer connection fees from the property owners. Due to its location along the 10<sup>th</sup> Place NE service drive adjacent to I-90, the sewer line will only service one side of the roadway. There are currently two properties that will receive benefit from the sanitary sewer line. Using our sewer connection fees we will only be able to recoup 50% of the project cost. The remainder will be covered with general sewer fund dollars.

We would recommend awarding the project to Hodgman Drainage Company, Inc. If you have any questions, please contact me.

Fund 61 – WWTP Fund \$ 66,562.50



10TH PLACE NE SANITARY  
SEWER EXTENSION  
3/31/2021  
SHEET 1 OF 1

05/12/2021

To Whom it may concern:

Please continue with your plans for the gravity sewer and stubout at our location 2001 10<sup>th</sup> Place NE.

We will pay for the plumbing permit fee \$75.50 and also the SAC fee of \$16,700 and intend to connect to the sanitary sewer once available.

**Misael and Lisa Jordan**

A handwritten signature in black ink, appearing to read "Misael and Lisa Jordan". The signature is fluid and cursive, with "Misael" on the top line and "Lisa Jordan" on the bottom line.

## **RESOLUTION NO.**

### **AWARDING BID FOR SANITARY SEWER EXTENSION**

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

#### **10<sup>th</sup> Place NE Sanitary Sewer Extension**

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

<b><u>Contractor</u></b>	<b><u>Bid</u></b>
Hodgman Drainage Co. Inc.	\$ 66,562.50
Alcon Excavating	\$ 69,325.75
SL Contracting, Inc.	\$ 99,700.00
Heselton Construction, LLC	\$127,295.00

**AND, WHEREAS**, it appears Hodgman Drainage Co. 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 Hodgman Drainage Co. Inc. is hereby accepted and the Mayor and City Recorder are hereby authorized and directed to enter into the standard city contract, subject to the project budget, with Hodgman Drainage Co. Inc. in the name of the City of Austin for the following:

#### **10<sup>th</sup> Place NE Sanitary Sewer Extension**

Passed by a vote of yeas and nays this 21st day of June, 2021.

YEAS

NAYS

ATTEST:

---

City Recorder

APPROVED:

---

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 Lang, PE  
**Date:** June 17, 2021  
**Subject:** Bids – 31<sup>st</sup> Street SW Realignment  
 CP 20106

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The City of Austin has been working Mower County to develop a project for the realignment of 31<sup>st</sup> Street SW (County Road 21). The project is proposed to reconstruct 31<sup>st</sup> Street SW from Oakland Ave. West to 5<sup>th</sup> Avenue SW. Attached is a drawing showing the proposed alignment. The project components have been divided between City and County responsibility as follows:

### Mower County

- Roadway construction, 40-foot-wide roadway with asphalt pavement and curb & gutter
- 10-foot-wide bituminous trail
- Roadway storm sewer
- Street lighting

### City of Austin

- Property acquisition for new roadway alignment
- Stormwater Pond and storm sewer outlet

Mower County received bids for the realignment project on June 17, 2021 and the bids are summarized below.

Contractor	Total Bid Amount
Ulland Brothers, Inc.	\$1,197,736.15
Fitzgerald Excavating	\$1,198,286.75
Snow Ctontracting, LLC	\$1,303,366.15
Engineer's Estimate	\$1,309,653.00

The City portion of work related to pond and storm sewer construction totals \$306,886.02. These projects costs are eligible to utilize State Aid funding. We would recommend authorizing the use of State Aid funds for the City portion of the project and support Mower County's intent to award the project to Ulland Brothers, Inc. If you have any questions, please contact me.

