

**A G E N D A**  
**CITY COUNCIL MEETING**  
**MONDAY, AUGUST 16, 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 August 2, 2021

3. Recognitions and Awards.

(mot) 4. \*Consent Agenda

Licenses:

Exempt Gambling (paddlewheels): Austin Morning Lions Club on October 29, 2021  
Right of Way: JJD Companies, LLC, Blooming Prairie

Claims:

- a. Pre-list of bills
- b. Investment and Credit Card Report.
- c. Melissa Baldus, 2000 11<sup>th</sup> Avenue SW. The matter has been forwarded to the City Attorney to protect the City's interest.

**PUBLIC HEARING:**

5. Public hearing to review the establishment of tax increment financing (redevelopment) district no. 16 and the proposed adoption of a tax increment financing plan.

(res) a. Establishing tax increment financing (redevelopment) district no. 16 in municipal development district no. 1 and adopting a tax increment financing plan therefor.

(res) b. Authorizing an interfund loan for advance of certain costs in connection with tax increment financing district no. 16 within municipal development district no. 1.

**PETITIONS AND REQUESTS:**

(mot) 6. Approving 2021 Hormel Foundation grant rankings.

(res) 7. Accepting a Minnesota Department of Education Construction grant.

(res) 8. Accepting coronavirus local fiscal recovery funds established under the American Rescue Plan Act.

(res) 9. Accepting donations to the City of Austin.

(mot) 10. Appointing Varinh Van Vugt to the Human Rights Commission, term expiring December 31, 2022.

- (mot) 11. Reviewing an annexation ordinance for City owned property in Lansing/Red Rock townships.  
(ord) a. For preparation of the ordinance.  
b. For adoption of the ordinance.
- (mot) 12. Reviewing an annexation ordinance for Austin Township property.  
(ord) a. For preparation of the ordinance.  
b. For adoption of the ordinance.
- (res) 13. Granting deed restrictions on Todd Park for a DNR grant.
- (res) 14. Accepting an airfield lighting grant for the Austin Municipal Airport.
- (res) 15. Accepting an airport grant from the American Rescue Plan for the Austin Municipal Airport.
- (res) 16. Approving engineering design services for the Cedar River siphons.
- (res) 17. Approving engineering design services for the 21<sup>st</sup> Avenue NE project. *Backup to follow.*
- (res) 18. Accepting a grant from International Paper for the Austin Fire Department.
- (res) 19. Declaring the property at 709 Oakland Avenue West a hazardous structure.
- 20. Granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at the following locations:
  - (mot) a. 713 4<sup>th</sup> Avenue NE, Miller Property.
  - (mot) b. 1004 5<sup>th</sup> Street NW, Marquardt Property.
  - (mot) c. 1206 12<sup>th</sup> Street NW, Sheehan Property.

#### **CITIZENS ADDRESSING THE COUNCIL**

#### **HONORARY COUNCIL MEMBER COMMENTS**

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

City Administrator

City Council

- (mot) Adjourn to **Tuesday, September 7, 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  
August 2, 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:

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

STAFF APPEARING ELECTRONICALLY: Public Works Director Steven Lang, Planning and Zoning Administrator Holly Wallace, Park and Rec Director Kevin Nelson, Human Resource Director Trish Wiechmann and City Clerk Ann Kasel

OTHERS APPEARING ELECTRONICALLY: Austin Daily Herald

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

Added to the agenda:

- (res) 15. Approving a 2020 bonding bill appropriation revision for the Waste Water Treatment Plant.

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

Moved by Council Member Fischer, seconded by Council Member Waller, approving Council minutes from July 19, 2021 and July 23, 2021. Carried.

#### CONSENT AGENDA

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

#### Licenses:

Temporary Food: The Lemon, 1027 S. Ramsey Street, Blue Earth

Temporary Liquor: VFW Post 1216 on August 21, 2021 at Lafayette Park

Claims:

a. Pre-list of bills

Event Applications:

River Rats Car Show on August 21, 2021

Carried.

## PUBLIC HEARINGS

A public hearing was held for the review of a tax abatement application from Bigelow & Lennon Construction for the property at 2104 14<sup>th</sup> Avenue NE. The proposed home has an estimated value of \$328,500 and meets the requirements of the tax abatement program.

There were no public comments.

Moved by Council Member Baskin, seconded by Council Member Postma, adopting a resolution approving a five-year tax abatement for Bigelow & Lennon Construction for the property at 2104 14<sup>th</sup> Avenue NE. Carried 7-0.

## PETITIONS AND REQUESTS

Parks and Recreation Director Kevin Nelson requested the Council approve a one-year lease with Austin MN Junior Hockey, LLC/Austin Bruins for the use of Riverside Arena.

Moved by Council Member Baskin, seconded by Council Member Fischer, adopting a resolution approving a lease with the Austin Bruins. Carried 7-0.

Parks and Recreation Director Kevin Nelson requested Council authorization to deed Sterling Park to Mower County. The parcel abuts the Mower County Fairgrounds and is mostly a landlocked parcel that couldn't be developed. The play equipment has been removed due to its poor condition and the County would use it for fair activities.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution approving the transfer of Sterling Park to Mower County. Carried 7-0.

Planning and Zoning Administrator Holly Wallace requested the Council approve a lot split petitioned by Hal Henderson. Mr. Henderson had the lots combined for a potential sale in February of 2021 and the deal fell through. He would like the lots split apart again.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution approving a lot split for Hal Henderson. Carried 7-0.

Planning and Zoning Administrator Holly Wallace requested the Council approve a lot consolidation requested by Kristen Heichel. She would like an empty adjacent lot combined with her homestead placed for the construction of accessory structures.

Moved by Council Member-at-Large Austin, seconded by Council Member Fischer, adopting a resolution approving a lot combination for Kirsten Heichel. Carried 7-0.

Planning and Zoning Administrator Holly Wallace requested the Council approve a lot consolidation requested by Gregory Hovland.

Moved by Council Member Fischer, seconded by Council Member Oballa, adopting a resolution approving a lot combination for Gregory Hovland. Carried 7-0.

Planning and Zoning Administrator Holly Wallace requested the Council approve a lot split request from Eric Jensen for the purpose of selling off a piece of property.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution approving a lot split for Eric Jensen. Carried 7-0.

Moved by Council Member Fischer, seconded by Council Member Poshusta, appointing Sylvia Hernandez to the Culture and Arts Commission, term ending 12/31/2023. Carried.

Moved by Council Member Oballa, seconded by Council Member Baskin, adopting a resolution declaring the property at 1409 4<sup>th</sup> Street SE a hazardous structure. Carried 7-0.

Moved by Council Member Waller, seconded by Council Member Fischer, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 605 10<sup>th</sup> Drive SE, Guzman Property. Carried.

Moved by Council Member Fischer, seconded by Council Member Poshusta, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 707 6<sup>th</sup> Avenue SW, Batikare Property. Carried.

Moved by Council Member Fischer, seconded by Council Member Oballa, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 110 12<sup>th</sup> Street NE, Patel Property. Carried.

Public Works Director Steven Lang requested the Council modify the bonding bill agreement with the State of Minnesota for the \$7.45 million the City was awarded from the 2020 bonding bill. The funds were not eligible for engineering costs prior to October 20, 2020 so the language is being modified so some of the engineering costs can be used for construction costs to maximize the grant.

Moved by Council Member Baskin, seconded by Council Member Waller, approving a 2020 bonding bill appropriation revision for the Waste Water Treatment Plant. Carried 7-0.

## REPORTS

City Administrator Craig Clark stated there may be a special Council meeting on August 23<sup>rd</sup>. He stated he recently attended the CGMC meeting.

Police Chief David McKichan stated the National Night Out is August 3 from 4 – 7 p.m. at the Bandshell.

Council Member Baskin thanked the Austin Police Department for their recent work.

Council Members Oballa and Poshusta also thanked the Police Department for their work.

Council Member Postma thanked the Southern Minnesota Association of Realtors for their donation to the Cedar River Farmer's Market.

Mayor King stated he attended the CGMC conference and thought it was very valuable.

Moved by Council Member-at-Large Austin, seconded by Council Member Postma, adjourning the meeting to August 16, 2021. Carried.

Adjourned: 5:51 p.m.

Approved: August 16, 2021

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

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

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REDEVELOPMENT AGREEMENT

IN

MUNICIPAL DEVELOPMENT DISTRICT NO. 1

AND

TAX INCREMENT FINANCING (REDEVELOPMENT) DISTRICT NO. 16

CITY OF AUSTIN,  
MOWER COUNTY, MINNESOTA

Between

CITY OF AUSTIN, MINNESOTA

And

STENCIL GROUP II LLC

for the

STENCIL GROUP APARTMENT PROJECT

\_\_\_\_\_  
Dated as of August 16, 2021  
\_\_\_\_\_

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This Document Was Drafted By:

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

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## REDEVELOPMENT AGREEMENT

THIS Redevelopment Agreement (this “Agreement”), made and entered into as of this 16<sup>th</sup> day of August, 2021, by and between the CITY OF AUSTIN, a municipal corporation and political subdivision of the State of Minnesota (the “City”), and STENCIL GROUP II LLC, a Minnesota limited liability company, together with its successors and assigns (the “Developer”).

WITNESSETH:

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

WHEREAS, the City adopted a resolution establishing Tax Increment Financing (Redevelopment) District No. 16, an “redevelopment district” (the “TIF District”) pursuant to M.S., Section 469.174, Subdivision 10, and approved a Tax Increment Financing Plan therefor (the “TIF Plan”); and

WHEREAS, in order to achieve the objectives of the Development Program and the TIF Plan, the City intends to provide assistance to the Developer through tax increment financing, as described in M.S., Sections 469.174 through 469.1794 (the “TIF Act”), to finance construction of an apartment complex consisting of ninety-one (91) market-rate units (the “Project”);

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

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

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

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



ARTICLE 1  
Definitions

1.01. Definitions.

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

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

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

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

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

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

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

“City” means the City of Austin, Minnesota.

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

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

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

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

“Developer” means Stencil Group II LLC, a limited liability company organized under the laws of the State of Minnesota.

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

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

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

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

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

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

“M.S.” means Minnesota Statutes.

“Project” means the construction of an apartment complex consisting of ninety-one (91) market-rate units.

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

“Qualified Costs” means costs incurred by Developer in connection with construction of the Minimum Improvements that are reimbursable from tax increment pursuant to Sections 469.174, Subd. 12 and 469.1761 of the TIF Act, which are shown on Exhibit C to this Agreement. The total principal amount of any and all tax increment notes issued to reimburse the Developer for Qualified Costs of the Project will not exceed \$1,600,000.

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

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

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

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

“State” means the State of Minnesota.

“Termination Date” means the earlier of (i) February 1, 2050, (ii) the date the TIF Note is paid in full, (iii) the date on which the Tax Increment District expires or is otherwise terminated, or (iv) the date this Agreement is terminated or rescinded in accordance with its terms;

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

“TIF District” means Tax Increment Financing (Redevelopment) District No. 16, a redevelopment district, established by the City Council on August 16, 2021.

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

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

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

## ARTICLE 2

### Representations and Warranties

#### 2.01. City Representations.

The City makes the following representations to the Developer:

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

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

(c) With each TIF Note payment, the City will provide Developer with a statement showing the Available Tax Increment along with a statement of the remaining amounts of unpaid interest, if any, and principal.

#### 2.02. Developer Representations.

The Developer represents and warrants that:

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

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

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

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

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

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

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

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

(i) The financial assistance received by the Developer will be used to create housing.

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

2.04. Ownership of Development Property. The Developer hereby represents and warrants that it is the owner in fee simple of the Development Property and that there are no liens,

defects or other encumbrances upon title to the Development Property that would hinder the development of the Development Property by the Developer as contemplated by this Agreement.

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

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

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

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

### ARTICLE 3 Construction of Project

3.01. Construction Plans. Prior to commencing construction of the Minimum Improvements for the Project, the Developer shall make available to the City for review Construction Plans for the Project. The Construction Plans shall provide for construction of the Project in conformity with the Development Program, the TIF Plan, this Agreement, and all applicable state and local laws and regulations. The City shall approve the Construction Plans in writing if, in the reasonable discretion of the City, the Construction Plans: (a) conform to the Development Program, the TIF Plan, this Agreement, and to any subsequent amendments thereto approved by the City; (b) conform to all applicable federal, state and local laws, ordinances, rules and regulations; (c) are adequate to provide for construction of the Minimum Improvements; and (d) no Event of Default has occurred.

No approval by the City shall relieve the Developer of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations,



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

3.02. Undertaking of Minimum Improvements.

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

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

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

3.03. Certificate of Occupancy; Certificate of Completion.

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

(b) If the City shall refuse or fail to provide a Certificate of Completion following the Developer's request, the City shall, within ten (10) days after the Developer's request, provide the Developer with a written statement specifying in what respects the Developer has failed to complete the Project in accordance with this Agreement, or is otherwise in

default, and what measures or acts will be necessary, in the reasonable opinion of the City, for the Developer to obtain the Certificate of Completion.

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

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

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

#### ARTICLE 4

##### Defense of Claims; Insurance

##### 4.01. Defense of Claims.

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

the Developer shall not be entitled to assume the defense of such action on behalf of the City, but the Developer shall be responsible for the reasonable fees, costs and expenses (including the employment of counsel) of the City in conducting their defense. The Developer shall not be liable to indemnify any person for any settlement of any such action effected without the Developer's consent. The omission to notify the Developer as herein provided will not relieve the Developer from any liability which they may have to any Indemnified Party pursuant hereto, otherwise than under this Section.

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

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

#### 4.02. Insurance.

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

1. fire
2. extended coverage perils
3. vandalism and malicious mischief
4. boiler explosion (but only if steam boilers are present)
5. collapse



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

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

## ARTICLE 5 Public Assistance

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

### 5.02. Reimbursement for Qualified Costs.

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

(a) The total principal amount of any and all TIF notes issued for the Project will not exceed one million six hundred thousand dollars (\$1,600,000).

(b) The unpaid principal of the TIF Note shall bear simple non-compounding interest from the date of issuance of the TIF Notes, at four percent (4.00%) per annum.

Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

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

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

(e) The City will retain 10% of the Tax Increment generated for administrative costs and apply the retained Tax Increment first to pay any administrative expenses relating to the Development Property to the extent permitted by the Tax Increment Act and to the extent that such expenses have not been paid or reimbursed to the City by the Developer. In addition to the 10% retained by the City for administrative expenses, the City shall also retain 11% of the Tax Increment generated for other City purposes. Any of the Tax Increment remaining after the payment of any administrative expenses then due and owing and retained for other City purposes (the "Available Tax Increment"), which percentage shall be approximately 79% of the Tax Increment generated, shall be paid to the Developer for reimbursement of the Qualified Costs plus interest on the Payment Dates.

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

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

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

### 5.03. Conditions Precedent to Provision of Public Assistance.

Upon payment by the Developer of Qualified Costs for the Project, the Developer will deliver to the City an instrument executed by the Developer (i) specifying the amount and nature of the Qualified Costs of the Minimum Improvements for the Project to be reimbursed and (ii) certifying that such costs have been paid to third parties unrelated to the Developer, or if any costs have been paid to third parties related to the Developer, that such costs do not exceed the

reasonable and customary costs of services, labor or materials of comparable quality, dependability, availability and other pertinent criteria and that such costs have not previously been contained in an instrument furnished to the City pursuant to this Section 5.03. Together with such instrument, the Developer shall deliver to the City evidence reasonably satisfactory to the City of the payment by the Developer of such costs to be reimbursed. Thereafter, the City will provide to the Developer reimbursement for the Project, constituting a portion of the Public Assistance described in this Article 5, paid up to the maximum amount then due and payable, in accordance with Section 5.02.

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

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

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

5.05. Notice of Default. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement, the City shall at the same time forward a copy of such notice or demand to each investor, lender, or holder of any permitted mortgage, lien or other similar encumbrance at the last address of such holder shown in the records of the City. Each such investor, lender, or

holder shall have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided that if the breach or default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City, to complete the construction the Project in accordance with the plans and specifications therefor and this Agreement. Any such holder who shall properly complete the construction of the Project shall be entitled, upon written request made to the City, to a certification by the City to such effect in the manner provided in Section 3.03.

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

The Developer agrees that prior to the Termination Date:

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

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

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

5.07 Action to Reduce Taxes. The Developer may seek through petition or other means to have the market value for the Development Property reduced. Until the TIF Note is fully paid, such activity must be preceded by written notice from the Developer. Upon receiving such notice, or otherwise learning of the Developer's intentions, the City may suspend payments due under the TIF Note until the actual amount of the reduction is determined, whereupon the City will make the suspended payments less any amount that the City is required to repay the County as a result any reduction in market value of the Development Property. During the period that the payments are subject to suspension, the City may make partial payments on the TIF Note if it determines, in its



sole and absolute discretion, that the amount retained will be sufficient to cover any repayment which the County may require. The City's suspension of payments on the TIF Note pursuant to this Section shall not be considered a default under this Agreement.

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

## ARTICLE 6 Prohibitions Against Assignment and Transfer

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

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

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

Except as set forth in the immediately preceding paragraph, in the absence of specific written agreement by the City to the contrary, no approval of any assignment or transfer by the City thereof with respect to any transfer or assignment shall be deemed to relieve the Developer,

or any other party bound in any way by this Agreement or otherwise with respect to the completion of the Project, from any of their obligations with respect thereto.

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

## ARTICLE 7

### Event of Default; Fees

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

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

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

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

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

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

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

7.02. Remedies on Default. In the event the City desires to exercise any of its rights or remedies as provided herein or otherwise available to the City at law or in equity, the City shall first provide written notice to Developer setting forth with specific particularity the Event of Default and the action required to cure or remedy the same (the “Default Notice”). Developer or any transferee or assignee under Section 6.01 hereof, shall have thirty (30) days from receipt of a Default Notice to cure or remedy the Event of Default specified in the Default Notice, or such longer period as may be reasonably required to complete the cure as soon as reasonably possible

under the circumstances. If, following Developer's receipt of a Default Notice, Developer does not cure or remedy the Event of Default therein specified within the time provided above, the City may take any one or more of the following actions at any time prior to Developer's curing or remedying the Event of Default:

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

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

(c) Withhold the Certificate of Completion.

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

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

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

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

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

7.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City, or to the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City, or Developer to exercise any remedy reserved to them, it shall not be necessary to give notice, other than such notice as may be required under this Agreement.

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

7.05. Agreement to Pay Attorneys' Fees. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

## ARTICLE 8 General Provisions

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

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

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

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

8.05. Business Subsidies Act.

Based on the representations of the Developer contained in Section 2.02(i) of this Agreement, the assistance being provided by the City to the Developer under this Agreement is not a business subsidy under the Business Subsidies Act and subsidy agreement as described in



Minnesota Statutes, Section 116J.994, Subd. 3 and Subd. 4 is not being entered by the City and Developer.

8.06. Term of Agreement. This Agreement shall terminate upon the earlier to occur of (i) February 1, 2050, (ii) the date the TIF Note is paid in full, (iii) the date on which the Tax Increment District expires or is otherwise terminated, or (iv) the date this Agreement is terminated or rescinded in accordance with its terms; it being expressly agreed and understood that the provisions of this Agreement are intended to survive the expiration and satisfaction of any security instruments placed of record contemporaneously with this Agreement, if such expiration and satisfaction occurs prior to the expiration of the term of this Agreement, as stated in this Section 8.06.

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

## ARTICLE 9 Administrative Provisions

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

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

Stencil Group II LLC

[REDACTED]

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

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

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

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

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

9.04. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

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

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

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

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

CITY OF AUSTIN, MINNESOTA

By \_\_\_\_\_  
Mayor

And \_\_\_\_\_  
City Recorder

STATE OF MINNESOTA    )  
                                      ) ss.  
COUNTY OF MOWER     )

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

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

\_\_\_\_\_  
Notary Public

STENCIL GROUP II LLC, a Minnesota  
limited liability company

By: \_\_\_\_\_  
Nathan Stencil, Chief Executive  
Officer

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
2021, by Nathan Stencil, the Chief Executive Officer Stencil Group II LLC, a Minnesota limited  
liability company, on behalf of the company.

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

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **DEVELOPMENT PROPERTY**

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

| <u>Parcel ID Number</u> | <u>Legal Description</u>  |
|-------------------------|---|
| 34.579.0010             | SubdivisionName PICKETT PLACE<br>Block 001 SubdivisionCd 34579 LOTS 1,<br>2, 3, 5 & 6, ALL W OF LINE FROM<br>E101FT LOT 1 - S LINE - THRU E267FT<br>LOT 6 - N LINE LAND |
| 34.865.0541             | SubdivisionName 3 102 18 SubdivisionCd<br>34865 .92 AC ADJ ON E<br>OF LOTS 6, 7 & S33FT LOT 8 BLK 14<br>MORGANS ADD EAST OF Y   |
| 34.460.1040             | SubdivisionName MORGANS Block 014<br>SubdivisionCd 34460 LOTS<br>6, 7 & S33FT LOT 8 YMCA  |
| 34.865.0610             | .57 AC NW1/4 NE1/4 E OF YMCA & S<br>OF 7TH PLACE NW OLD<br>PEPPERMILL RESTAURANT Section 03<br>Township 102 Range 018   |

## **EXHIBIT B**

### **COVENANTS AND RESTRICTIONS**

During the term of that certain Redevelopment Agreement between the City of Austin (the “City”), and Stencil Group II LLC together with its successors and permitted assigns (the “Developer”), dated August 16, 2021, and recorded in the Office of the Mower County Registrar as Document No. [ ] on [ ], 20[ ], the Property shall be subject to the following covenants and restrictions:

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

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

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

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

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

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

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

5. The Property owner shall:

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

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

7. Notwithstanding Section 6 hereof, the covenants and restrictions herein contained shall remain in effect until the earlier of (i) February 1, 2050, (ii) the date the City terminates the TIF District or the TIF District expires, or (iii) as otherwise set forth in the Redevelopment Agreement.

## EXHIBIT C

### PROJECT DESCRIPTION; QUALIFIED COSTS

#### Project Description

The Project involves the construction of an apartment complex consisting of ninety-one (91) market-rate units, including the following mix of units:

- (19) Studio 501 SF
- (38) One Bed 702 SF
- (34) Two bed 1050 SF

#### Qualified Costs

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

Site Improvements/Preparation costs  
Administrative expenses  
**Total**

\$[ ]  
[ ]  
[ ]

\* Developer's Qualified Cost. The total principal amount of any and all tax increment notes issued to reimburse the Developer for Qualified Costs of the Project will not exceed \$1,600,000.



**EXHIBIT D**

**CERTIFICATE OF COMPLETION**

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

WHEREAS, the Development Property is subject to the provisions of a certain Redevelopment Agreement (the “Agreement”) in the Municipal Development District No. 1 and Tax Increment Financing (Redevelopment) District No. 16, dated as of August 16, 2021, between the Developer and the City of Austin, Minnesota; and

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

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF AUSTIN, MINNESOTA

By \_\_\_\_\_  
Mayor

And \_\_\_\_\_  
City Recorder

## Exhibit A

### Development Property

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

| <u>Parcel ID Number</u> | <u>Legal Description</u>  |
|-------------------------|---|
| 34.579.0010             | SubdivisionName PICKETT PLACE<br>Block 001 SubdivisionCd 34579 LOTS 1,<br>2, 3, 5 & 6, ALL W OF LINE FROM<br>E101FT LOT 1 - S LINE - THRU E267FT<br>LOT 6 - N LINE LAND |
| 34.865.0541             | SubdivisionName 3 102 18 SubdivisionCd<br>34865 .92 AC ADJ ON E<br>OF LOTS 6, 7 & S33FT LOT 8 BLK 14<br>MORGANS ADD EAST OF Y   |
| 34.460.1040             | SubdivisionName MORGANS Block 014<br>SubdivisionCd 34460 LOTS<br>6, 7 & S33FT LOT 8 YMCA  |
| 34.865.0610             | .57 AC NW1/4 NE1/4 E OF YMCA & S<br>OF 7TH PLACE NW OLD<br>PEPPERMILL RESTAURANT Section 03<br>Township 102 Range 018   |

**EXHIBIT E**

**FORM OF LIMITED TAX INCREMENT REVENUE NOTE**

No. R-\_\_\_\_\_

\$[\_\_\_\_\_]

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

**LIMITED REVENUE TAXABLE TAX INCREMENT NOTE  
(STENCIL GROUP APARTMENT PROJECT)**

**PRINCIPAL AMOUNT: \$**

**INTEREST RATE: 4.0%**

The City of Austin, Minnesota (the “City”) for value received, promises to pay, but solely from the source, to the extent and in the manner hereinafter provided, to Stencil Group II LLC, or its registered assigns (the “Owner”), the principal sum of one million six hundred thousand dollars (\$1,600,000), in semi-annual installments payable beginning August 1, 2024, and on each February 1 and August 1 thereafter up to and including February 1, 2050 (each being a “Scheduled Payment Date”), together with interest on the outstanding and unpaid principal balance of this Limited Tax Increment Revenue Note (Stencil Group Apartment Project) (this “Note”) at the rate of 4.0% per annum. Installment payments shall be applied first to interest and then to a reduction of outstanding principal. Interest on the outstanding balance of this Note shall accrue from the date hereof and shall be added to the principal amount on each February 1 and August 1 installment payment date unless paid on such date. Each payment on this Note is payable in any coin or currency of the United States of America which on the date of such payment is legal tender for public and private debts and shall be made by check or draft made payable to the Owner and mailed to the Owner at the postal address within the United States designated from time to time by the Owner.

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

This Note is a special and limited obligation and not a general obligation of the City, which has been issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including M.S., Sections 469.174 through 469.1794. This Note is issued pursuant to the provisions of that certain Redevelopment Agreement, dated as of August 16, 2021, as the same may be amended from time to time (the “Redevelopment Agreement”), between the City and the Owner.

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

The Note Payment Amounts due hereon shall be payable solely from a portion of the tax increments, less the City's administrative fee of ten percent (10%), less the percentage retained by the City for other City purposes (11%) from the Development Property within the City's Tax Increment Financing (Redevelopment) District No. 16 (the "Tax Increment District") within its Municipal Development District No. 1, which are paid to the City and which the City is entitled to retain pursuant to the provisions of M.S., Sections 469.174 through 469.1794, as the same may be amended or supplemented from time to time (the "Available Tax Increment"). The City makes no representation or covenant, express or implied, that the Available Tax Increments will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City shall pay to the Owner on each Scheduled Payment Date all Available Tax Increment on that date to the extent necessary to pay principal and interest then due and any past due installment. To the extent that the City is unable to pay the total principal and interest due on this Note at or prior to the February 1, 2050, maturity date hereof as a result of its having received as of such date insufficient Available Tax Increment, such failure shall not constitute a default under this Note and the City shall have no further obligation hereon.

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

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

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

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

\_\_\_\_\_  
Mayor

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

## **EXHIBIT F**

### **FORM OF ASSESSMENT AGREEMENT**

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

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

#### Section 1. Recitals.

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

1.02. Tax Increment Financing District; Project. Pursuant to the Minnesota Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 to 469.1794, as amended (the “TIF Act”), the City has approved a tax increment financing plan (the “Financing Plan”), which is the proposed method for financing the development activities currently proposed to be undertaken pursuant to the Project Plan and established a portion of the Project Area as a tax increment financing district (“Tax Increment District”). The Financing Plan proposes to finance the cost of construction of an apartment complex consisting of ninety-one (91) market-rate units (the “Project”).

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

1.04. Development Agreement. The City and the Developer have entered into a Redevelopment Agreement, dated as of August 16, 2021 (the “Redevelopment Agreement”), which provides that the Developer, or its permitted assignee, will improve the real property described in Exhibit A hereto (the “Land”) by the construction of the portion of the Project located thereon. The Redevelopment Agreement provides that upon the execution and delivery of the Redevelopment Agreement, the City and Developer are to enter into this Assessment Agreement.

#### Section 2. Minimum Market Value.

2.01. Agreed Upon Minimum. The Developer agrees that the minimum market value of the Land and the portion of the Project located thereon for ad valorem tax purposes, (i) for the assessment made as of January 1, 2023 for taxes payable 2024, shall be not less than \$5,828,100.00, and shall not be reduced by any action taken by the Developer (other than a deed

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

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

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

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

### Section 3. Filing and Certification.

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

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

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

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

Section 5. Miscellaneous Provisions.

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

5.02. Severability. In the event any provision of this Assessment Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

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

5.05. Execution Counterparts. This Assessment Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

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

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

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

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

[Signature Pages Follow]



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

CITY OF AUSTIN, MINNESOTA

By \_\_\_\_\_  
Mayor

And \_\_\_\_\_  
City Recorder

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF MOWER     )

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

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

\_\_\_\_\_  
Notary Public

STENCIL GROUP II LLC, a Minnesota limited liability company

By: \_\_\_\_\_  
Nathan Stencil, Chief Executive Officer

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2021, by Nathan Stencil, the Chief Executive Officer of Stencil Group II LLC, a Minnesota limited liability company, on behalf of the company.

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

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**DESCRIPTION OF LAND**

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

| <u>Parcel ID Number</u> | <u>Legal Description</u>  |
|-------------------------|---|
| 34.579.0010             | SubdivisionName PICKETT PLACE<br>Block 001 SubdivisionCd 34579 LOTS 1,<br>2, 3, 5 & 6, ALL W OF LINE FROM<br>E101FT LOT 1 - S LINE - THRU E267FT<br>LOT 6 - N LINE LAND |
| 34.865.0541             | SubdivisionName 3 102 18 SubdivisionCd<br>34865 .92 AC ADJ ON E<br>OF LOTS 6, 7 & S33FT LOT 8 BLK 14<br>MORGANS ADD EAST OF Y   |
| 34.460.1040             | SubdivisionName MORGANS Block 014<br>SubdivisionCd 34460 LOTS<br>6, 7 & S33FT LOT 8 YMCA  |
| 34.865.0610             | .57 AC NW1/4 NE1/4 E OF YMCA & S<br>OF 7TH PLACE NW OLD<br>PEPPERMILL RESTAURANT Section 03<br>Township 102 Range 018   |

## EXHIBIT B

### COPY OF MINNESOTA STATUTES, SECTION 469.177, SUBDIVISION 8

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

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

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

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

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

## **EXHIBIT C**

### **ASSESSOR'S CERTIFICATE**

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

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

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

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

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

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

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

7. I hereby certify that the market value assigned to the Land and the portion of the Project located thereon described on the foregoing Exhibit A by the Assessment Agreement is reasonable and the market value assigned to the Land and the portion of the Project located thereon, for the assessment made as of January 1, 2023 for taxes payable 2024, and continuing throughout the term of this Assessment Agreement, shall be not less than \$5,828,100.00.

Dated: \_\_\_\_\_, 20\_\_.

---

City Assessor, City of Austin, Minnesota

**CITY OF AUSTIN  
MOWER COUNTY  
STATE OF MINNESOTA**

Council member \_\_\_\_\_ introduced the following resolution and moved its adoption:

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION AUTHORIZING AN INTERFUND LOAN FOR ADVANCE  
OF CERTAIN COSTS IN CONNECTION WITH TAX INCREMENT  
FINANCING DISTRICT NO. 16 WITHIN MUNICIPAL DEVELOPMENT  
DISTRICT NO. 1.**

BE IT RESOLVED by the City Council (the "Council") of the City of Austin, Minnesota (the "City"), as follows:

**Section 1.     Background.**

1.01. The City has heretofore approved the establishment of Tax Increment Financing (Redevelopment) District No. 16 (the "TIF District") within Municipal Development District No. 1 (the "Project Area"), and has adopted a Tax Increment Financing Plan (the "TIF Plan") for the purpose of financing certain improvements within the Project Area.

1.02. The City has determined to pay for certain costs identified in the TIF Plan consisting of land/building acquisition, site improvements/preparation, public utilities, public parking facilities, other qualifying improvements, interest and administrative costs (collectively, the "Qualified Costs"), which costs may be financed on a temporary basis from City funds available for such purposes.

1.03. Under Minnesota Statutes, Section 469.178, Subd. 7, the City is authorized to advance or loan money from the City's general fund or any other fund from which such advances may be legally authorized, in order to finance the Qualified Costs.

1.04. The City intends to reimburse itself for the Qualified Costs from tax increments derived from the TIF District in accordance with the terms of this resolution (which terms are referred to collectively as the "Interfund Loan").

**Section 2.     Terms of Interfund Loan.**

2.01. The City hereby authorizes the advance of up to \$650,000 from the Building Fund (48000) of the City or so much thereof as may be paid as Qualified Costs. The City shall reimburse itself for such advances together with interest at the rate stated below. Interest accrues on the principal amount from the date of each advance. The maximum rate of interest permitted to be charged is limited to the greater of the rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 as of the date the loan or advance is authorized, unless the written agreement states that the maximum interest rate will fluctuate as the interest rates specified under Minnesota



Statutes, Section 270C.40 or Section 549.09 are from time to time adjusted. The interest rate shall be 1% and will not fluctuate.

2.02. Principal and interest (“Payments”) on the Interfund Loan shall be paid annually on each December 31 (each a “Payment Date”), commencing on the first Payment Date on which the City has Available Tax Increment (defined below), or on any other dates determined by the Director of Administrative Services, through the date of last receipt of tax increment from the TIF District.

2.03. Payments on this Interfund Loan are payable solely from “Available Tax Increment,” which shall mean, on each Payment Date, tax increment available after other obligations have been paid, or as determined by the Director of Administrative Services, generated in the preceding six (6) months with respect to the property within the TIF District and remitted to the City by Mower County, all in accordance with Minnesota Statutes, Sections 469.174 to 469.1794, all inclusive, as amended. Payments on this Interfund Loan may be subordinated to any outstanding or future bonds, notes or contracts secured in whole or in part with Available Tax Increment, and are on parity with any other outstanding or future interfund loans secured in whole or in part with Available Tax Increment.

2.04. The principal sum and all accrued interest payable under this Interfund Loan are pre-payable in whole or in part at any time by the City without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Interfund Loan.

2.05. This Interfund Loan is evidence of an internal borrowing by the City in accordance with Minnesota Statutes, Section 469.178, Subd. 7, and is a limited obligation payable solely from Available Tax Increment pledged to the payment hereof under this resolution. This Interfund Loan and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the City. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on this Interfund Loan or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Interfund Loan or other costs incident hereto. The City shall have no obligation to pay any principal amount of the Interfund Loan or accrued interest thereon, which may remain unpaid after the final Payment Date.

2.06. The City may amend the terms of this Interfund Loan at any time by resolution of the Council, including a determination to forgive the outstanding principal amount and accrued interest to the extent permissible under law.

Section 3. Effective Date. This resolution is effective upon the date of its approval.

The motion for the adoption of the foregoing resolution was duly seconded by Council member \_\_\_\_\_, and upon a vote being taken thereon, the following voted in favor thereof:

and the following voted against the same.

Dated: August 16, 2021

ATTEST:

\_\_\_\_\_  
Steve King, Mayor

\_\_\_\_\_  
Tom Dankert, City Recorder

(Seal)

**CITY OF AUSTIN  
MOWER COUNTY  
STATE OF MINNESOTA**

Council member \_\_\_\_\_ introduced the following resolution and moved its adoption:

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION ESTABLISHING TAX INCREMENT FINANCING  
(REDEVELOPMENT) DISTRICT NO. 16 IN MUNICIPAL DEVELOPMENT  
DISTRICT NO. 1 AND ADOPTING A TAX INCREMENT FINANCING PLAN  
THEREFOR.**

BE IT RESOLVED by the City Council (the "Council") of the City of Austin, Minnesota (the "City"), as follows:

Section 1.     Recitals

1.01.   The City Council of the City of Austin (the "City") has heretofore established Municipal Development District No. 1 (the "Development District") and adopted the Development Program therefor. It has been proposed by the City that the City establish Tax Increment Financing (Redevelopment) District No. 16 (the "District") in the Development District and adopt a Tax Increment Financing Plan (the "Plan") therefor; all pursuant to and in conformity with applicable law, including Minnesota Statutes, Sections 469.124 to 469.133 and Sections 469.174 to 469.1794, all inclusive, as amended, (the "Act") all as reflected in the Plan, and presented for the Council's consideration.

1.02.   The City has investigated the facts relating to the Plan and has caused the Plan to be prepared.

1.03.   The City has performed all actions required by law to be performed prior to the establishment of the District and the adoption and approval of the proposed Plan, including, but not limited to, notification of Mower County and Independent School District No. 492 having taxing jurisdiction over the property to be included in the District, a review of and written comment on the Plan by the City Planning Commission, and the holding of a public hearing upon published notice as required by law.

1.04.   Certain written reports (the "Reports") relating to the Plan and to the activities contemplated therein have heretofore been prepared by staff and consultants and submitted to the Council and/or made a part of the City files and proceedings on the Plan. The Reports include data, information and/or substantiation constituting or relating to the basis for the other findings and determinations made in this resolution. The Council hereby confirms, ratifies and adopts the Reports, which are hereby incorporated into and made as fully a part of this resolution to the same extent as if set forth in full herein.

1.05    The City is not modifying the boundaries of the Development District.

Section 2.     Reserved.

Section 3.      Findings for the Establishment of Tax Increment Financing (Redevelopment) District No. 16

3.01.    The Council hereby finds that the District is in the public interest and is a “redevelopment district” under Minnesota Statutes, Section 469.174, Subd. 10 of the Act.

3.02.    The Council further finds that the proposed redevelopment would not occur solely through private investment within the reasonably foreseeable future and that the increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the District permitted by the Plan, that the Plan conform to the general plan for the development or redevelopment of the City as a whole; and that the Plan will afford maximum opportunity consistent with the sound needs of the City as a whole, for the development or redevelopment of the District by private enterprise.

3.03.    The Council further finds, declares and determines that the City made the above findings stated in this Section and has set forth the reasons and supporting facts for each determination in writing, attached hereto as Exhibit A.

Section 4.      Public Purpose

4.01.    The adoption of the Plan conforms in all respects to the requirements of the Act and will help fulfill a need to develop an area of the City which is already built up, to provide housing opportunities, to improve the tax base and to improve the general economy of the State and thereby serves a public purpose. For the reasons described in Exhibit A, the City believes these benefits directly derive from the tax increment assistance provided under the TIF Plan. A private developer will receive only the assistance needed to make this development financially feasible. As such, any private benefits received by a developer are incidental and do not outweigh the primary public benefits.

Section 5.      Approval and Adoption of the Plan

5.01.    The Plan, as presented to the Council on this date, including without limitation the findings and statements of objectives contained therein, are hereby approved, ratified, established, and adopted and shall be placed on file in the office of the City Administrator.

5.02.    The staff of the City, the City’s advisors and legal counsel are authorized and directed to proceed with the implementation of the Plan and to negotiate, draft, prepare and present to this Council for its consideration all further plans, resolutions, documents and contracts necessary for this purpose.

5.03    The Auditor of Mower County is requested to certify the original net tax capacity of the District, as described in the Plan, and to certify in each year thereafter the amount by which the original net tax capacity has increased or decreased; and the City of Austin is authorized and directed to forthwith transmit this request to the County Auditor in such form and content as the Auditor may specify, together with a list of all properties within the District, for which building permits have been issued during the 18 months immediately preceding the adoption of this resolution.

5.04.    The City Administrator is further authorized and directed to file a copy of the Plan with the Commissioner of the Minnesota Department of Revenue and the Office of the State Auditor pursuant to Minnesota Statutes 469.175, Subd. 4a.

The motion for the adoption of the foregoing resolution was duly seconded by Council member \_\_\_\_\_, and upon a vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

Dated: April 16, 2021

ATTEST:

\_\_\_\_\_  
Mayor

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

(Seal)

## EXHIBIT A

The reasons and facts supporting the findings for the adoption of the Tax Increment Financing Plan (TIF Plan) for Tax Increment Financing (Redevelopment) District No. 16 (District), as required pursuant to Minnesota Statutes, Section 469.175, Subdivision 3 are as follows:

1. *Finding that the District is a redevelopment district as defined in M.S., Section 469.174, Subd. 10(a)(1).*

The City hired LHB to inspect and evaluate the property within the proposed Tax Increment Financing District No. 16 to be established by the City. The purpose of the evaluation was to determine if the proposed district met the statutory requirements for coverage and if the buildings met the qualifications required for a Redevelopment District.

A final report will be prepared for the City to retain on file in City offices for public inspection. The report contains the details of the findings summarized below regarding the substandard qualifications:

- The TIF District consists of parcels that are occupied with 100 percent of the area of the proposed TIF District occupied (exceeding the 70 percent coverage test);
  - 100 percent (1 of 1) of the buildings in the proposed District contain code deficiencies exceeding the 15 percent threshold;
  - at least 50 percent of the buildings are structurally substandard to a degree requiring substantial renovation or clearance, because of defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors which defects or deficiencies are of sufficient total significance to justify substantial renovation or clearance, exceeding the more than 50 percent substandard test; and
  - The substandard buildings are reasonably distributed throughout the geographic area of the proposed TIF District.
2. *Finding that the proposed development, in the opinion of the City Council, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future and that the increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the District permitted by the TIF Plan.*

*The proposed development, in the opinion of the City, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future:*

The proposed project consists of the redevelopment of property within the City that consists of blighted property found to be substandard and will be demolished following establishment of the district. The City has identified significant and extraordinary costs including acquisition, site development/improvement, demolition, utilities, parking and other redevelopment costs associated with redevelopment of the project site in conjunction with new development. The estimated total redevelopment costs for this property make the total cost of this effort significantly higher than costs reasonably incurred for similar developments on a clean site. The City's finding that the proposed redevelopment would be unlikely to occur solely through private investment within the reasonably foreseeable future is based on an analysis of the proforma and other materials submitted by the developer.



*The increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the District permitted by the TIF Plan:*

If the proposed redevelopment did not go forward, for the same reasons described above, no significant alternative redevelopment of the proposed TIF area would occur. The existing buildings are currently substandard and it is highly unlikely that the improvements would be made on the property site without tax increment financing. In short, there is no basis for expectation that the area would redevelop or be renovated in any significant way purely by private action without public subsidy.

To summarize the basis for the City's findings regarding alternative market value, in accordance with Minnesota Statutes, Section 469.175, Subd. 3(d), the City makes the following determinations:

- (a) The City's estimate of the amount by which the market value of the site will increase without the use of tax increment financing is anywhere from \$0 to some modest amount based on small scale renovation or redevelopment that could be possible without assistance; any estimated values would be too speculative to ascertain.
  - (b) If the proposed development to be assisted with tax increment occurs in the District, the total increase in market value would be approximately \$12,202,747, including the value of the building (See Exhibit V to TIF Plan).
  - (c) The present value of tax increments from the District for the maximum duration of the district permitted by the TIF Plan is estimated to be \$2,117,065 (See Exhibit V to TIF Plan).
  - (d) Even if some development other than the proposed development were to occur, the Council finds that no alternative would occur that would produce a market value increase greater than \$10,085,682 (the amount in clause b less the amount in clause c) without tax increment assistance.
3. *Finding that the TIF Plan for the District conforms to the general plan for the development or redevelopment of the municipality as a whole.*

The City Planning Commission has determined that the development proposed in the TIF Plan conforms to the City comprehensive plan.

4. *Finding that the TIF Plan for the District will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the development or redevelopment of Municipal Development District No. 1 by private enterprise.*

The anticipated redevelopment of the project site and any subsequent demolition, reconstruction, or renovation related to the project will remain consistent with the City's design goals. The Development proposed to occur within the TIF District will afford maximum opportunity for the development of the applicable parcel consistent with the needs of the City and the removal of substandard buildings. The Development will increase the taxable market valuation of the City and provide additional housing options in the City.



City of Austin  
500 Fourth Avenue NE  
Austin, Minnesota 55912-3773



Phone: 507-437-9940

www.ci.austin.mn.us

# MEMO

TO: Mayor and City Council

FROM: Tom Dankert *TD*

DATE: August 3, 2021

SUBJECT: Hormel Foundation Grant Requests for 2022  
U:\Word\2021\Hormel Foundation 2021\Hormel Foundation 2022 Grant Requests to CC.doc

The listing below is the final listing of the 11 projects as decided by the Mayor and City Council at the August 2 work session. These are now listed in order of priority, as follows:

1. I90 Bridge Replacement - \$630,000
2. Affordable Housing Grant - \$600,000
3. Jay C. Hormel Nature Center Bridge Replacement - \$50,000
4. Wildwood Park Playground - \$65,000
5. Oakland Avenue West Trail - \$100,000
6. Jay C. Hormel Nature Center Education Programs - \$45,000
7. Delivering the Data: Hotspot Data Plans 2022 - \$38,000
8. Fire Prevention and Education - \$5,000
9. Curb Appeal Project (CAP) - \$75,000
10. Tie - Flashing Crosswalk - \$25,000
10. Tie - Hormel Family Statue – \$150,000

Not included in the rankings is one project that is being requested to be funneled through the City of Austin, but is not our specific request and as such is not ranked:

- Quality of Life - \$93,826 (this includes \$2,000 for Leadership Austin; \$20,000 for the 4<sup>th</sup> of July festival; \$71,826 to the Austin Artworks Center for rent and property tax reimbursement).

We would request Council approval of the above rankings for submittal to The Hormel Foundation. Please call if you have any questions.

[illegible]

**EXHIBIT A**

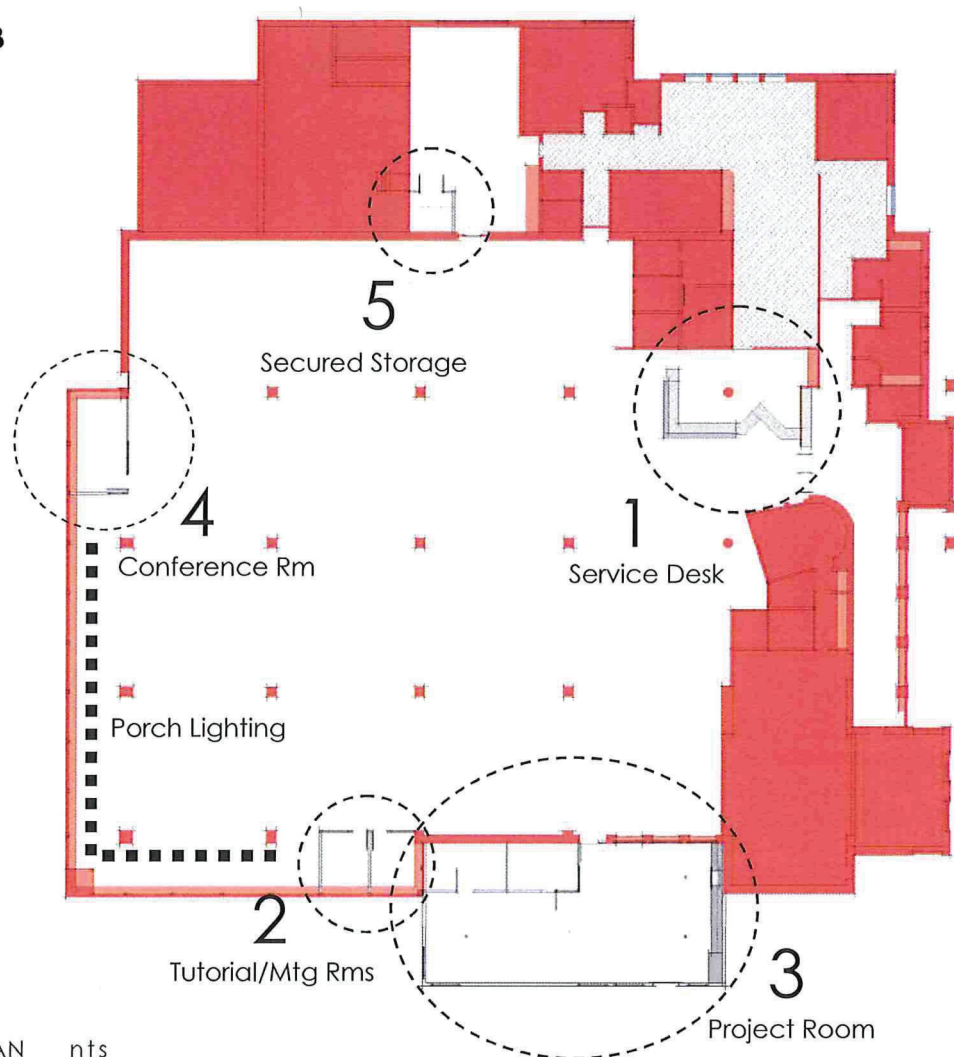
**Library Construction Grant Application - Improvement Grant  
Proposed Expenditure Plan**

**Applicant Name:** Austin Public Library, Austin, Minnesota

| <b>PROJECTED COSTS (Please specify)</b> | <b>Amount</b>    | <b>FUNDING SOURCES</b>                | <b>Amount</b>    |
|---|------------------|---------------------------------------|------------------|
| Service Desk                            | \$79,276         | Library Construction Grant Amount     | \$319,800        |
| Tutorial/meeting rooms                  | \$45,092         | Matching fund sources*                |                  |
| Project Room                            | \$375,043        | City funds                            | \$250,000        |
| Conference Room                         | \$38,072         |                                       |                  |
| Secured Storage                         | \$16,660         | Philanthropic/donations               | \$69,800         |
| Porch ceiling lighting                  | \$25,457         |                                       |                  |
| Amphitheater stage                      | \$60,000         |                                       |                  |
|   |                  |                                       |                  |
|   |                  | <b>Total non-state matching funds</b> | <b>\$319,800</b> |
| <b>Total Project Cost</b>               | <b>\$639,600</b> | <b>Total Funds</b>                    | <b>\$639,600</b> |

*\*State funds cannot be used as matching funds*

## Exhibit B

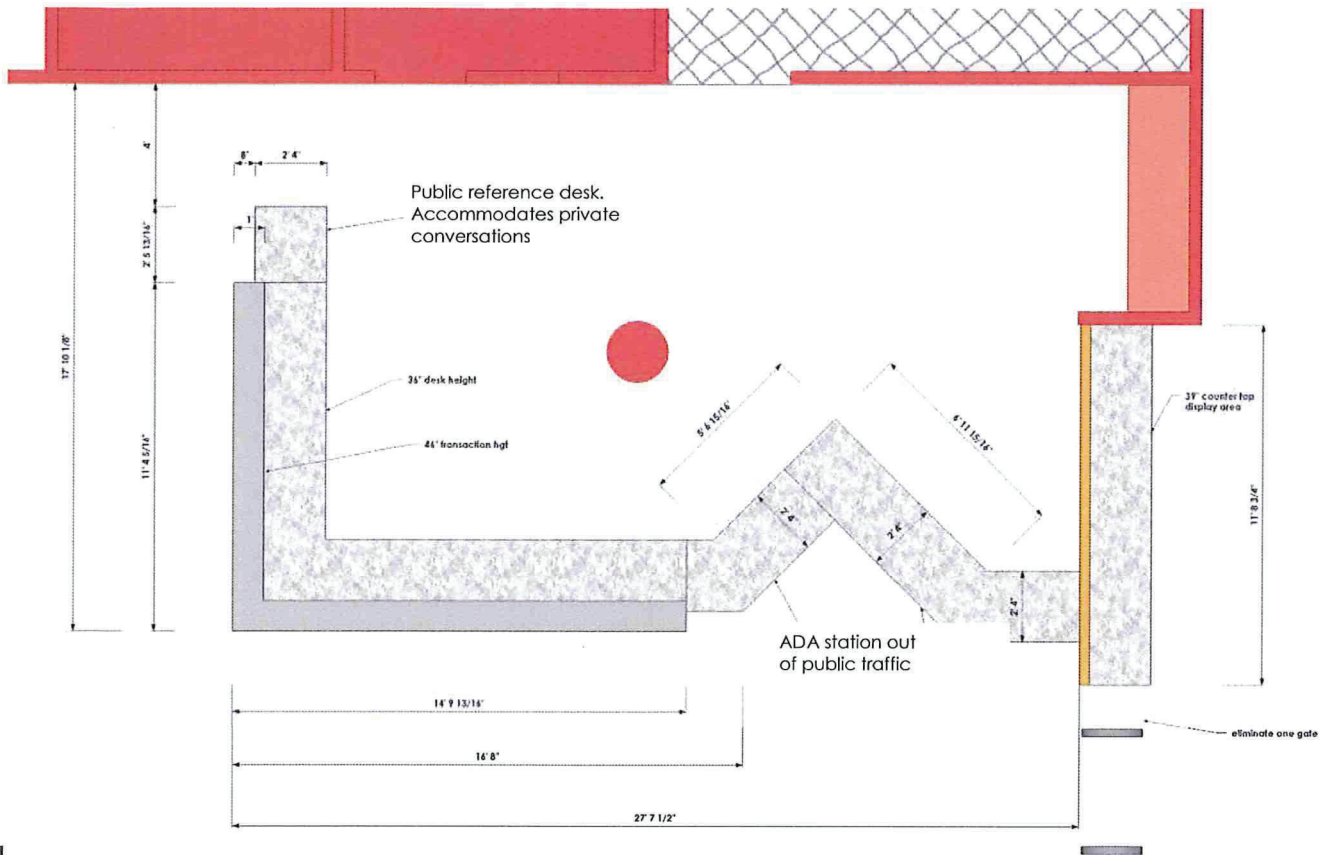


LOCATION PLAN    nts



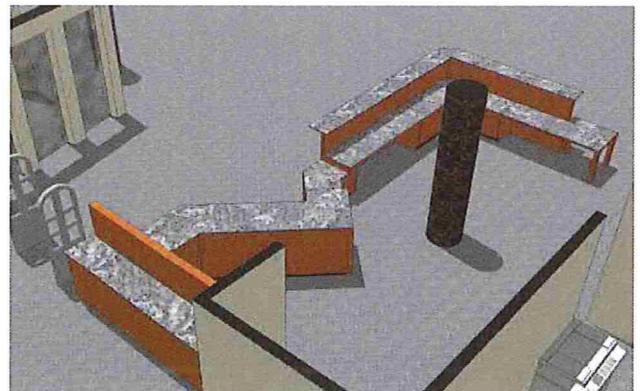
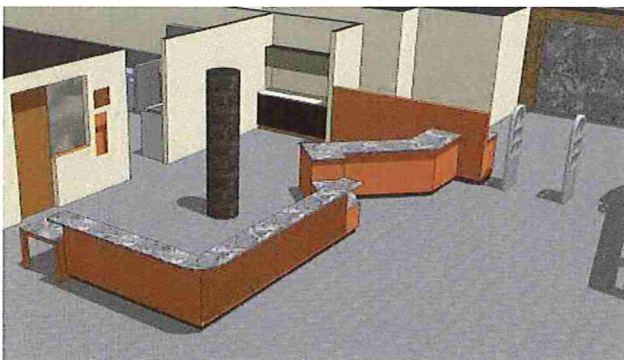
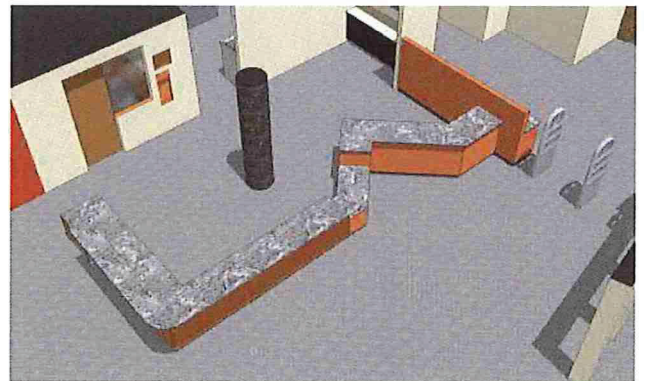
Project Room Image

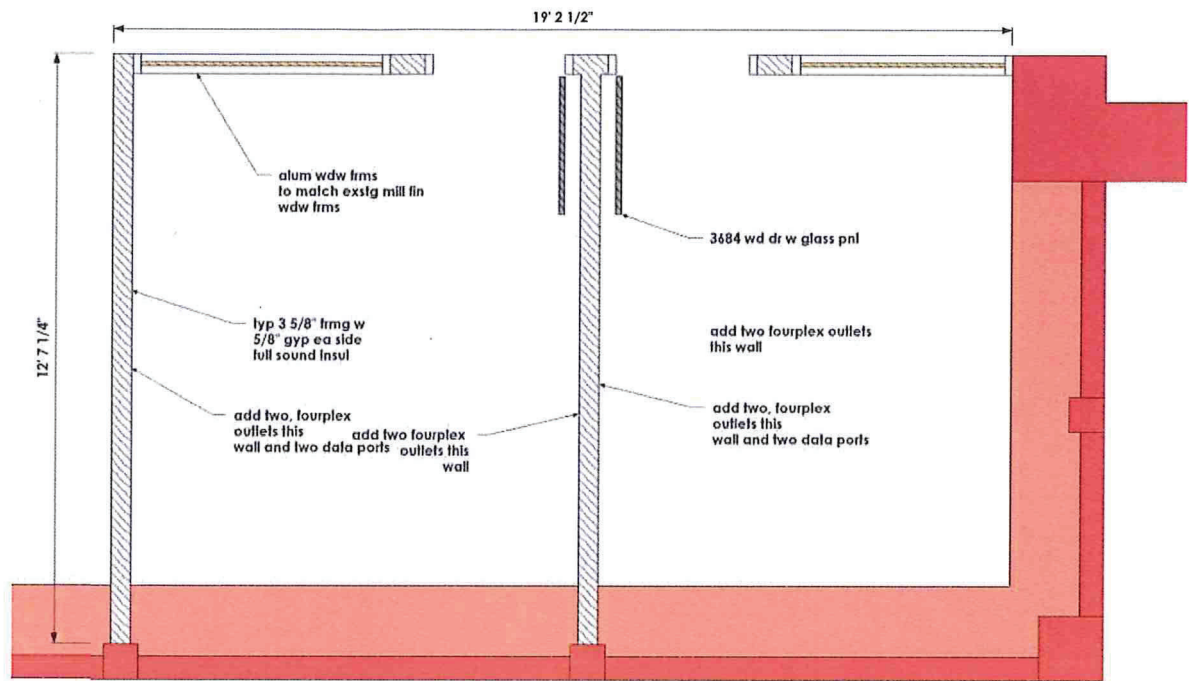




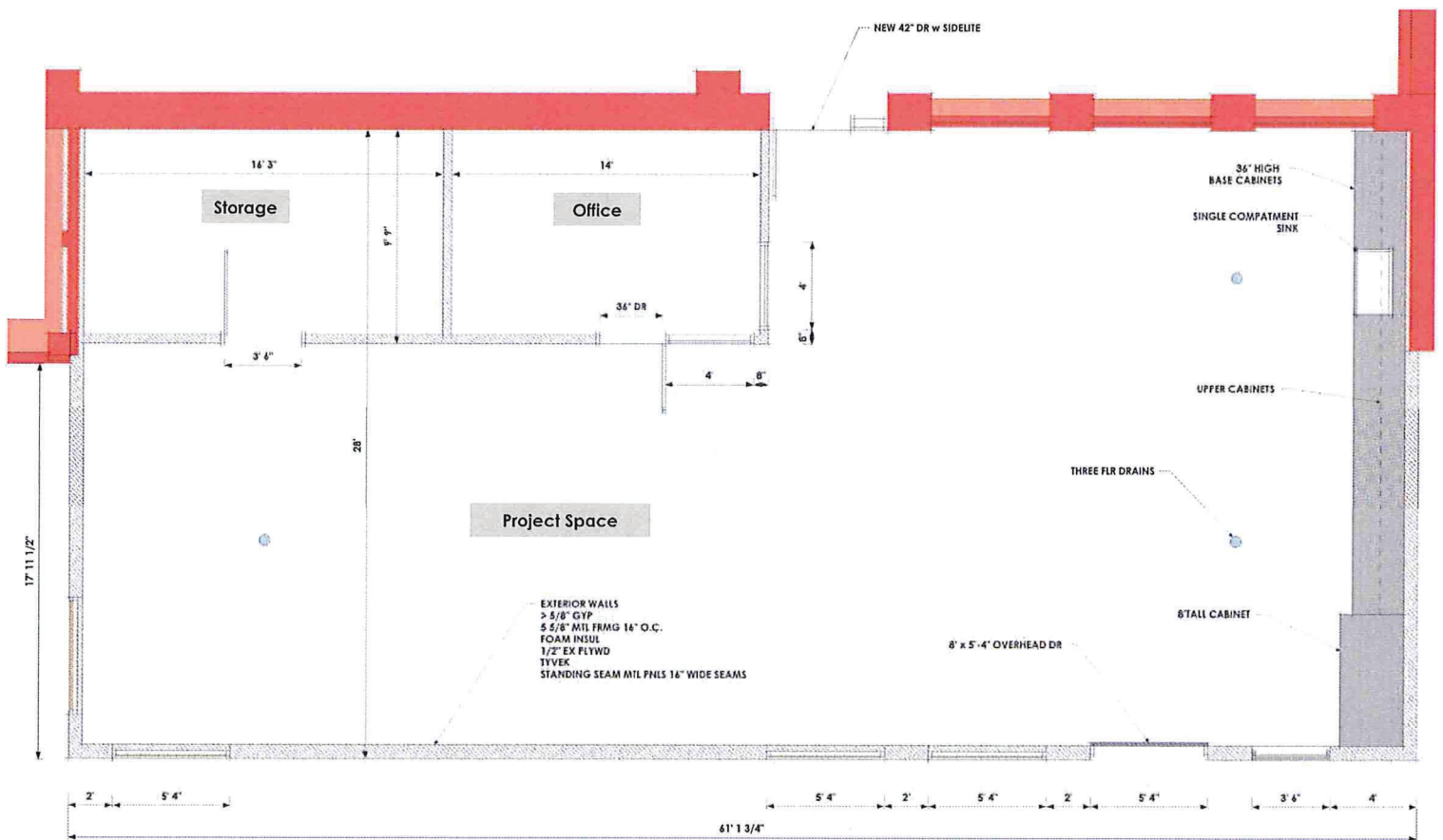
# 1 SERVICE DESK 1/4"

Service Desk images

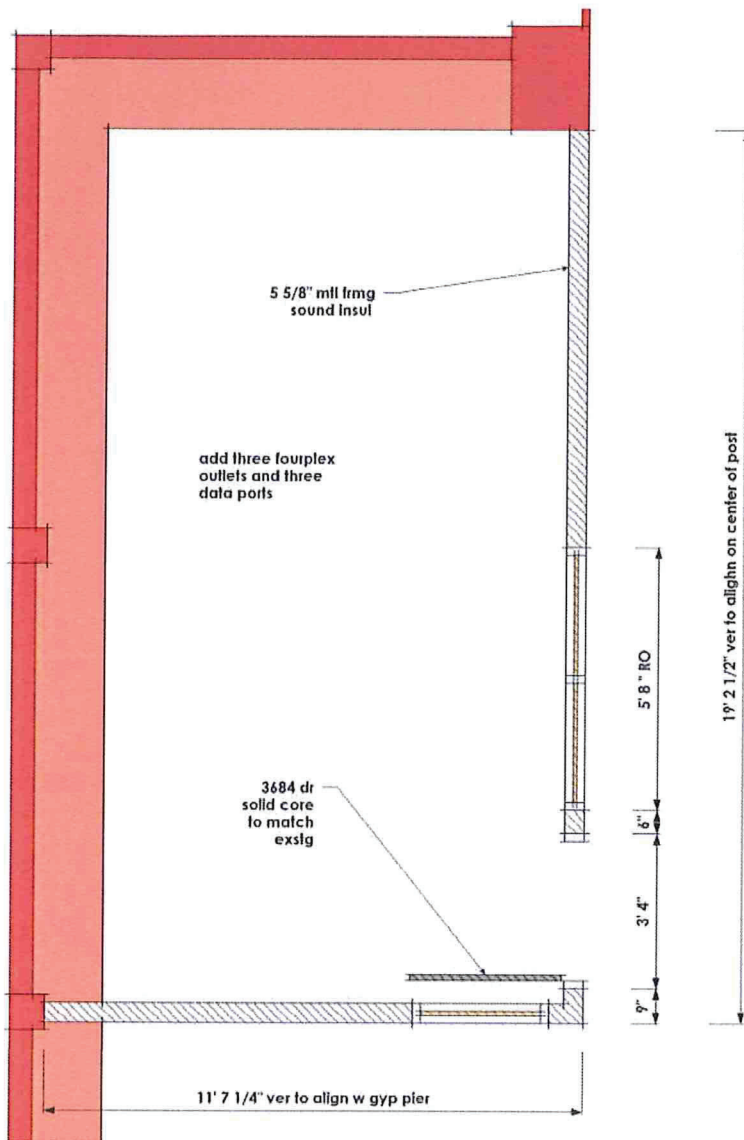




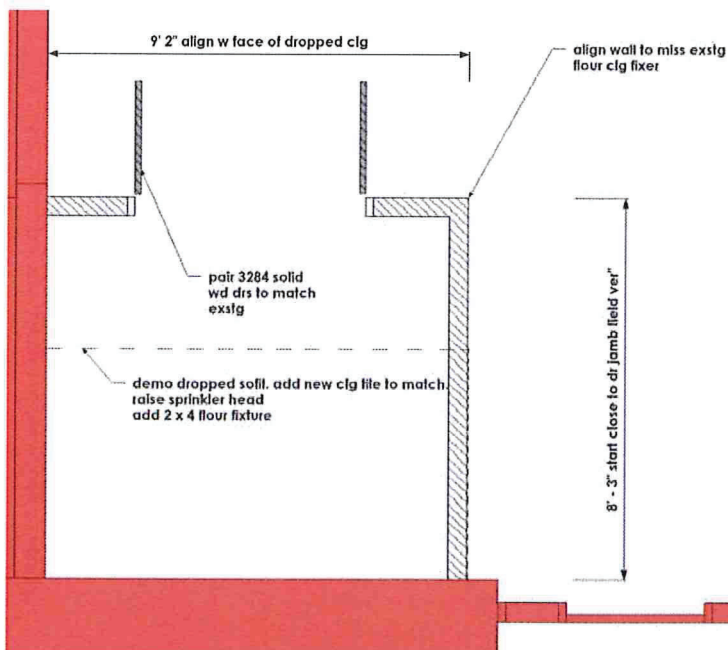
## 2 TUTORIAL / MEETING ROOMS 1/4"



## 3 CHILDREN'S PROJECT ROOM 1/8"



**4** CONFERENC ROOM 1/4"



**5** SECURED AV STORAGE 1/4"



**RESOLUTION NO.**

**ACCEPTING GRANT FROM THE MINNESOTA DEPARTMENT OF  
EDUCATION AND AUTHORIZING A CONSTRUCTION GRANT  
AGREEMENT**

**WHEREAS**, the City of Austin desires to make improvements to the Austin Public Library; and

**WHEREAS**, the City of Austin holds the title to the land and the owns the building where the Austin Public Library is located; and

**WHEREAS**, the total project cost is \$639,600 which includes a new project room, meeting and study rooms, updated service desk and additional storage; and

**WHEREAS**, the City has received a grant from the Minnesota Department of Education in the amount of \$319,800; and

**WHEREAS**, the City has matching funds in the amount of \$319,800 from City improvement funding in the amount of \$250,000 and donations in the amount of \$69,800.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council that the City of Austin accepts the grant award in the amount of \$319,800 and authorizes the Mayor and City Recorder to sign the Minnesota Department of Education Construction Grant Agreement.

Passed by a vote of yeas and nays this 16<sup>th</sup> day of August, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor

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

**A RESOLUTION TO ACCEPT 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**, \$2,670,080.90 has been allocated to the City of Austin (“City”) pursuant to the ARPA (“Allocation”), of which \$1,335,040.45 was received in 2021 and the balance will be received on year later.

**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 a vote of yeas and nays by the City Council of Austin, Minnesota this 16th day of August, 2021.

YEAS

NAYS

Attested:

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

\_\_\_\_\_  
Mayor

RESOLUTION NO.

ACCEPTING DONATIONS TO THE CITY OF AUSTIN

WHEREAS, the City has received gift as follows:

| Gift     | Donor            | For                                |
|----------|------------------|------------------------------------|
| \$100.00 | Maynard Akkerman | Flowers in memory of Kathy Schafer |
| \$100.00 | Douglas Valpey   | K-9 Fund                           |

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 16th day of August, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor

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



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

## Memorandum

**To:** Mayor and City Council  
**From:** Holly Wallace, Planning & Zoning Administrator  
**Date:** August 11, 2021  
**Re:** Annexation of City owned property

---

Parcels owned by the city may be annexed by ordinance, without notice. This ordinance allows annexation of six parcels of city owned, tax exempt property. All of the parcels are located within, or adjacent to, city boundaries. The parcels are unimproved (one road) and the majority are part of the Hormel Nature Center.

No payments will be made to the township based on the tax exempt status of the properties. The parcel South of the Windrift will be zoned R-O, Residential-Office and the remaining parcels A-1, Agricultural, Recreation, Conservation.

A total of 78.7 and 10.33 acres will be annexed into the city from Lansing and Red Rock Townships respectively.

### Reasons for Annexation

#### A. Provide Areas for Future Growth

Cities and developers initiate annexation in order to provide areas for future growth and development.

#### B. Promote Proper Development Through Planning

The City's Comprehensive Plan and Land Use Regulations provide for a uniform, systematic method for development that preserves open space, the environment and property rights.

#### C. Assertion of Zoning or Other Regulatory Control

Annexation brings territory into the full regulatory authority of a City. While state statutes provide cities with limited extraterritorial regulatory authority, annexation into a City allows application of full land use controls, building codes, nuisance regulations and development standards.

#### D. Promote Municipal Services

Provide for the extension of municipal services to areas in the process of being developed for intensive uses such as residential, commercial, industrial, institutional, and government purposes or are needed for such purposes already in existence.

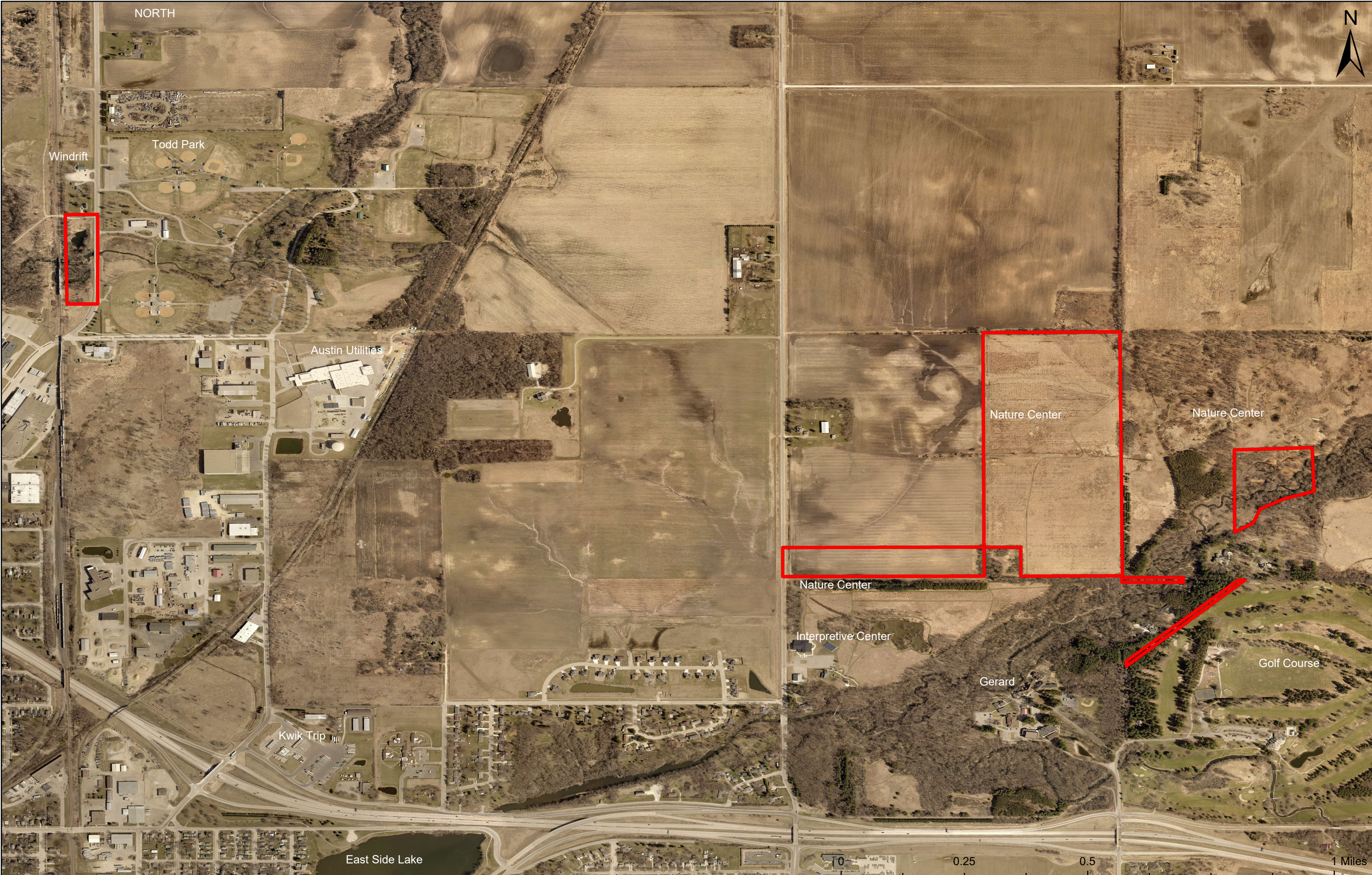
#### E. Promote Extension of Municipal Utilities

Municipal water and wastewater utilities promote safe environmental practices and provide for protection of the water supply.

#### F. Promote Fair Distribution of Property Tax

Township residents use City services (library, police, parks, etc.) but typically pay less in local property taxes (excluding County and School taxes) than City residents. Annexation increases the City's tax base and spreads out the costs for municipal services. In turn, annexation sustains the vitality of the community by providing a critical mix of services for its residents and businesses.





NORTH



Windrift

Todd Park

Austin Utilities

Kwik Trip

East Side Lake

Nature Center

Nature Center

Nature Center

Interpretive Center

Gerard

Golf Course

0.25

0.5

1 Miles



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

**AN ORDINANCE OF THE CITY OF AUSTIN, MINNESOTA, ANNEXING  
PROPERTY LOCATED IN LANSING AND RED ROCK TOWNSHIPS, MOWER  
COUNTY, MINNESOTA, PURSUANT TO MINNESOTA STATUTES 414.033, SUBD.  
2(1), PERMITTING ANNEXATION BY ORDINANCE.**

WHEREAS, said properties are unincorporated and abut the City of Austin on its Northern boundary or are wholly within the city; and are owned by the City of Austin; and

WHEREAS, the City of Austin was not required to hold a public hearing pursuant to Minnesota Statutes § 414.033, Subd. 2b, as the land is owned by the city, nor was written notice required to be mailed to the Townships of Lansing and Red Rock; and

WHEREAS, the city council reviewed the annexation;

NOW THEREFORE, the city council of the City of Austin hereby ordains as follows:

1. The city council hereby determines that the property as hereinafter described abuts the City limits and is urban or suburban in nature or about to become so and said land is currently owned by the City of Austin.
2. None of the property is now included within the limits of any city, or in any area that has already been designated for orderly annexation pursuant to Minnesota Statutes §414.0325.
3. The corporate limits of the City of Austin, Minnesota, are hereby extended to include the following described property, said land abutting the City of Austin and already owned by said City of Austin and it being necessary and appropriate that the same be annexed within the corporate limits of said City of Austin, Minnesota, described as follows:

Parcel A (08.026.0110) – 5.3 Acres, Lansing Township, Exempt

All that part of the Southeast Quarter of the Southwest Quarter of Section 26, in Township 103, Range 18, lying east of the right of way of the Chicago, Milwaukee, and St. Paul Railway, Mower County, Minnesota, excepting therefrom all that part thereof lying East of the West right of way line of County State Aid Highway No. 16 (CSAH 16), and further excepting therefrom all that part thereof included within the following described tract of land, to wit:

Beginning at the S.E. corner of the S.W. 1/4 of Section 26 Twp. 103 N. Range 18 W. Mower County, Minnesota; thence west along the south line of the S.W. 1/4 of said Section 26, 231.4 feet to the east right of way line of the C.M. St. P.&P.R.R. thence north along the east right of way line of said R.R. 395.8 feet; thence S.84 23' E. 237.35 feet to the east line of the S.W. 1/4 of said Section 26; thence south 370.5 feet to the place of beginning.

Parcel B (08.036.0016) - 62.4 Acres, Lansing Township, Exempt

The Northeast Quarter of Section 36, Township 103 North, Range 18 West, subject to all easements and reservations of record, and excepting therefrom the following described parcel:

Commencing at the Southwest corner of the Northeast Quarter of Section 36, Township 103 North, Range 18 West; thence Easterly 1558.5 feet on the South line of said Quarter Section; thence North on a line parallel with the West line of said Northeast Quarter to the North line of said Northeast Quarter; thence West along the North line of said Northeast Quarter to the Northwest corner thereof; thence South along the West line of the Northeast Quarter to the point of beginning.

AND

The South 49.5 feet of the West 1558.5 feet of the Northeast Quarter of Section 36, Township 103 North, Range 18 West, Mower County, Minnesota.

Parcel C (08.036.0010) – 11.0, Lansing Township, Exempt

All that part of the South Half of the Northeast Quarter of Section 36, Township 103 North, Range 18 West, Mower County, Minnesota described as follows:

Commencing at the Southwest corner of said Northeast Quarter of Section 36; thence North 00 degrees 16 minutes 22 seconds East a distance of 49.50 feet, on an assumed bearing on the West line of said Northeast Quarter of Section 36, to the point of beginning; thence South 89 degrees 45 minutes 17 seconds East a distance of 1558.47 feet, on a line 49.5 feet North of and parallel with the South line of said Northeast Quarter of Section 36; thence North 00 degrees 14 minutes 43 seconds East a distance of 308.50 feet; thence North 89 degrees 45 minutes 17 seconds West a distance of 1558.33 feet, on a line parallel with and 358.00 feet North of the South line of the Northeast Quarter, to a point on the West line thereof; thence South 00 degrees 16 minutes 22 seconds West a distance of 308.50 feet, on the West line of said Northeast Quarter of Section 36, to the point of beginning.

Parcel D (16.040.0010) – 0.53 Acres, Red Rock, Exempt

and Parcel E (16.040.0011) – 1.10 Acres, Red Rock, Exempt

Outlot L, Outlot 1A, Outlot E, and that portion of Outlot C lying North of the extended Southeasterly line of Outlot E in Auditor's Plat of Outlots in the West Half of West Half of Section 31, Township 103 North, Range 17 West, and the East Half of the East Half of the Southeast Quarter of Section 36, Township 103 North, Range 18 West, Mower County, Minnesota, recorded in Book 8 of Plats, page 3 in the office of the County Recorder of said County.

Parcel F (16.031.0155) – 8.7 Acres, Red Rock, Exempt

All that part of the NW¼ Section 31-T103N-R17W, Mower County, Minnesota; described as follows:

Commencing at the northeast corner of the NW¼ of said Section 31; thence South 89° 16'49" West a distance of 1980.00 feet, on an assumed bearing on the north line of said NW ¼; thence South 00°52'40" East a distance of 1623.14 feet, parallel with the east line of said NW¼ to the point of beginning;



thence South 00°52' 40" East a distance of 512.81 feet, on a line parallel with the east line of said NW¼;  
thence North 55°23'22" East a distance of 173.55 feet;  
thence North 18°27'36" East a distance of 155.97 feet;  
thence North 58°47'32" East a distance of 211.25 feet;  
thence North 70°04'51" East a distance of 248.34 feet;  
thence North 02°28'50" West a distance of 104.88 feet;  
thence South 86°56' 14" West a distance of 610.57 feet to the point of beginning.

And also

Tract A: All that part of the Northwest Quarter, Section 31, Township 103 North, Range 17 West, Mower County, Minnesota; described as follows:

Commencing at the northeast corner of the Northwest Quarter of said Section 31; thence South 89°16'49" West a distance of 1980.00 feet, on an assumed bearing on the north line of said Northwest Quarter; thence South 00°52'40" East a distance of 1262.96 feet, parallel with the east line of said Northwest Quarter, to a point 1391.50 feet north of the south line of said Northwest Quarter, measured along a continuation of the previously described line, said point being the point of beginning; thence South 00°52'40" East a distance of 360.18 feet, on a line parallel with the east line of said Northwest Quarter; thence North 86°56'14" East a distance of 610.57 feet; thence North 02°28'50" West a distance of 359.94 feet; thence South 86°56'14" West a distance of 600.50 feet, to the point of beginning.

A copy of the corporate boundary map showing the parcels to be annexed and their relationship to the corporate boundaries of the City of Austin is attached hereto as Exhibit A.

4. That the area legally described herein is vacant and will not affect the population of the City at this time. The area to be annexed includes 78.7 acres in Lansing Township and 10.33 acres in Red Rock Township.
5. Parcel A is hereby classified as R-O, Multi-Family Residential-Office District. Parcels B through F are hereby classified as A-1, Agricultural, Recreation and Conservation District. The future land use and official zoning maps shall be amended to display the annexed area and zoning classification.
6. The City of Austin will make no cash payment to Red Rock or Lansing Township pursuant to Minnesota Statutes § 414.036, since the land being annexed is City owned and tax exempt.
7. That pursuant to Minnesota Statutes § 414.036, there are no special assessments assigned by the town to the annexed property.
8. That the City Clerk-Treasurer of the City of Austin is hereby authorized and directed to file a copy of this ordinance with the Municipal Boundary Adjustment Unit of the Office of the Administrative Hearings, the Minnesota Secretary of State, the Mower County Auditor, Mower County Recorder and the Lansing and Red Rock Township Clerks.

9. That this ordinance shall be in full force and effect and final upon the dates this ordinance is approved by the Office of Administrative Hearings.

PASSED AND ADOPTED by the City Council of the City of Austin, Minnesota , this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

APPROVED:

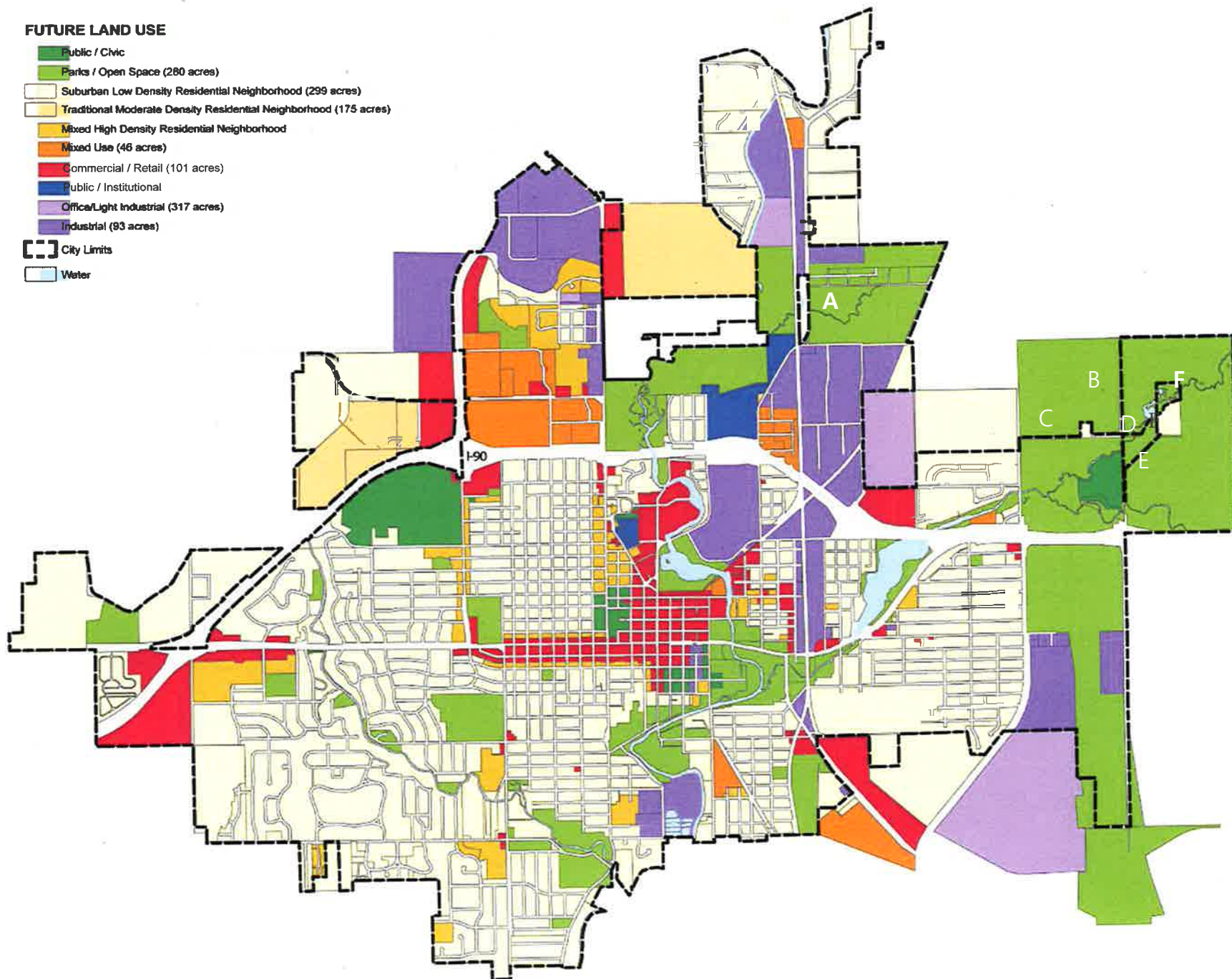
\_\_\_\_\_

City Recorder

\_\_\_\_\_

Mayor

FIGURE 2-3



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



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

**Memorandum**

**To:** Mayor and City Council

**From:** Holly Wallace, Planning & Zoning Administrator

**Date:** August 11, 2021

**Re:** Annexation Request – Richardson Property

---

Don Richardson owns a property at 2511 4<sup>th</sup> Dr SW, which he has petitioned for annexation. Richardson received a letter from Mower County regarding a failing septic system and requiring that he connect to sanitary sewer. The City of Austin has sanitary sewer available for connection to this property.

Typically orderly annexation is pursued through a joint agreement with the township in which the property is located. However, in this instance, because the Richardson property is adjacent to the city boundary and less than 120 acres, it may be annexed by ordinance without approval by the township.

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

**AN ORDINANCE OF THE CITY OF AUSTIN, MINNESOTA ANNEXING  
LAND LOCATED IN AUSTIN TOWNSHIP, MOWER COUNTY, MINNESOTA  
PURSUANT TO MINNESOTA STATUTES § 414.033 SUBDIVISION 2(3),  
PERMITTING ANNEXATION BY ORDINANCE**

**WHEREAS**, a petition signed by all the property owners, requesting that property legally described (herein or attached exhibit) be annexed to the City of Austin, Minnesota, was duly presented to the Council of the City of Austin on the 16th day of August, 2021; and

**WHEREAS**, said property is unincorporated and abuts the City of Austin on its South boundary; is less than 120 acres; is not presently served by public sewer facilities or public sewer facilities are not otherwise available; and

**WHEREAS**, said property is not located within a flood plain or shoreland area; and

**WHEREAS**, said property is currently residential and annexation will facilitate connection to city sewer; and

**WHEREAS**, the City of Austin held a public hearing pursuant to Minnesota Statutes § 414.033 Subd. 2b, on August 16, 2021, following thirty (30) days written notice by certified mail to the Town of Austin and to all landowners within and contiguous to the area legally described (herein or attached exhibit), to be annexed; and

**WHEREAS**, provisions of Minnesota Statutes § 414.033 Subd. 13 are not applicable in that there will be no change in the electric utility service provider resulting from the annexation of the territory to the municipality.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUSTIN HEREBY  
ORDAINS AS FOLLOWS:**

1. The City Council hereby determines that the property as hereinafter described abuts the city limits and is or is about to become urban or suburban in nature. The current use is residential, which requires or will need city services, including public sewer facilities.

.

2. None of the property is now included within the limits of any city, or in any area that has already been designated for orderly annexation pursuant to Minnesota Statute § 414.0325.

3. The corporate limits of the City of Austin, Minnesota, are hereby extended to include the following described property, said land abutting the City of Austin and being 120 acres or less in area, and is not presently served by public sewer facilities or public sewer facilities are not otherwise available, and the City having received a petition for annexation from all the property owners of the land, to wit:

***Commencing at a point 293.5 feet North of the Southwest corner of Out Lot 2 in Plat of Out Lots in Section 15, Township of 102 North. Range 18 West, thence North along the West side of said Out Lot 2, 155 feet, thence running East Parallel with the South line of Out Lot 2 to the center of the river, thence South along the center of the river to a point directly East of the place of beginning, thence West parallel with the South line of said Out Lot 2 to the place of beginning.***

The above-described property consists of a total of 1.5 acres, more or less. Copies of the corporate boundary map showing the property to be annexed and its relationship to the corporate boundaries and all appropriate plat maps are as attached.

4. That the population of the area legally described (herein or attached exhibit) and hereby annexed is one.

5. The City of Austin, pursuant to Minnesota Statutes § 414.036, that with respect to the property taxes payable on the area legally described (herein or attached exhibit), hereby annexed, shall pay the Town of Austin as follows:

The Township share of property taxes as of the date of this ordinance is \$144.54, which it shall retain for 2021. The City shall provide reimbursement to include 50% of that share (72.27) in 2022 and 50% of that share (72.27) in 2023, which shall be the final year of such reimbursement.

6. That pursuant to Minnesota Statutes § 414.036 with respect to any special assessments assigned by the Town to the annexed property and any portion of debt incurred by the Town prior to the annexation and attributable to the property to be annexed, but for which no special assessments are outstanding, for the area legally described (herein or attached exhibit) there are no known special assessments or debt incurred by the Town on the subject area for which reimbursement is required. If any special assessments or debt are incurred by the Town on the subject area, the amounts shall be provided to the City within 90 days following the effective date of this ordinance and shall be paid to the Town in equal installments in 2022 and 2023.

7. That the City Clerk of the City of Austin is hereby authorized and directed to file a copy of this Ordinance with the Municipal Boundary Adjustment Unit of the Office of Administrative Hearings, the Minnesota Secretary of State, the Mower County Auditor, and the Austin Township Clerk.

8. The real estate described shall be zoned “R-1” Residential District. This zoning designation is consistent with the city’s comprehensive land use plan and future land use map.
9. That this Ordinance shall be in full force and effect and final upon the date this Ordinance is approved by the Office of Administrative Hearings.

PASSED AND ADOPTED by the City Council of the City of Austin, Minnesota , this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

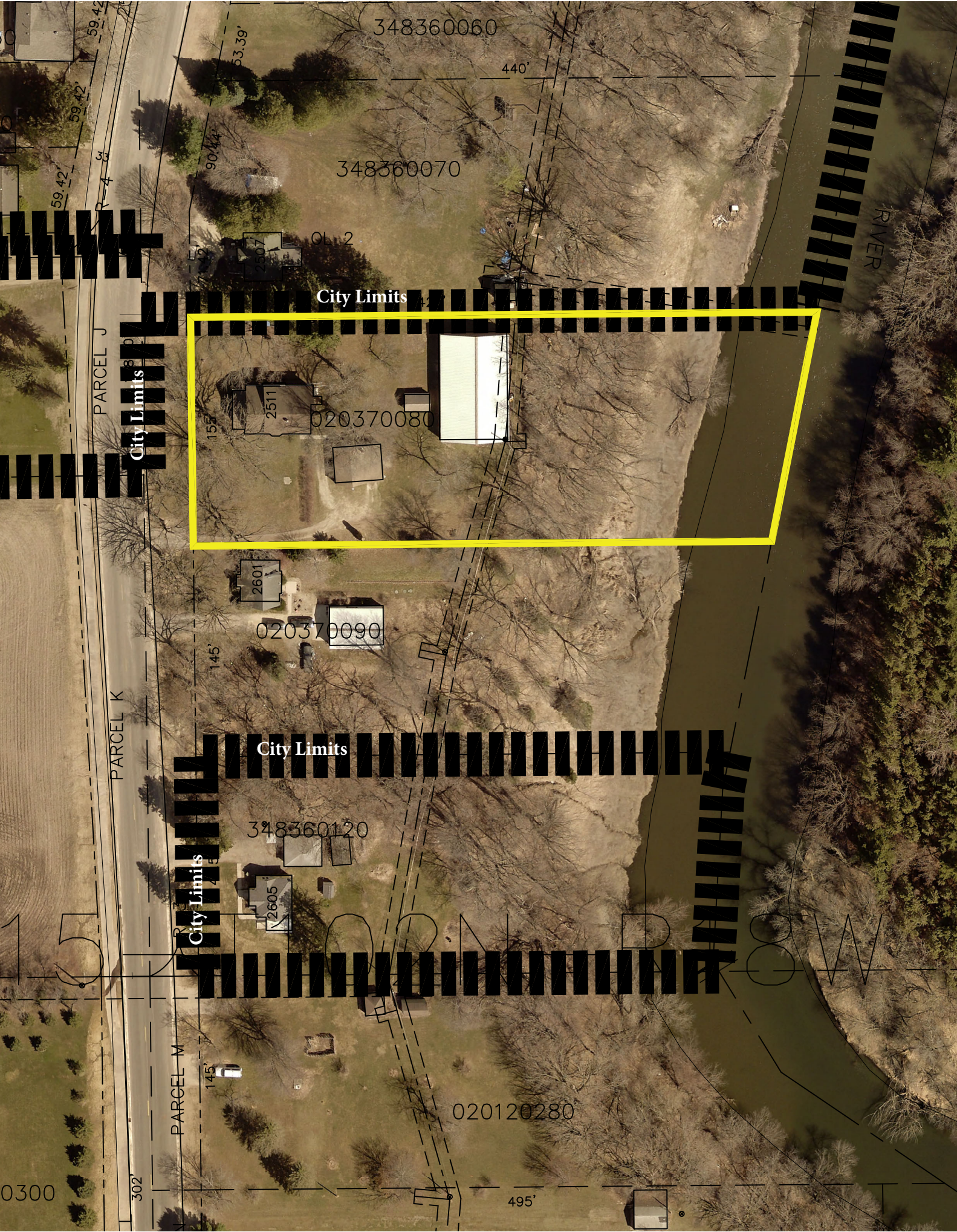
ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor





City Limits

City Limits

City Limits

PARCEL J

PARCEL K

PARCEL M

RIVER

348360060

348360070

01.2

020370080

020370090

348360120

020120280

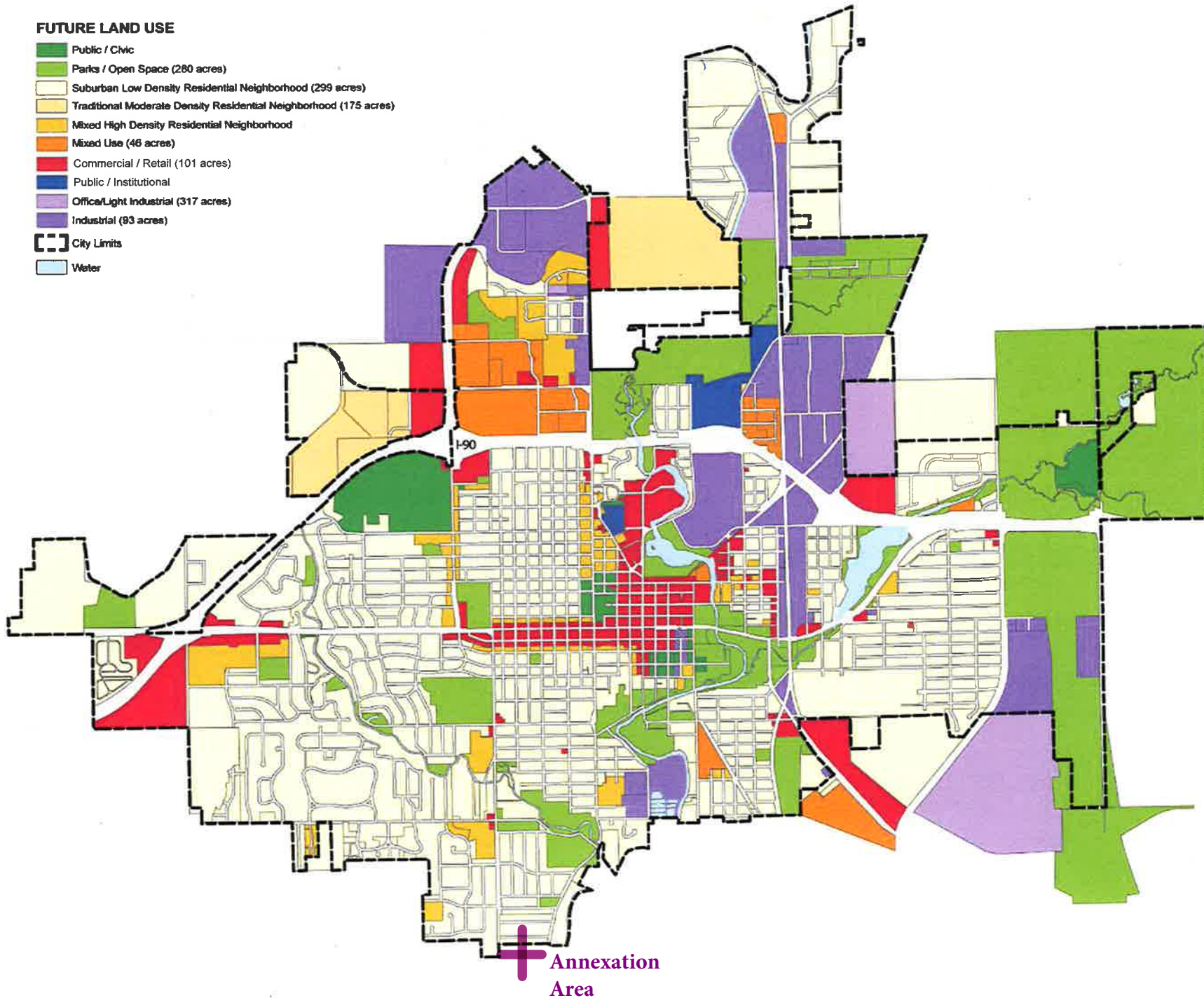
0300



FIGURE 2-3.

**FUTURE LAND USE**

- Public / Civic
- Parks / Open Space (280 acres)
- Suburban Low Density Residential Neighborhood (299 acres)
- Traditional Moderate Density Residential Neighborhood (175 acres)
- Mixed High Density Residential Neighborhood
- Mixed Use (46 acres)
- Commercial / Retail (101 acres)
- Public / Institutional
- Office/Light Industrial (317 acres)
- Industrial (93 acres)
- City Limits
- Water





**PARKS, RECREATION, FORESTRY DEPARTMENT & ARENAS**

500 4<sup>TH</sup> Avenue NE Austin, Minnesota 55912

507-433-1881

Kevin D. Nelson, Director

[www.ci.austin.mn.us](http://www.ci.austin.mn.us)

**JAY C. HORMEL NATURE CENTER**

1304 NE 21<sup>ST</sup> Street

507-437-7519 Fax 507-437-8246

J. Luke Reese, Naturalist

[www.hormelnaturecenter.org](http://www.hormelnaturecenter.org)

To: Honorable Mayor and City Council Members

Date: August 11, 2021

Re: Deed Restriction on Todd Park for Grant Reimbursement

As per funding requirements of a MNDNR grant from 2019, which was finished up in June of this year, a deed restriction is required on Todd Park, the parcel which benefitted from the improvements which the grant funded including poured-in-place material under one playground (nearest soccer fields) and perimeter sidewalk, a new (small) pavilion along the north central paved parking lot (near the lone sand volleyball court and youth ball fields), a handicapped-accessible drinking fountain and concrete approach (just NW of Todd Park Pavilion 1), and wood fiber chips (replacing sand) under the playground just south of the newest pavilion.

Thank you for your consideration in this matter.

Sincerely,

Kevin D. Nelson

**RESOLUTION NO.**

**DEED RESTRICTIONS FOR TODD PARK**

**WHEREAS**, the City of Austin received a State of Minnesota Department of Natural Resources (DNR) Outdoor Recreation Grant Program funds for improvements at Todd Park; and

**WHEREAS**, the DNR requires that any lands developed with assistance from this grant program must be retained solely for outdoor recreation use; and

**WHEREAS**, the DNR is asking that a deed restriction be placed on the park property stating that the property cannot be converted to any use other than public outdoor recreation use without the prior written approval of the DNR Commissioner.

**NOW, THEREFORE, BE IT RESOLVED** that in order to comply with the Department of Natural Resources Outdoor Recreation Contract, the City of Austin does hereby impose the following restrictions on the property as described in the attached Exhibit A.

1. The property shall be permanently managed and maintained for public outdoor recreation use.
2. The City of Austin shall not at any time convert any portion of the park area to uses other than public outdoor recreation use without the prior written approval of the State acting through acting through its commissioner of natural resources.

Passed by a vote of yeas and nays this 16<sup>th</sup> day of August, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor

## EXHIBIT A

All that part of the Southeast  $\frac{1}{4}$  of Section 26, Township 103, Range 18, Mower County, Minnesota lying East of 11<sup>th</sup> Street NE, EXCEPTING therefrom the following described parcel:

All that part of SE1/4 Section 26, Township 103 North, Range 18 West, described as follows:

Commencing at the Southwest corner SE1/4 Section 26, Township 103 North, Range 18 West; thence North 00 degrees 43 minutes 47 seconds West 2201.60 feet, on an assumed bearing, on the West line of said 1/4 section, to the point of beginning, thence North 00 degrees 43 minutes 47 seconds West 450.00 feet, on the West line of said 1/4 section; thence North 88 degrees 55 minutes 20 seconds East 1452.00 feet; thence South 00 degrees 43 minutes 47 seconds East 450.00 feet; thence South 88 degrees 55 minutes 20 seconds West 1452 feet, to the point of beginning; being part of the SE 1/4 Section 26, Township 103 North, Range 18 West, and containing 15.00 acres, more or less, subject to highway easement on the West side thereof. According to the records on file in the Office of the County Recorder, Mower County, State of Minnesota.

AND

All that part of the Southwest  $\frac{1}{4}$  of Section 25, Township 103, Range 18 lying West of the rail road right of way (now abandoned).



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:** August 10, 2021  
**Subject:** Airfield Lighting Grant, CP 21310  
AIP Project No. 3-27-0007-017-2021

The City of Austin has developed an Airport LED Lighting replacement project including 58 runway lights, 136 taxiway and other ancillary systems. The project has been developed to include the following:

| <u>Project Cost Summary</u>     | <u>Federal</u>   | <u>State</u> | <u>Local</u> |
|---------------------------------|------------------|--------------|--------------|
|                                 | 100%             | 0%           | 0%           |
| 2021 Airfield Lighting          | \$322,780        |              |              |
| Design Engineering (SEH)        | \$ 49,300        |              |              |
| Construction Engineering        | \$ 24,000        |              |              |
| Administration (City of Austin) | <u>\$ 2,000</u>  |              |              |
|                                 | <b>\$398,080</b> |              |              |

The total project costs are \$398,080.00; the Federal Funds requested are AIP Eligible (90%) = \$358,281.00 & \$39,799.00 in CRRSAA (10%) in FAA Funding. We would request Council approval of the federal grant covering 100% of the project costs and the state grant as the pass-through entity covering 0% of the project costs. If you have any questions, please contact me.

## RESOLUTION

### AUTHORIZATION TO EXECUTE MINNESOTA DEPARTMENT OF TRANSPORTATION GRANT AGREEMENT FOR AIRPORT IMPROVEMENT EXCLUDING LAND ACQUISITION

It is resolved by the City of Austin as follows:

1. That the state of Minnesota Agreement No. 1048179,  
"Grant Agreement for Airport Improvement Excluding Land Acquisition," for  
State Project No. A5001-54 at the Austin Municipal Airport is accepted.
2. That the \_\_\_\_\_ and \_\_\_\_\_ are  
(Title) (Title)  
authorized to execute this Agreement and any amendments on behalf of the  
City of Austin.

## CERTIFICATION

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

I certify that the above Resolution is a true and correct copy of the Resolution adopted by the

\_\_\_\_\_  
(Name of the Recipient)

at an authorized meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

as shown by the minutes of the meeting in my possession.

Signature: \_\_\_\_\_  
(Clerk or Equivalent)

CORPORATE SEAL

/OR/

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

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:** August 10, 2021  
**Subject:** Airport Maintenance and Operations  
Airport Rescue Grant Program

---

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

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

With the passing of the American Rescue Plan Act 2021, the Austin Municipal Airport has received an additional \$32,000 allocation. Similar to the operations & maintenance agreement, funds can be used for the following:

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

At this time, we would request Council acceptance of the \$32,000 grant funding. If you have any questions, please contact me.



### Application for Federal Assistance SF-424

\*1. Type of Submission:

- ☐ Preapplication  
☒ Application  
☐ Changed/Corrected Application

\*2. Type of Application

- ☒ New  
☐ Continuation  
☐ Revision

\* If Revision, select appropriate letter(s):

\*Other (Specify)  
\_\_\_\_\_

\*3. Date Received:

NA

4. Applicant Identifier:

AUM (Austin Municipal) Austin, MN

\*5b. Federal Entity Identifier:

27-0007

\*5b. Federal Award Identifier:

#### State Use Only:

6. Date Received by State:

7. State Application Identifier:

#### 8. APPLICANT INFORMATION:

\*a. Legal Name: City of Austin

\*b. Employer/Taxpayer Identification Number (EIN/TIN):

41-6007162

\*c. Organizational DUNS:

07-866-7946

#### d. Address:

\*Street 1:

Street 2:

\*City:

AUSTIN

County/Parish:

\*State:

MN

Province:

\*Country:

USA: United States

\*Zip / Postal Code

#### e. Organizational Unit:

Department Name:

Division Name:

#### f. Name and contact information of person to be contacted on matters involving this application:

Prefix:

\*First Name: Steven

Middle Name:

\*Last Name:

Lang

Suffix:

Title:

Public Works Director

Organizational Affiliation:

\*Telephone Number: (507) 433-1813

Fax Number:

\*Email: slang@ci.austin.mn.us

**Application for Federal Assistance SF-424**

**\*9. Type of Applicant 1: Select Applicant Type:**

X. Airport Sponsor

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

\*Other (Specify)

**\*10. Name of Federal Agency:**

**Federal Aviation Administration**

**11. Catalog of Federal Domestic Assistance Number:**

20.106

CFDA Title:

Airport Improvement Program

**\*12. Funding Opportunity Number:**

NA

\*Title:

NA

**13. Competition Identification Number:**

NA

Title:

NA

**14. Areas Affected by Project (Cities, Counties, States, etc.):**

**\*15. Descriptive Title of Applicant's Project:**

\$32,000 for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments.

**Attach supporting documents as specified in agency instructions.**

## Application for Federal Assistance SF-424

### 16. Congressional Districts Of:

\*a. Applicant: 1

\*b. Program/Project: 1

Attach an additional list of Program/Project Congressional Districts if needed.

### 17. Proposed Project:

\*a. Start Date: NA

\*b. End Date: NA

### 18. Estimated Funding (\$):

|                    |          |
|--------------------|----------|
| *a. Federal        | \$32,000 |
| *b. Applicant      | \$0      |
| *c. State          | \$0      |
| *d. Local          | \$0      |
| *e. Other          | \$0      |
| *f. Program Income | \$0      |
| *g. TOTAL          | \$32,000 |

### \*19. Is Application Subject to Review By State Under Executive Order 12372 Process?

- ☐ a. This application was made available to the State under the Executive Order 12372 Process for review on \_\_\_\_.
- ☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- ☒ c. Program is not covered by E. O. 12372

### \*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation in attachment.)

☐ Yes ☒ No

If "Yes", provide explanation and attach

21. \*By signing this application, I certify (1) to the statements contained in the list of certifications\*\* and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances\*\* and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U. S. Code, Title 218, Section 1001)

☒ \*\* I AGREE

\*\* The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

### Authorized Representative:

Prefix: \_\_\_\_\_ \*First Name: \_\_\_\_\_

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

\*Last Name: \_\_\_\_\_

Suffix: \_\_\_\_\_

\*Title: Mayor

\*Telephone Number:

Fax Number:

\* Email:

\*Signature of Authorized Representative:

\*Date Signed:

**Authorized Representative:**

Prefix: Mr. \*First Name: James

Middle Name:

\*Last Name: Bittmann

Suffix:

\*Title: Assistant Director, MnDOT Office of Aeronautics

\*Telephone Number:

\* Email: jim.bittmann@state.mn.us

\*Signature of Authorized Representative:

\*Date Signed:

RESOLUTION NO.

**ACCEPTING AN AMERICAN RESCUE PLAN  
AIRPORT GRANT**

WHEREAS, the City of Austin has received a grant from the American Rescue Plan Act in the amount of \$32,000 for the Austin Municipal Airport for maintenance and operations at the airport.

NOW THEREFORE, BE IT RESOLVED that the Austin City Council accepts said grant to the City of Austin in the amount of \$32,000 and authorizes the Mayor and City Recorder to execute the grant agreement.

Passed by a vote of yeas and nays this 16th day of August, 2021

YEAS

NAYS

ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor



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



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

## Memorandum

**To:** Mayor & Council  
**From:** Steven J. Lang, P.E.  
**Date:** August 10, 2021  
**Subject:** Cedar River Siphons, CP 21202  
Design & Bidding Services

---

The City previously hired WHKS & Co. to perform a siphon hydraulic analysis to determine the extent of the work required to rehabilitate the Driesner Park existing siphon, or to replace the existing siphon. As part of the analysis a temporary flow meter was installed at the siphon structure to determine actual flows.

On May 17, 2021 City and WHKS staff held a status meeting to review the findings of the analysis and the recommendations of WHKS. Since the existing siphon was built in 1921 and has served beyond its useful life it was agreed a new siphon should be constructed. The new siphon should be designed with a capacity of at least the measured maximum wet weather flow (MWW) of 3.00 MGD. The new siphon will also accommodate the measured average wet weather flow (AWW) of 1.44 MGD, plus an additional 2.59 MGD of periodic flows from Hormel.

The siphon will consist of two (2) barrels, an 8" and 12" barrel with a capacity of 3.22 MGD, larger than the measured MWW. The periodic Hormel sewage flows of 4.03 MGD (1.44 + 2.59) will cause the new siphon to surcharge approximately 1.2 feet. The analysis determined that no properties would be negatively impacted by the surcharge. The new siphon will be relocated west of the existing siphon. Approximately 250 feet of 30" sanitary sewer will be replaced upstream and downstream of the new siphon. The estimated cost of the project is \$538,000.

The next step of the design is to develop plans and specifications for construction. WHKS has provided an estimated hourly fee of \$41,200 to complete the following scope of services:

- Project management and meetings
- Preliminary and final design
- Bidding
- Permitting

Additional items not included in this proposal

- Topo surveying (to be completed by City)
- Geotechnical borings and soil review (separate contract to come later)
- Construction Admin and Inspection

We would recommend awarding the design and bidding services to WHKS in the amount of \$41,200 with funding to be split equally between LOST and WWTP funds. If you have any questions, please contact me.

**Project Budget, CP 21202 Cedar River Siphons**

|                             | <u>LOST</u> | <u>WWTP</u> | <u>Total</u> |
|-----------------------------|-------------|-------------|--------------|
| Siphon Analysis             | \$ 5,000    | \$ 5,000    | \$10,000     |
| Design & Bidding Services   | \$20,600    | \$20,600    | \$41,200     |
| Geotechnical                |             |             |              |
| Construction Contract       |             |             |              |
| Admin & Inspection Services |             |             |              |



## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, by and between **City of Austin, Minnesota** hereinafter referred to as the "Client" and WHKS & Co., hereinafter referred to as "WHKS", is made as follows:

WHEREAS, the Client has a need for certain professional services relating to the project described as **Final Design Driesner Park Sanitary Sewer Siphon**.

WHEREAS, WHKS proposes to furnish the professional services required by the Client for said project,

NOW THEREFORE, the Client hereby agrees to retain and compensate WHKS to perform the professional services in accordance with the terms and conditions of this Agreement and the attached Standard Terms and Conditions.

### **Scope of Services**

WHKS shall perform the following described services for the Client:

**Design and bid phase engineering services as described on the attached Scope of Services included in Exhibit A.**

### **Basis of Compensation**

For the services described above, the Client shall remunerate WHKS as follows:

**Items 1, 3 - Billed Hourly with an Estimated Fee of \$41,200.**

**Each of the above items includes estimated expenses except permit application fees. Permit application fees will be billed separately. Expenses billed at actual cost and mileage at the current published IRS rate per mile.**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2021

**City of Austin, Minnesota**

***WHKS & co.***

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

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

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

Printed Name: William Angerman, P.E.

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

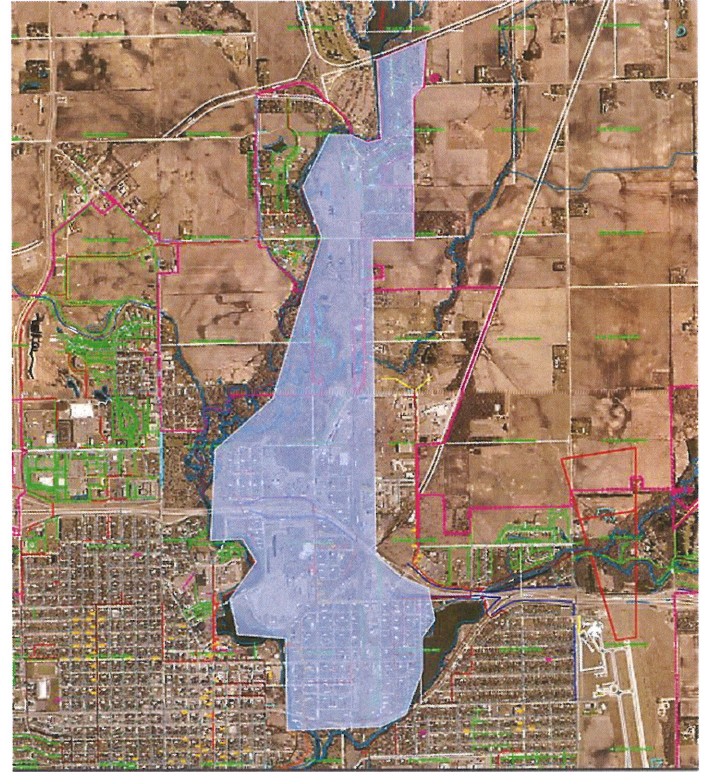
Title: Exec. Vice President, COO



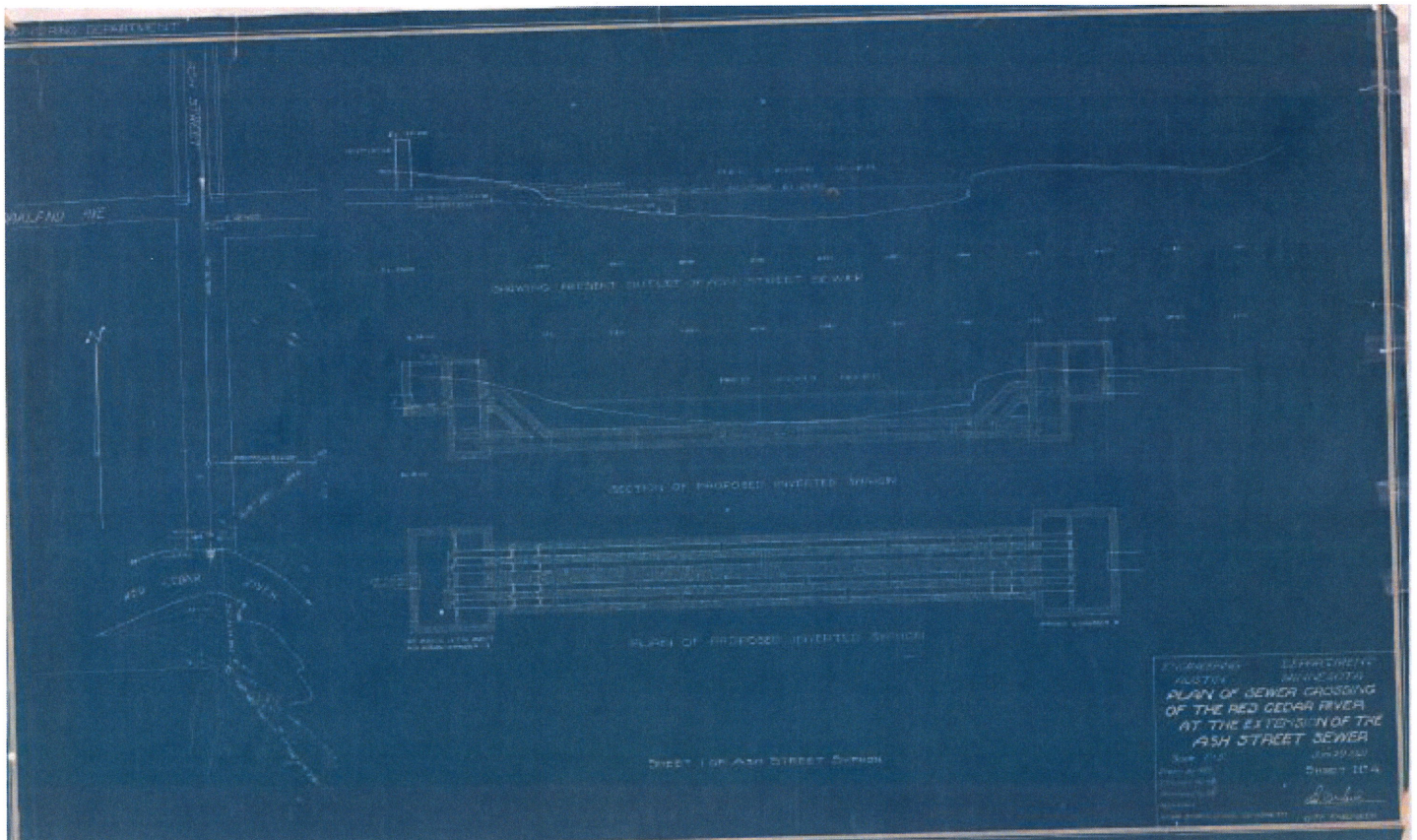
Siphon Location



Sewer Area



Original Drawings





RESOLUTION NO.

**APPROVING ENGINEERING CONSULTING SERVICES  
FOR THE DESIGN AND BIDDING OF THE CEDAR RIVER SIPHONS**

WHEREAS, the City of Austin installed siphons across the Cedar River in 1921 for sanitary sewer flow; and

WHEREAS, the structure is in need of rehabilitation or reconstruction and the has been evaluated for reconstruction; and

WHEREAS, the City has received a proposal from WHKS in the amount of \$41,200 for the design and bidding of the Cedar River siphons; and

WHEREAS, the funding for the project would be split between Local Option Sales Tax and Waste Water Treatment Plant Funds.

NOW THEREFORE, BE IT RESOLVED, that the City Council approves the contract in the amount of \$41,200 from WHKS for design and bidding services for the siphons across the Cedar River.

Passed by a vote of yeas and nays this 16th day of August, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor



James McCoy, Fire Chief  
Austin Fire Department



122 First Avenue NE  
Austin, Minnesota 55912  
Phone: 507-433-3405  
Fax: 507-433-3525  
[www.ci.austin.mn.us](http://www.ci.austin.mn.us)

**TO:** Honorable Mayor and City Council

**FROM:** Fire Chief Jim McCoy *Jm*

**DATE:** August 11, 2021

**SUBJECT:** International Paper Grant

---

The Austin Fire Department applied for and was awarded a 2021 International Paper Grant. The grant is used to promote cancer reduction within the fire department.

The grant amount awarded to our department is \$5,500. This grant will be used to purchase vapor protection firefighting hoods. After fire personnel retreat from their limit of interior firefighting and before entering rehab, they will turn in their hood and gloves. Used contaminated gear will be bagged to be returned to the station for cleaning. Before returning to their interior firefighting duties, the firefighter will be provided a clean hood and gloves. Providing clean protective gear for firefighters is one step in reducing cancer incidents in the fire service.

I recommend approval to accept the International Paper Grant. If you have questions, please contact me.

**RESOLUTION NO.**

**ACCEPTING GRANT FROM INTERNATIONAL PAPER**

**WHEREAS**, the Austin Fire Department applied for a grant from International Paper;  
and

**WHEREAS**, the Fire Department was awarded a grant in the amount of \$5,500; and

**WHEREAS**, the grant will be used to purchase vapor protection firefighting hoods to  
promote cancer reduction within the Fire Department.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council that the City of Austin  
accepts the grant award in the amount of \$5,500 from International Paper.

Passed by a vote of yeas and nays this 16<sup>th</sup> day of August, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor

City of Austin  
Zoning Department



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

## Memorandum

**To:** Mayor and City Council

**Cc:** State of Minnesota Forfeited Property  
Attn: Scott Felten, Mower County Auditor

Charles Fawver  
1805 14<sup>th</sup> St SW Austin, MN 55912

**From:** Holly Wallace, Planning & Zoning Administrator

**Re:** Hazardous Structure located at 709 Oakland Ave W, Austin MN 55912

**Date:** August 11, 2021

---

May I ask the City Council to review and approve this resolution classifying the property located at 709 Oakland Ave W, Austin, Minnesota, as hazardous pursuant to Minnesota Statutes 463.15 – 463.261. City staff has been dealing with numerous complaints regarding this property and the owner has failed to repair these structural deficiencies. (See attached)

If you should have any questions regarding this matter, please call me at my office at 507-437-9952.

Thank You!

City of Austin  
Building Department



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

July 9<sup>th</sup>, 2021

Charles Fawver  
1805 14<sup>th</sup> St SW  
Austin, MN 55912

RE: Housing Violations at 709 Oakland Ave W, Austin, MN 55912

Dear Charles:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on October 2<sup>nd</sup>, 2018 . July 9<sup>th</sup>, 2021 to check for progress at this site, and the following issues need to be resolved:

1. **Repair/ Replace broken windows**
2. **Repair/ Replace roof decking**
3. **Repair fascia**
4. **Protective treatment on siding**

**No progress has been made**

The violation of International Property Maintenance Code Sections 304 were found. These Property Maintenance Code Sections read as follows:

**304.2 Protective treatment.** Exterior surfaces, including but not limited to, doors, door and window frames cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

**304.6 Exterior walls.** All exterior walls shall be free from holes, breaks, loose or rotting material; and maintained weatherproof and properly surfaced coated where required to prevent deterioration. Without limiting the generality of this section, a protective surface of a building shall be deemed to be out of repair if: a) The protective surface is paint (25%) of the area of any plane or wall or other area including window trim, cornice members, porch railing and other such areas; b) More than (25%) of the finish coat of a stucco wall is worn through or chipped away.

**304.7 Roofs and drainage.** The roof and flashing shall be sound, tight and not have

defects that admit rain. Roof drain- age shall be adequate to prevent dampness or *deterioration* in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

**304.13 Window, skylight and door frames.** Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

**304.13.1 Glazing.** Glazing materials shall be maintained free from cracks and holes.

**304.13.2 Openable windows.** Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

Please contact the Austin Planning & Zoning Department at 437-9950 to discuss the above mentioned Property Maintenance Code violations within the next **30 days**, or the City of Austin will take further action in efforts to resolve these violations. Council generally meets the first and third Mondays of every month. You will be fined a minimum of \$100, the amount varies depending on the type of violations. Your cooperation with this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Johnson", with a stylized flourish at the end.

Brent Johnson  
Zoning Inspector



**City of Austin  
Building Department**



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

October 3<sup>rd</sup>, 2018

Charles Fawver  
609 Oakland Ave W  
Austin, MN 55912

RE: Housing Violations at 709 Oakland Ave W, Austin, MN 55912

Dear Charles:

The City of Austin Planning and Zoning Department has observed a violation of City Code on October 2<sup>nd</sup>, 2018 your property. An investigation of this complaint was conducted on at this site, and the following issues need to be resolved:

- 1. Repair/ Replace broken windows**
- 2. Repair/ Replace roof decking**
- 3. Repair fascia**
- 4. Protective treatment on siding west side of house**

The violation of International Property Maintenance Code Sections 304 were found. These Property Maintenance Code Sections read as follows:

**304.2 Protective treatment.** Exterior surfaces, including but not limited to, doors, door and window frames cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

**304.7 Roofs and drainage.** The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drain- age shall be adequate to prevent dampness or *deterioration* in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

**304.13 Window, skylight and door frames.** Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

**304.13.1 Glazing.** Glazing materials shall be maintained free from cracks and holes.

**304.13.2 Openable windows.** Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

Please contact the Austin Planning & Zoning Department at 437-9950 to discuss the above mentioned Property Maintenance Code violations within the next **30 days**, or the City of Austin will take further action in efforts to resolve these violations. You will be fined a minimum of \$100, the amount varies depending on the type of violations. Your cooperation with this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Johnson", with a long horizontal flourish extending to the right.

Brent Johnson  
Zoning Inspector





TIME STAMP

July 9, 2021  
10:32 AM





**August 11, 2021**  
**9:50 AM**







**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION ORDERING SECURING AND RAZING OF A HAZARDOUS BUILDING  
LOCATED AT 709 OAKLAND AVE W AUSTIN, MINNESOTA  
OWNED BY CHARLES FAWVER.**

**WHEREAS**, Pursuant to Minnesota Statutes, Section 463.15 to 463.61, the City Council of Austin, Minnesota, finds the building located at 709 Oakland Ave W to be a hazardous building for the following reasons:

- 1. Repair/ Replace broken windows**
- 2. Repair/ Replace roof decking**
- 3. Repair fascia**
- 4. Protective treatment on siding**

**WHEREAS**, The conditions listed above are more fully documented in the inspection report prepared by Brent Johnson on October 3<sup>rd</sup>, 2018 and July 9<sup>th</sup>, 2021 and a copy (or copies) of which is (are) attached to the resolution as Exhibit A.

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

1. Pursuant to the foregoing findings and in accordance with Minnesota Statutes, Sections 463.15 and 463.261, the City Council hereby orders the record owner(s) of the above hazardous buildings to make such buildings safe to the public health, welfare, and safety by taking the following actions:
  - 1. Repair/ Replace broken windows**
  - 2. Repair/ Replace roof decking**
  - 3. Repair fascia**
  - 4. Protective treatment on siding**
2. The repairs listed above must be made within 30 days after the order is served upon the record owner and in compliance with applicable codes, regulations and permits.
3. The City Council further orders that unless such corrective action is taken, the building(s) is/are ordered to be razed, the foundation(s) filled and the property left free of debris in compliance with all applicable codes, regulations and permits. The structures must be removed within 20 days after the initial 30 day repair period has expired.
4. If corrective action is not taken and an answer is not served within 20 days as specified in Minn. Stat. Section 453.18, a motion for summary enforcement of this order will be made to the District Court of Mower County.
5. In accordance with Minn. Stat. Section 463.24, the owner or occupant must remove all personal property and/or fixtures that will reasonably interfere with the work within 14 days. If the property and/or fixtures are not removed and the city enforces this order, the city may sell personal property, fixtures, and/or salvage materials at a public auction after three days posted notice.

6. The City Council further orders that if the city is compelled to take any corrective action herein, all necessary costs expended by the city will be assessed against the real estate concerned and collected in accordance with Minnesota Statutes, Section 463.22, 463.161 and 463.21.
7. The Mayor, City Recorder, City Attorney and other officers and employees of the City are authorized and directed to take such action, prepare, sign and serve such papers as are necessary to comply with this order and to assess the costs thereof against the real estate described above for collection along with taxes.
8. The city attorney is authorized to proceed with the enforcement of this order as provided in Minn. Stat. Sections 463.15 and 463.261.

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

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

ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor

City of Austin  
Zoning Department



500 Fourth Avenue N.E.  
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[www.ci.austin.mn.us](http://www.ci.austin.mn.us)

## Memorandum

**To:** Mayor and City Council

**Cc:** Miller R&R LLC  
713 4<sup>th</sup> Ave NE, Austin, MN 55912

**From:** Holly Wallace, Planning & Zoning Administrator

**Re:** Accumulation of Refuse and Junk  
At 713 4<sup>th</sup> Ave NE, Miller Property

**Date:** August 12, 2021

---

May I ask the City Council to approve granting the Planning & Zoning Department the power to contract for the removal of refuse and junk at 713 4<sup>th</sup> Ave NE. The property owner has been notified of this violation to the City Code Sections 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

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

Thank You

City of Austin  
Zoning Department



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

August 12, 2021

Miller R&R LLC  
713 4<sup>th</sup> Ave NE  
Austin, MN 55912

RE: Zoning Violations at 713 4<sup>th</sup> Ave NE, Austin, MN

Dear Sir or Madam:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on August 11, 2021 at this site and the following issues need to be resolved:

**1. Remove all junk from property**

*This is a repeat offense and the matter has been referred to the Austin City Council for corrective action. You are being fined under the following City Code:*

**1.98 CIVIL PENALTIES.**

Subd. 1. Purpose.

- A. The City Council seeks to offer an alternative method of enforcement for city code violations rather than relying on the criminal court system. The formal criminal prosecution process does not provide an environment to adequately address the unique and sensitive issues that are involved in city code violations, including, but not limited to, neighborhood concerns, livability issues, economic impact, physical limitations of the offenders and the stigma and unintended consequences of being charged with or convicted of a misdemeanor offense. In addition, the court system is a slow, overburdened and methodical process that is not conducive to dealing with the violations in a prompt and timely manner. Finally, the penalties afforded the criminal court system are restricted to fines or physical confinement, which are not always effective solutions to address city code violations.

Subd. 4. Compliance letter.

- C. Exceptions to issuance of a compliance letter. For violations of any of the following sections, the city shall not be required to issue a compliance letter and may proceed directly to issuance of an administrative citation as provided in division (E) below.

1. Repeat offender. If the same offender commits a subsequent violation within 24 months after a compliance letter has been issued for a same or similar offense.

Subd. 5. Administrative citation

A. Generally.

1. Upon the failure to correct the violation specified in the compliance letter within the time frame established in the compliance letter or any extension thereof granted by the city, or for any offense for which a compliance letter is not required, an administrative citation may be issued.

If you have any questions, please call me at my office at (507)437-9951.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Brent Johnson', with a stylized, flowing script.

Brent Johnson  
Zoning Inspector





August 11, 2021

9:33 AM

713 4th Ave NE

City of Austin  
Zoning Department



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

## Memorandum

**To:** Mayor and City Council

**Cc:** Janice Marquardt  
1004 5<sup>th</sup> St NW, Austin, MN 55912

**From:** Holly Wallace, Planning & Zoning Administrator

**Re:** Accumulation of Refuse and Junk  
At 1004 5<sup>th</sup> St NW, Marquardt Property

**Date:** August 12, 2021

---

May I ask the City Council to approve granting the Planning & Zoning Department the power to contract for the removal of refuse and junk at 1004 5<sup>th</sup> St NW. The property owner has been notified of this violation to the City Code Sections 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

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

Thank You



City of Austin  
Zoning Department



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

July 28<sup>th</sup>, 2021

Janice Marquardt  
1004 5<sup>th</sup> St NW  
Austin, MN 55912

RE: Zoning Violations at 1004 5<sup>th</sup> St NW Austin, MN 55912

Dear Janice:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on July 28<sup>th</sup>, 2021 at this site and the following issues need to be resolved:

**1. Remove all junk from property**

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

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

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

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

**B. Public nuisances affecting health**

**5.** Accumulations of manure, refuse or other debris;

**D. Public nuisances affecting peace and safety.**

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

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

**NOTICE AND ABATEMENT.**

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

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

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

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

**City Code Section 10.14, Subd. 5:**

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

**City Code Section 10.14, Subd. 6:**

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Johnson", with a stylized flourish at the end.

Brent Johnson  
Zoning Inspector





August 11, 2021  
10:30 AM

1004 5<sup>th</sup> & M





August 11, 2021  
10:30 AM



City of Austin  
Zoning Department



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

## Memorandum

**To:** Mayor and City Council

**Cc:** Jennifer Sheehan  
1206 12<sup>th</sup> St NW, Austin, MN 55912

**From:** Holly Wallace, Planning & Zoning Administrator

**Re:** Accumulation of Refuse and Junk  
At 1206 12<sup>th</sup> St NW, Sheehan Property

**Date:** August 12, 2021

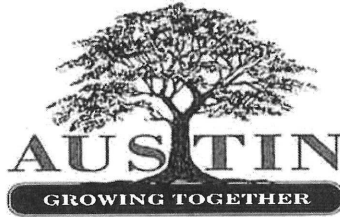
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May I ask the City Council to approve granting the Planning & Zoning Department the power to contract for the removal of refuse and junk at 1206 12<sup>th</sup> St NW. The property owner has been notified of this violation to the City Code Sections 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

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

Thank You

City of Austin  
Zoning Department



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

July 27<sup>th</sup>, 2021

Jennifer Sheehan  
1206 12<sup>th</sup> St NW  
Austin, MN 55912

RE: Zoning Violations at 1206 12<sup>th</sup> St NW, Austin, MN 55912

Dear Jennifer:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on July 27<sup>th</sup>, 2021 at this site and the following issues need to be resolved:

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

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

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

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

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

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

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

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

**B. *Public nuisances affecting health***

5. Accumulations of manure, refuse or other debris;

**D. *Public nuisances affecting peace and safety.***

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



**City Code Section 10.14, Subd. 4(E-G)  
NOTICE AND ABATEMENT.**

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

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

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

**City Code Section 10.14, Subd. 5:**

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

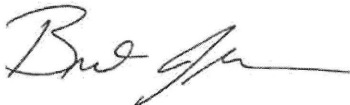
**City Code Section 10.14, Subd. 6:**

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

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

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

Sincerely,



Brent Johnson  
Zoning Inspector

CC: RPD Properties, LLC





August 11, 2021

10:02 AM

1206 12th St NW