

A G E N D A
CITY COUNCIL MEETING
MONDAY, NOVEMBER 1, 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 October 18, 2021
- 3. Recognitions and Awards.
- (res) Dedicating the Bonnie Besse Rietz Conference Room.
- (mot) 4. *Consent Agenda
Licenses:
Massage Therapist: Eh Soe, 811 7th Avenue SW

Claims:

- a. Pre-list of bills
- b. Financial Report.

Appointments:

Appointing Council Member Poshusta to the SMART Transit Advisory Committee.
Appointing Council Member Fisher to the Senior Center Board

PETITIONS AND REQUESTS:

- (res) 5. Accepting donations to the City of Austin.
- (res) 6. Adopting storm water management fees.
- (res) 7. Approving an airport maintenance and operations agreement with MnDOT.
- (res) 8. Approving a project agreement for the Highway 105/12th Street SW project with MnDOT.
- (res) 9. Approving a 21st Avenue NE and 11th Street prescriptive easement.
- (res) 10. Approving a contract with SEH for airport rezoning.
- (res) 11. Approving an amendment to the grant agreement for the construction of a public television station.
- (res) 12. Granting a transfer of an on-sale liquor license to Cuatro Copas Bar & Lounge, LLC.

- (res) 13. Adopting Minn. Statutes section 272.162 to enforce parcel transfer and division restrictions.
- (res) 14. Declaring the property at 807 9th Street NE a hazardous structure.
- (mot) 15. Granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 106 11th Street NE, Nelson Property.

CITIZENS ADDRESSING THE COUNCIL

HONORARY COUNCIL MEMBER COMMENTS

REPORTS AND RECOMMENDATIONS:

City Administrator
City Council

- (mot) Adjourn to **Monday, November 15, 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
October 18, 2021
5:30 PM
Council Chambers

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

MEMBERS ABSENT:

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

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

OTHERS APPEARING ELECTRONICALLY: Brian Butts, Rob Steffes

APPEARING IN PERSON: Austin Daily Herald, Honorary Council Member Kris Heichel, Public

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

Additions to the Agenda:

Consent Agenda:

Licenses:

Right of Way: Berg's Nursery & Landscape, LLC 904 1st Avenue SW
American Waterworks: 1307 Valleyhigh Drive NW, Rochester

- (res) 16. Approving a contract for a Preliminary Engineering Report for the EDA grant at Creekside Business Park.
- (mot) 17. Appointing Justin Hanson to the Park and Recreation Board, term expiring December 31, 2022.
- (res) 18. Approving a Parks Master Planning contract with MSA Professional Services, Inc.

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

Moved by Council Member Waller, seconded by Council Member Fischer, approving Council minutes from October 4, 2021 and October 11, 2011. Carried.

CONSENT AGENDA

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

Licenses:

Right of Way: Carl Bolander & Sons, LLC, St. Paul

Right of Way: Berg's Nursery & Landscape, LLC 904 1st Avenue SW

Right of Way: American Waterworks: 1307 Valleyhigh Drive NW, Rochester

Claims:

- a. Pre-list of bills
- b. Investment Report.

Event Applications:

2022 Farmers Market Place events

Carried.

PUBLIC HEARINGS

A public hearing was held for a proposed tax abatement for Chad and Frances Sonnek for a proposed property at 3005 & 3007 15th Avenue SW in the estimated value of \$600,000. City Administrator Craig Clark stated the application met the City's requirements for tax abatement.

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 Chad & Frances Sonnek. Carried 7-0.

PETITIONS AND REQUESTS

Fire Chief Jim McCoy stated the Department has evaluated their fleet needs and would like to purchase a mini pumper apparatus in 2022. The contract for the vehicle needs to be signed by November 1, 2021 to avoid 2022 cost increases. Chief McCoy asked Council to approve the signing of the contract in 2021.

Moved by Council Member Fischer, seconded by Council Member-at-Large Austin, approving the advanced purchase of a fire apparatus in 2022. Carried.

Administrative Services Director Tom Dankert requested the Council approve a senior deferral of special assessments for Melissa Weis. He stated Ms. Weis met all the criteria for the deferral and the assessment would accrue interest until the property is sold.

Moved by Council Member Postma, seconded by Council Member Fischer, adopting a resolution approving a senior deferral of special assessments for Melissa M. Weis. Carried 7-0.

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

Public Works Director Steven Lang requested an increase to the stormwater utility rates to fund existing programs and new mandates from the state and federal government. The last adjustment was in 2012 and Mr. Lang stated the Council proposed a \$1.50 increase for the residential rate and a \$9.00 increase in the commercial rate. This would increase the yearly funding from \$675,000 to \$925,000 for the program.

Moved by Council Member Fischer, seconded by Council Member Oballa, approving increases to 2022 stormwater utility rates. Carried.

Public Works Director Steven Lang stated the City of Austin has Medium Intensity Approach Lighting System with Runway alignment lights at the Austin Municipal Airport which allows aircraft to land during inclement weather. The FAA will be requiring annual and semi-annual ground checks of the lighting system and checks are required to be completed by a FAA certified contractor. NEO Electrical Solutions from Hudson, Wisconsin is the only one in the region and has provided a three-year contract in the amount of \$6,300 per year.

Moved by Council Member Fischer, seconded by Council Member Poshusta, adopting a resolution approving a contract with NEO Electrical Solutions for airport lighting inspections. Carried 7-0.

Planning and Zoning Administrator Holly Wallace reviewed a rezoning request from Bruce Baudler. She stated the request is to divide the existing parcel and rezone Parcel A to R-O, multi family/office and Parcel B to Community Business to allow for development on the parcels. The surrounding uses are commercial to the north and west and residential to the south and east. The Planning Commission reviewed the matter at their October 12, 2021 meeting and recommended denial of the parcels by an 8-0 vote. She stated the Planning Commission was concerned about traffic in the area.

Scooters Coffee is proposed to be located on Parcel B. There is a proposed ingress and egress agreement with the City for traffic control.

Ms. Wallace stated that residents in the area were opposed to the development at the Planning Commission meeting.

Council Member Poshusta asked when the coffee shop is looking to build.

Robb Steffes, with Scooter's Coffee shop, stated the design for the shop is complete and would begin in the second or third quarter of 2022.

Mayor King noted that the City turned down an ambulance facility in the neighborhood a few years ago. He stated the property appears to be fit for redevelopment since there is an abandoned home on the parcel. He stated he sees the proposal as a good fit for the property because it is unlikely that it would be developed residentially.

Council Member-at-Large Austin stated the property has been marketed for 20 plus years. This property would have been developed residentially already if that was the intended purpose. He stated he doesn't see the development as a detriment to the neighbors.

Council Member Postma stated he was on the Planning Commission when the ambulance proposal came forward and did not support that proposal. He spoke in support of the current project. He noted he doesn't feel that property owner should be held hostage because of the City street.

Council Member Poshusta stated she believes the traffic in the area will be better with the improved bridge design that Council recently approved. She asked Mr. Steffes if he was looking at any other locations in town.

Mr. Steffes stated this is the ideal location for their business.

Council Member Oballa stated he supports the business development on the property. He noted that he doesn't believe it will decrease property values.

Council Member Baskin stated he understands the concern about the traffic in the neighborhood but the bridge improvements in the future will help that issue. He noted the decision to develop the property will be in the best interest of the City.

Council Member Fischer stated the property is unlikely to be a residential area and is in favor of the rezoning.

Moved by Council Member Council Member-at-Large Austin seconded by Council Member Fischer, adopting findings on the Baudler rezoning parcels. Carried.

Moved by Council Member-at-Large Austin, seconded by Council Member Fischer, for preparation of the zoning ordinance. Carried.

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

Planning and Zoning Administrator Holly Wallace stated the proposed apartments at the former YMCA site, called the Mill on Main, are requested an off-street parking variance and a height variance for the complex.

Ms. Wallace stated the City zoning code would require 2.25 parking spaces per dwelling unit. The developer is requesting 1.66 spaces per unit because of the number of studio and one bedroom apartments in the complex. This would bring the number of parking spaces to 153, down from 207. The Planning Commission reviewed the matter at their October 12, 2021 meeting and recommended approval of the variance by an 8-0 vote.

Moved by Council Member Fischer, seconded by Council Member Postma, approving an off street parking appeal for the Mill on Main. Carried.

Ms. Wallace stated the structure for the apartment is proposed at 5 stories. The maximum height in a B-2 district is three stories. She stated there are R-2 districts to the west and north with buildings from 4 to 8 stories. The Planning Commission reviewed the matter at their October 12, 2021 meeting and recommended approval of the variance by an 8-0 vote.

Moved by Council Member Poshusta, seconded by Council Member Baskin, approving a height variance for the Mill on Main. Carried.

Planning and Zoning Administrator Holly Wallace stated Nicholas Yerhart is requested a variance from the square footage for accessory structures in the City Code. He is proposing the build a 2400 square foot shed, in addition to his existing shed, on his 3.4 acre lot. This would exceed the maximum square footage for accessory structures. The Planning Commission reviewed the matter at their October 12, 2021 meeting and recommended approval of the variance by an 8-0 vote.

Moved by Council Member Postma, seconded by Council Member Baskin, approving an accessory structure variance request from Nicholas Yerhart. Carried.

Moved by Council Member Fischer, seconded by Council Member Postma, adopting a resolution declaring the garage at 611 13th Street NE a hazardous structure. Carried.

Moved by Council Member Postma, 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 1605 12th Street SW. Carried.

City Administrator Craig Clark stated the City received proposals for a Preliminary Engineering Report and Environmental Review for the submission of a grant to the Federal Economic Development Administration. SEH, Inc. provided a proposal in the amount of \$20,000 for the completion of the reports and the costs for the contract will be split with Austin Utilities. Mr. Clark requested approval of the contract with SEH, Inc.

Moved by Council Member Baskin, seconded by Council Member-at-Large Austin, approving a contract with SEH, Inc. for a Preliminary Engineering Report for the EDA Grant at Creekside Business Park. Carried 7-0.

Moved by Council Member Fischer, seconded by Council Member Oballa, appointing Justin Hanson to the Park and Recreation Board, term expiring December 31, 2022. Carried.

Parks and Recreation Director Kevin Nelson requested the Council approve and Parks and Trails master plan with MSA Professional Services, Inc. in the amount of \$73,197.95. He stated the Park and Recreation Board reviewed the proposals at their October 13, 2021 meeting and recommended approval.

Moved by Council Member Fischer, seconded by Council Member Baskin, approving a Parks and Trails master planning contract with MSA Professional Services, Inc. Carried 7-0.

CITIZENS ADDRESSING THE COUNCIL

Mike Stoll stated he is moving out of state and appreciated the interaction with the Council.

The Council thanked Mr. Stoll for his work and wished him the best.

HONORARY COUNCIL MEMBER COMMENTS

Honorary Council Member Kris Heichel stated she appreciated the Council taking time for their decisions.

REPORTS

City Administrator Craig Clark stated the Velocity Group will be in Austin November 8 through 10, 2021.

Library Director Julie Clinefelter stated the social justice book club will meet on Thursday night.

Council Member Postma recognized the Cedar River Farmer's Market for their successful season.

Council Member Baskin stated he recently attended a conference with other cities and said he felt good about the progress Austin has made.

Moved by Council Member Fischer, seconded by Council Member Waller, adjourning the meeting to November 1, 2021. Carried.

Adjourned: 6:33 p.m.

Approved: November 1, 2021

Mayor: _____

City Recorder: _____

RESOLUTION NO.

A RESOLUTION DEDICATING

THE “BONNIE BESSE RIETZ” CONFERENCE ROOM

WHEREAS, Bonnie Besse Reitz selflessly devoted 18 years of her life to public service at the City of Austin as a Council Member then the Mayor;

WHEREAS, Bonnie has been an excellent representative of the city at both the local and statewide levels as President of the League of Minnesota Cities, APEX, Drug Task Force, Austin Area Symphony, Austin Area Commission for the Arts and many others; and

WHEREAS, Bonnie has continued to be involved in many community projects and causes after her term as mayor; and

WHEREAS, Bonnie leads with energy, enthusiasm and professionalism; and

WHEREAS, Bonnie exhibited the highest level of statesmanship and has excelled as an advocate for consensus and cooperation among the diverse political, social and cultural groups of the City of Austin; and

WHEREAS, she has taken great care to facilitate meaningful conversations in many conference rooms across the City and region.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Austin does hereby dedicate the “Bonnie Besse Rietz Conference Room” in honor of her faithful dedication to the community.

Passed by a vote of Yeas and Nays this 1st day of November, 2021.

YEAS

NAYS

ATTEST:

City Recorder

APPROVED:

Mayor

RESOLUTION NO.

ACCEPTING DONATIONS TO THE CITY OF AUSTIN

WHEREAS, the City has received gift as follows:

Gift	Donor	For
\$100	Thomas and Timothy Purcell	Fire Department
\$1,200	AAA	Fire Safety Vests

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 1st day of November, 2021.

ATTEST:

APPROVED:

City Recorder

RESOLUTION NO.

RESOLUTION ADOPTING CHANGES TO FEE SCHEDULE
FOR STORM WATER MANAGEMENT PROGRAM

WHEREAS, the City Council of the City of Austin has reviewed the fee schedule relative to storm water management and has recommended that certain fees be amended.

NOW, THEREFORE, the City Council of the City of Austin hereby adopts the following fee rate schedule for storm water utility fees:

Developed property

Single-family residential	\$ 5.50/lot
Twin homes/duplex	\$ 5.50/unit
Manufactured home	\$ 2.75/unit
Apartment	\$ 1.375/unit
Recreational property	\$ 1.375/acre
Institutional (churches/schools)	\$ 24.75/acre
Commercial	\$ 33.00/acre

Undeveloped property

Residential	\$ 220.00
Twin homes/duplex	\$ 220.00/unit
Manufactured homes	\$ 110.00/unit
Apartment building	\$ 55.00/unit
Recreational	\$ 55.00/acre
Institutional property	\$ 412.50/acre
Commercial	\$ 550.00/acre

Credits

The above rates will be reduced by 25% for private property who own and maintain detention/retention ponds. Pond design must be approved by the City Engineer's Department.

BE IT FURTHER RESOLVED that said storm water utility fees shall be collected by the Austin Utilities.

Approved by the Austin City Council this 1st day of November, 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: October 21st, 2021
Subject: Airport Maintenance and Operations

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 proposed reimbursement allotment of up to 75% of eligible costs 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 \$100,000 in eligible expenses, so at a 75% reimbursement rate we are eligible for \$75,000 and therefore 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
- Maintenance of all airfield lighting
- Building utilities, supplies and repairs

Attached is a two-year agreement for state FY2022 and 2023, beginning July 1st, 2021. I would recommend approving the grant agreement. If you have any questions, please contact me.

STATE OF MINNESOTA
AIRPORT MAINTENANCE AND OPERATION GRANT CONTRACT

State Project Number (S.P.): A5001-MO22

State Project Number (S.P.): A5001-MO23

This contract is between the State of Minnesota, acting through its Commissioner of Transportation (“State”) and City of Austin acting through its City Council (“Recipient”).

RECITALS

1. Minnesota Statutes §§360.015 and 360.305 authorize State to provide financial assistance to airports for maintenance and operation activities.
2. Recipient owns, operates, or controls an airport (“Airport”) in the state system, and Recipient desires financial assistance from the State for maintenance and operation activities for State Fiscal Year 2022 and State Fiscal Year 2023.
3. Recipient represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.

CONTRACT TERMS

1. Term of Contract and Survival of Terms

- 1.1. **Effective Date:** This contract will be effective on July 1, 2021, or the date State obtains all required signatures under Minnesota Statutes §16B.98, subdivision 5, whichever is later. As required by Minnesota Statutes §16B.98 Subd. 7, no payments will be made to Recipient until this contract is fully executed.
- 1.2. **Expiration Date:** This contract will expire on June 30, 2023.
- 1.3. **Survival of Terms:** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this contract, including, but not limited to, the following clauses: 9. Indemnification; 10. State Audits; 11. Government Data Practices; 13. Governing Law, Jurisdiction and Venue; and 14. Data Disclosure.

2. Recipient’s Duties

- 2.1. Recipient will operate and maintain the Airport in a safe, serviceable manner for aeronautical purposes only for the use and benefit of the public.
- 2.2. The Recipient will keep the runway and the area around the lights mowed at the Airport. The grass must be mowed at least 7 feet beyond the lights, and the grass must not exceed 6 inches in height on the landing area. The areas around any navigational aids will be mowed and plowed to keep the area clear for access by a vehicle.
- 2.3. If the Airport remains operational during the winter months, the Recipient will keep at least one runway, associated taxiway, and apron area cleared of snow and ice to the same priority as arterial roads. Snow banks must be limited in height so that aircraft wings, engines, and propellers will clear them. Landing strip markers and/or lights must remain visible.

- 2.4. If the State contracts for the periodic paint striping of the Airport's runways and taxiways during the term of this Contract, the Recipient will cooperate with the marking operation. The Recipient must coordinate seal coat pavement maintenance projects with the State to maximize the pavement marking life.
- 2.5. The Recipient will allow a representative of the State's Office of Aeronautics access to any area of the Airport necessary for the purpose of periodic inspections.
- 2.6. The Recipient will promptly pay all utility bills, including those required for navigational aids.

3. Recipient's Assurances

- 3.1. In accordance with Minnesota Statutes § 360.305, subdivision 4, Recipient assures the State that Recipient will operate and maintain the Airport in a safe, serviceable manner for public aeronautical purposes only for a period of one year from the date the Recipient receives final reimbursement under this contract.
- 3.2. Recipient represents and warrants that Recipient has established a zoning authority for the Airport, and such authority has completed, or is in the process of and will complete, with due diligence, an airport zoning ordinance in accordance with Minnesota Statutes §§ 360.061 to 360.074.
- 3.3. Recipient will comply with all required grants management policies and procedures set forth through Minnesota Statutes §16B.97, Subd. 4 (a) (1).

4. Third-Party Contracting

- 4.1. Recipient will comply with all applicable local, state, or federal laws, regulations, policies and procedures in the procurement of goods and services funded in whole or in part under this Contract.

5. Consideration and Payment

- 5.1. **Consideration.** State will pay for all eligible telecommunication, maintenance, and operation costs incurred by Recipient under this Contract as follows:
 - 5.1.1. **Basis.** Recipient will be reimbursed for 100% of telecommunication costs associated with the operation of state-owned navigational aids. Recipient will be paid for 75% of all other eligible maintenance and operation costs not reimbursed by any other source. Eligible maintenance and operations costs will be determined at the sole discretion of State's Authorized Representative.
 - 5.1.2. **Telecommunication Amount.** State has currently obligated \$0.00 in each State fiscal year to reimburse eligible telecommunication costs at 100%.
 - 5.1.3. **Maintenance and Operation Amount.** State has currently obligated \$51,075.00 in each State fiscal year to reimburse other eligible costs at 75%.
 - 5.1.4. **Total Obligation.** The total obligation of State for all compensation and reimbursements to Recipient under this contract will not exceed \$102,150.00 (State fiscal years 2022 and 2023).

5.2. Payment.

- 5.2.1. **Invoices.** The Recipient must submit a reimbursement request of its eligible costs to the Director of the Office of Aeronautics on a quarterly basis or as directed by State's Authorized Representative. The State's Office of Aeronautics will supply the reimbursement request forms which Recipient must submit. Reimbursement requests must be submitted according to the following schedule:
 - On or after October 1, **and no later than November 15**, for the period July 1 through September 30.
 - On or after January 1, **and no later than February 15**, for the period October 1 through December 31.
 - On or after April 1, **and no later than May 15**, for the period January 1 through March 31.
 - On or after July 1, **and no later than August 15**, for the period April 1 through June 30.

The State may reject costs that the State determines are not eligible maintenance and operations expenses.

- 5.2.2. **All Invoices Subject to Audit.** All invoices are subject to audit, at State's discretion.

5.2.3. **State's Payment Requirements.** State will promptly pay all valid obligations under this contract as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving Recipient's invoices and progress reports for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify Recipient within ten days of discovering the error. After State receives the corrected invoice, State will pay Recipient within 30 days of receipt of such invoice.

5.2.4. **Grant Monitoring Visit and Financial Reconciliation.** If State's total obligation is greater than \$50,000 in section 5.1.4, above, during the period of performance the State will make at least one monitoring visit and conduct annual financial reconciliations of Recipient's expenditures. The State's Authorized Representative will notify Recipient's Authorized Representative where and when any monitoring visit and financial reconciliation will take place, which State employees and/or contractors will participate, and which Recipient staff members should be present. Recipient will be provided notice prior to any monitoring visit or financial reconciliation. Following a monitoring visit or financial reconciliation, Recipient will take timely and appropriate action on all deficiencies identified by State. At least one monitoring visit and one financial reconciliation must be completed prior to final payment being made to Recipient.

5.2.5. **Closeout.** The State will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed. Monitoring of any capital assets acquired with grant funds will continue following grant closeout.

6. Conditions of Payment

6.1. All services provided by Recipient under this contract must be performed to State's satisfaction, as determined at the sole discretion of State's Authorized Representative and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations, including business registration requirements of the Office of the Secretary of State. Recipient will not receive payment for work found by State to be unsatisfactory or performed in violation of federal, state or local law. In addition to the foregoing, Recipient will not receive payment for Airport's failure to pass periodic inspections by a representative of the State's Office of Aeronautics.

7. Authorized Representatives

7.1. **State's Authorized Representative.** State's Authorized Representative will be:

Name/Title: Jenny Bahneman, Grants Specialist Coordinator
 Address: Office of Aeronautics,
 395 John Ireland Boulevard, Mail Stop 410
 Saint Paul, Minnesota 55155
 E-Mail: jenny.bahneman@state.mn.us

State's Authorized Representative or his /her successor, will monitor Recipient's performance and has the authority to accept or reject the services provided under this contract. If the Recipient's duties are performed in a satisfactory manner, the State's Authorized Representative will accept each reimbursement request submitted for payment.

7.2. **Recipient's Authorized Representative.** Recipient's Authorized Representative will be:

Name/Title: Steven J. Lang, City Engineer/Public Works Director
 Address: 500 - Fourth Avenue NE, Austin, MN 55912
 Telephone: (507) 437-9950
 E-Mail: slang@ci.austin.mn.us

If Recipient's Authorized Representative changes at any time during this contract, Recipient must immediately notify State.

8. Assignment, Amendments, Waiver and Contract Complete

- 8.1. **Assignment.** Recipient may neither assign nor transfer any rights or obligations under this contract without the prior consent of State and a fully executed Assignment Contract, executed and approved by the same parties who executed and approved this contract, or their successors in office.
- 8.2. **Amendments.** An amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.
- 8.3. **Waiver.** If State fails to enforce any provision of this contract that failure does not waive the provision or State's right to subsequently enforce it.
- 8.4. **Contract Complete.** This contract contains all prior negotiations and agreements between State and Recipient. No other prior understanding regarding this contract, whether written or oral, may be used to bind either party.
- 8.5. **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.

9. Indemnification

- 9.1. In the performance of this contract by Recipient, or Recipient's agents or employees, and to the extent permitted by law, Recipient must indemnify, save and hold State, its agents, and employees harmless from any and all claims or causes of action, including reasonable attorney's fees incurred by State, to the extent caused by Recipient's: 1) intentional, willful or negligent acts or omissions; 2) breach of contract or warranty; or 3) breach of the applicable standard of care. The indemnification obligations of this section do not apply if the claim or cause of action is the result of State's sole negligence. This clause will not be construed to bar any legal remedies Recipient may have for State's failure to fulfill its obligation pursuant to this contract.

10. State Audits

- 10.1. Under Minnesota Statutes § 16B.98, Subd.8, the Recipient's books, records, documents, and accounting procedures and practices of Recipient, or other party relevant to this grant contract or transaction, are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this contract or receipt and approval of all final reports, whichever is later. Recipient will take timely and appropriate action on all deficiencies identified by an audit.

11. Government Data Practices

- 11.1. Recipient and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by State under this contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Recipient under this contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either Recipient or State. If Recipient receives a request to release the data referred to in this Clause, Recipient must immediately notify State and consult with State as to how Recipient should respond to the request. Recipient's response to the request must comply with applicable law.

12. Workers' Compensation

- 12.1. Recipient certifies that it is in compliance with Minnesota Statutes §176.181, subdivision 2, pertaining to workers' compensation insurance coverage. Recipient's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

13. Governing Law, Jurisdiction and Venue

- 13.1. Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings arising out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14. Data Disclosure

14.1. Under Minnesota Statutes §270C.65, and other applicable law, Recipient consents to disclosure of its social security number, federal employer tax identification number and Minnesota tax identification number, already provided to State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring Recipient to file state tax returns and pay delinquent state tax liabilities, if any, or pay other state liabilities.

15. Termination and Suspension

15.1. **Termination by the State.** The State may terminate this contract with or without cause, upon 30 days written notice to the Recipient. Upon termination, the Recipient will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

15.2. **Termination for Cause.** The State may immediately terminate this grant contract if the State finds that there has been a failure to comply with the provisions of this contract, that reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that Recipient has been convicted of a criminal offense relating to a state grant agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

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

15.4. **Suspension.** The State may immediately suspend this contract in the event of a total or partial government shutdown due to the failure to have an approved budget by the legal deadline. Work performed by the Recipient during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.

16. Discrimination Prohibited by Minnesota Statutes §181.59

16.1. Recipient will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

17. Limitation.

17.1. Under this contract, the State is only responsible for disbursing funds. Nothing in this contract will be construed to make the State a principal, co-principal, partner, or joint venturer with respect to the Project(s) covered herein. The State may provide technical advice and assistance as requested by the Recipient, however, the Recipient will remain responsible for providing direction to its contractors and consultants and for administering its contracts with such entities. The Recipient's consultants and contractors are not intended to be third party beneficiaries of this contract.

STATE ENCUMBRANCE VERIFICATION

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

Signed: _____

Date: _____

SWIFT Contract (SC) ID No. _____

Purchase Order (PO) ID No. _____

*PO staged and to be encumbered with future State fiscal year funds.

RECIPIENT

Recipient certifies that the appropriate person(s) have executed Contracts on behalf of Recipient as required by applicable articles, bylaws or resolutions.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

By: _____
(with delegated authority)

Title: _____

Date: _____

**MnDOT OFFICE OF FINANCIAL MANAGEMENT –
GRANT UNIT**

By: _____

Date: _____

MnDOT CONTRACT MANAGEMENT

By: _____

Date: _____

RESOLUTION NO.

APPROVING GRANT FUNDS FROM THE STATE OF MINNESOTA
FOR AIRPORT MAINTENANCE AND OPERATIONS

WHEREAS, the City of Austin annually receives a grant from MnDOT Aeronautics for operations and maintenance at the Austin Municipal Airport.

WHEREAS, the proposed grant for fiscal year 2022-2023 is in the amount of \$51,075.00,

NOW THEREFORE, BE IT RESOLVED, that the Austin City Council approves the agreement with the State of Minnesota and accepts the grant from the State of Minnesota for airport maintenance and operations.

Passed by a vote of yeas and nays this 1st day of November, 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: October 21, 2021
Subject: Hwy 105, 12th Street SW
 Turtle Creek to City Limits

MnDOT has developed plans and specifications for a project on Hwy 105 (12th Street SW) from the Turtle Creek Bridge south to the Iowa border. The City portion of work would consist of the segment of 12th Street SW from the Turtle Creek Bridge to 24th Avenue SW (City Limits). Work on this project will include a mill & overlay, pedestrian curb ramps and sidewalk replacement to comply with ADA requirements.

The City will have costs associated with the following project improvements:

- Pedestrian ramp improvements at Faith Free Church crossing
- Pedestrian flashing beacon and ped ramp improvements at 19th Avenue SW
- Sidewalk and ped ramp improvements adjacent to service road at 21st Avenue SW
- Manhole adjustment

The project has an estimated total construction cost of \$4M and the project is planned for 2022. MnDOT has developed construction costs associated with the project and identified local costs of **\$66,162.15**. The local project costs are proposed to be funded as follows:

• \$ 2,359.80	Assessment (Faith Free Church)
• \$25,000.00	Hormel Foundation Grant for 2022 (requested)
• \$32,358.71	Street Fund 49
• \$ 6,443.64	Austin Utilities
\$66,162.15	Total

Attached for your review is a breakdown of local project costs and a MnDOT cooperative construction agreement. I would recommend approval of the attached agreement with a local commitment of **\$66,162.15** toward the project. If you have any questions, please let me know.

12th Street SW

Turtle Creek to City Limits
Construction 2020

Legend

- Feature 1
- Untitled Path
- Untitled Polygon





Southgate Elementary School



Recommended Improvements

- A** Fill sidewalk gap along 16th Ave SW from 18th St SW to 16th St SW. (Alternatively, construct project F to provide the connection)
- B** Upgrade the crosswalk across 16th Ave SW to high visibility. Install a RRFB. Construct dual curb ramps on SE corner. Extend sidewalk and install curb ramp on the NE corner to assist in crossing 16th St.
- C** Fill sidewalk gap along 16th St SW from 16th Ave SW to 19th Ave SW.
- D** Potential drop and walk location.
- E** Construct path through open space that connects 18th Ave SW to 16th St SW. (Alternatively, construct project A to provide the connection)
- F** Restripe the driveway to encourage better circulation and increased drop-off capacity.
- G** Fill sidewalk gap along 14th St SW just south of 19th Ave SW.
- H** Upgrade the existing flashing beacon to a user-activated Rectangular Rapid Flash Beacon (RRFB).
- I** Introduce a trail on the east side of the school grounds to connect the sidewalk to the playground.
- J** Add a trail along the south side of the school grounds.
- K** Fill sidewalk gap.

ITEM NUMBER	S.P. 5007-34 WORK ITEM	UNIT	QUANTITY	UNIT PRICE	LOCAL COST	CITY (90.3%)	A.U. (9.7%)
2021501	MOBILIZATION	LUMP SUM	0.02	\$ 67,500.00	\$ 1,350.00	\$ 1,219.05	\$ 130.95
2031502	FIELD OFFICE TYPE D	EACH	0.02	\$ 5,000.00	\$ 100.00	\$ 90.30	\$ 9.70
2031502	FIELD LABORATORY TYPE D	EACH	0.02	\$ 5,000.00	\$ 100.00	\$ 90.30	\$ 9.70
2104502	REMOVE CURB AND GUTTER	LIN FT	65.00	\$ 5.00	\$ 325.00	\$ 325.00	
2104502	REMOVE CONCRETE WALK	SQ FT	545.00	\$ 1.35	\$ 735.75	\$ 735.75	
2104502	REMOVE AND REPLACE BITUMINOUS PAVEMENT	SQ FT	156.00	\$ 12.00	\$ 1,872.00	\$ 1,872.00	
2016507	EXCAVATION - COMMON	CU YD	38.00	\$ 12.00	\$ 456.00	\$ 456.00	
2211507	AGGREGATE BASE (CV) CLASS 5	CU YD	24.00	\$ 45.00	\$ 1,080.00	\$ 1,080.00	
2301602	DRILL AND GROUT REINFORCEMENT BAR (EPOXY COATED)	EACH	24.00	\$ 20.00	\$ 480.00	\$ 480.00	
2504602	ADJUST VAVE BOX - WATER	EACH	5.00	\$ 350.00	\$ 1,750.00		\$ 1,750.00
2506502	ADJUST FRAME AND RING CASTING	EACH	16.00	\$ 500.00	\$ 8,000.00	\$ 4,000.00	\$ 4,000.00
2521518	4" CONCRETE WALK	SQ FT	580.00	\$ 7.00	\$ 4,060.00	\$ 4,060.00	
2521618	CONCRETE WALK	SQ FT	253.00	\$ 14.00	\$ 3,542.00	\$ 3,542.00	
2531603	CONCRETE CURB AND GUTTER	LIN FT	65.00	\$ 45.00	\$ 2,925.00	\$ 2,925.00	
2531618	TRUNKATED DOMES	SQ FT	38.00	\$ 50.00	\$ 1,900.00	\$ 1,900.00	
2563601	TRAFFIC CONTROL	LUMP SUM	0.02	\$ 35,000.00	\$ 700.00	\$ 632.10	\$ 67.90
2565616	PEDESTRIAN CROSSWALK FLASHER SYSTEM	SYSTEM	1.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	
2572503	TEMPORARY FENCE	LIN FT	147.00	\$ 6.00	\$ 882.00	\$ 882.00	
2575618	SITE RESTORATION	SQ FT	446.00	\$ 2.25	\$ 1,003.50	\$ 1,003.50	
				CONSTRUCTION	\$ 61,261.25	\$ 55,293.00	\$ 5,968.25
				ENGINEERING (8%)	\$ 4,900.90	\$ 4,425.51	\$ 475.39
				100% LOCAL COST	\$ 66,162.15	\$ 59,718.51	\$ 6,443.64

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
AND
CITY OF AUSTIN
COOPERATIVE CONSTRUCTION
AGREEMENT**

State Project Number (S.P.):	<u>5007-34</u>	Estimated Amount Receivable
Trunk Highway Number (T.H.):	<u>105=199</u>	<u>\$66,162.15</u>
Federal Project Number:	<u>STPF 5020(020)</u>	
PCFS System ID:	<u>4322722</u>	

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

Recitals

1. The State will perform bituminous mill and overlay, American with Disabilities Act (ADA) improvements, and Pedestrian Crosswalk Flasher System (PCFS) construction and other associated construction upon, along, and adjacent to Trunk Highway No. 105 from 75 feet south of Turtle Creek to the State of Minnesota and State of Iowa Border according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 5007-34 (T.H. 105=199) ("Project"); and
2. The City has requested the State include in its Project utility adjustments, sidewalk, and Pedestrian Crosswalk Flasher System construction; and
3. The City will participate in the costs of the utility adjustments, sidewalk, and Pedestrian Crosswalk Flasher System construction and associated construction engineering; and
4. Minnesota Statutes § 161.45, subdivision 2, allows for City-owned utility relocation to be included in a State construction contract, and payment by the City for such relocation according to applicable statutes and rules for utilities on trunk highways; and
5. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining, and improving the trunk highway system.

Agreement

1. Term of Agreement; Survival of Terms; Plans; Incorporation of Exhibits

- 1.1. **Effective Date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration Date.** This Agreement will expire when all obligations have been satisfactorily fulfilled.
- 1.3. **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 3. Maintenance by the City; 4. Pedestrian Crosswalk Flasher System Power, Ownership, Operation, Maintenance and Compliance; 9. Liability; Worker Compensation Claims; 12. State Audits; 13. Government Data Practices; 14. Governing Law; Jurisdiction;

Venue; and 16. Force Majeure.

- 1.4. **Plans, Specifications, and Special Provisions.** Plans, specifications, and special provisions designated by the State as State Project No. 5007-34 (T.H. 105=199) are on file in the office of the Commissioner of Transportation at St. Paul, Minnesota, and incorporated into this Agreement by reference ("Project Plans").
- 1.5. **Exhibits.** Preliminary Schedule "I" is on file in the office of the Director of Public Works/City Engineer and attached and incorporated into this Agreement.

2. Construction by the State

- 2.1. **Contract Award.** The State will advertise for bids and award a construction contract to the lowest responsible bidder according to the Project Plans.
- 2.2. **Direction, Supervision, and Inspection of Construction.**
 - A. **Supervision and Inspection by the State.** The State will direct and supervise all construction activities performed under the construction contract and perform all construction engineering and inspection functions in connection with the contract construction. All contract construction will be performed according to the Project Plans.
 - B. **Inspection by the City.** The City participation construction covered under this Agreement will be open to inspection by the City. If the City believes the City participation construction covered under this Agreement has not been properly performed or that the construction is defective, the City will inform the State District Engineer's authorized representative in writing of those defects. Any recommendations made by the City are not binding on the State. The State will have the exclusive right to determine whether the State's contractor has satisfactorily performed the City participation construction covered under this Agreement.
- 2.3. **Plan Changes, Additional Construction, Etc.**
 - A. The State will make changes in the Project Plans and contract construction, which may include the City participation construction covered under this Agreement and will enter into any necessary addenda and change orders with the State's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner. The State District Engineer's authorized representative will inform the appropriate City official of any proposed addenda and change orders to the construction contract that will affect the City participation construction covered under this Agreement.
 - B. The City may request additional work or changes to the work in the plans as part of the construction contract. Such request will be made by an exchange of letter(s) with the State. If the State determines that the requested additional work or plan changes are necessary or desirable and can be accommodated without undue disruption to the project, the State will cause the additional work or plan changes to be made.
- 2.4. **Satisfactory Completion of Contract.** The State will perform all other acts and functions necessary to cause the construction contract to be completed in a satisfactory manner.
- 2.5. **Permits.** The City will submit to the State's Utility Engineer an original permit application for all utilities owned by the City to be constructed hereunder that are upon and within the Trunk Highway Right-of-Way. Applications for permits will be made on State form "Application For Utility Permit On Trunk Highway Right-of-Way" (Form 2525).

2.6. *Replacement of Castings.* Adjustments to certain City-owned facilities, including but not limited to, valve boxes and frame and ring castings, may be performed by the State's contractor under the construction contract. The City will furnish the contractor with new units and/or parts for those in place City-owned facilities when replacements are required and not covered by a contract pay item, without cost or expense to the State or the contractor, except for replacement of units and/or parts broken or damaged by the contractor.

3. Maintenance by the City

Upon completion of the Project, the City will provide the following without cost or expense to the State:

3.1. *Storm Sewers.* Routine maintenance of any storm sewer facilities construction. Routine maintenance includes, but is not limited to, removal of sediment, debris, vegetation and ice from grates and catch basins, and any other maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, or sedimentation, this also includes informing the District Maintenance Engineer of any needed repairs.

3.2. *Municipal Utilities.* Maintenance of any municipal-owned utilities construction, without cost or expense to the State.

3.3. *Sidewalks.* Maintenance of any sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps. Maintenance includes, but is not limited to, snow, ice, and debris removal, patching, crack repair, panel replacement, cross street pedestrian crosswalk markings, vegetation control of boulevards (if any) and any other maintenance activities necessary to perpetuate the sidewalks in a safe, useable, and aesthetically acceptable condition.

3.4. *Additional Drainage.* No party to this Agreement will drain any additional drainage volume into the storm sewer facilities constructed under the construction contract that was not included in the drainage for which the storm sewer facilities were designed, without first obtaining written permission to do so from the other party.

4. Pedestrian Crosswalk Flasher System Power, Ownership, Operation, Maintenance and Compliance

Power, ownership, operation, maintenance, and compliance responsibilities will be as follows for the new PCFS on T.H. 105 at 19th Avenue:

4.1. *Power.* The City will be responsible for the hook-up cost and application to secure an adequate power supply to the service pad or pole and will pay all monthly service expenses necessary to operate the PCFS.

4.2. *Ownership, Operation, and Maintenance.* Upon completion of this Project, the City will own the PCFS. The City will operate and maintain the PCFS, perform all Gopher State One Call locating, and be responsible for future system replacement, all at the City's cost and expense. The maintenance includes, but is not limited to, snow, ice and debris removal of the pedestrian landings and ramps, associated signing, crosswalk pavement markings, and lighting without cost or expense to the State. The City will perform all system maintenance in a timely manner.

4.3. *Compliance.* The City will also be responsible for replacement or upgrades to meet compliance of current and future ADA requirements without cost or expense to the State. If the City fails to comply with the maintenance terms or ADA requirements, or if a safety issue develops, the State may require the City to remove the PCFS or the State may remove it at the City's cost.

4.4. Right-of-Way Access. The City will submit to the State form "Application for Miscellaneous Work on Trunk Highway Right-of-Way" (Form No. 1723) in order to perform T.H. 105 pedestrian crosswalk marking maintenance as described in Article 4.2.

5. Basis of City Cost

5.1. Schedule "I". The Preliminary Schedule "I" includes all anticipated City participation construction item and the construction engineering cost share covered under this Agreement and is based on engineer's estimated unit prices.

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

A. 100 Percent will be the City's rate of cost participation in all of the utility adjustments, sidewalk, and PCFS construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 2 of the Preliminary Schedule "I".

5.3. Construction Engineering Costs. The City will pay a construction engineering charge equal to 8 percent of the total City participation construction covered under this Agreement.

5.4. Plan Changes, Additional Construction, Etc. The City will share in the costs of construction contract addenda and change orders that are necessary to complete the City participation construction covered under this Agreement, including any City requested additional work and plan changes.

The State reserves the right to invoice the City for the cost of any additional City requested work and plan changes, construction contract addenda, change orders, and associated construction engineering before the completion of the contract construction.

5.5. Liquidated Damages. All liquidated damages assessed the State's contractor in connection with the construction contract will result in a credit shared by each party in the same proportion as their total construction cost share covered under this Agreement is to the total contract construction cost before any deduction for liquidated damages.

6. City Cost and Payment by the City

6.1. City Cost. \$66,162.15 is the City's estimated share of the costs of the contract construction and the 8 percent construction engineering cost share as shown in the Preliminary Schedule "I". The Preliminary Schedule "I" was prepared using estimated quantities and unit prices and may include any credits or lump sum costs. Upon award of the construction contract, the State will prepare a Revised Schedule "I" based on construction contract unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement.

6.2. Conditions of Payment. The City will pay the State the City's total estimated construction and construction engineering cost share, as shown in the Revised Schedule "I", after the following conditions have been met:

- A.** Execution of this Agreement and transmittal to the City, including a copy of the Revised Schedule "I".
- B.** The City's receipt of a written request from the State for the advancement of funds.

6.3. Acceptance of the City's Cost and Completed Construction. The computation by the State of the amount due from the City will be final, binding, and conclusive. Acceptance by the State of the completed contract

construction will be final, binding, and conclusive upon the City as to the satisfactory completion of the contract construction.

6.4. *Final Payment by the City.* Upon completion of all contract construction and upon computation of the final amount due the State's contractor, the State will prepare a Final Schedule "I" and submit a copy to the City. The Final Schedule "I" will be based on final quantities and include all City participation construction items and the construction engineering cost share covered under this Agreement. If the final cost of the City participation construction exceeds the amount of funds advanced by the City, the City will pay the difference to the State without interest. If the final cost of the City participation construction is less than the amount of funds advanced by the City, the State will refund the difference to the City without interest.

The State and the City waive claims for any payments or refunds less than \$5.00 according to Minnesota Statutes § 15.415.

7. Authorized Representatives

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

7.1. The State's Authorized Representative will be:

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

7.2. The City's Authorized Representative will be:

Name, Title: Steven J. Lang, Director of Public Works/City Engineer (or successor)
Address: 500 4th Avenue NE, Austin, MN 55912
Telephone: (507) 437-9949
E-Mail: slang@ci.austin.mn.us

8. Assignment; Amendments; Waiver; Contract Complete

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

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

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

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

9. Liability; Worker Compensation Claims

9.1. Each party is responsible for its own acts, omissions, and the results thereof to the extent authorized by law and will not be responsible for the acts, omissions of others, and the results thereof. Minnesota

Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.

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

10. Nondiscrimination

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

11. Title VI/Non-discrimination Assurances

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

12. State Audits

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

13. Government Data Practices

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

14. Governing Law; Jurisdiction; Venue

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

15. Termination; Suspension

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

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

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

16. Force Majeure

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

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

CITY OF AUSTIN

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

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer)

Date: _____

Approved:

By: _____
(State Design Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

Date: _____

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

PRELIMINARY SCHEDULE "I"**Agreement No. 1035330****City of Austin**

S.P. 5007-34 (T.H. 105=199)

Preliminary: October 4, 2021

Fed. Proj. No. STPF 5020(020)

State Funds

Bituminous mill and overlay, ADA improvements, and Pedestrian Crosswalk Flasher System (PCFS) construction to start approximately Spring 2022 under

State Contract No. _____ with _____

located on Trunk Highway No. 105 from 75 feet south of Turtle Creek to the State of Minnesota and State of Iowa Border

CITY COST PARTICIPATION

PCFS Work Items From Sheet No. 2	61,261.25
Construction Engineering (8%)	4,900.90
(1) Total City Cost	\$66,162.15

(1) Amount of advance payment as described in Article 6 of the Agreement (estimated amount)

ITEM NUMBER	S.P. 5007-34 WORK ITEM	UNIT	QUANTITY	UNIT PRICE	COST (1)
2021501	MOBILIZATION	LUMP SUM	0.02	67,500.00	1,350.00
2031502	FIELD OFFICE TYPE D	EACH	0.02	5,000.00	100.00
2031502	FIELD LABORATORY TYPE D	EACH	0.02	5,000.00	100.00
2104502	REMOVE CURB AND GUTTER	LIN FT	65.00	5.00	325.00
2104502	REMOVE CONCRETE WALK	SQ FT	545.00	1.35	735.75
2104502	REMOVE AND REPLACE BITUMINOUS PAVEMENT	SQ FT	156.00	12.00	1,872.00
2106507	EXCAVATION - COMMON	CU YD	38.00	12.00	456.00
2211507	AGGREGATE BASE (CV) CLASS 5	CU YD	24.00	45.00	1,080.00
2301602	DRILL AND GROUT REINFORCEMENT BAR (EPOXY COATED)	EACH	24.00	20.00	480.00
2504602	ADJUST VALVE BOX-WATER	EACH	5.00	350.00	1,750.00
2506502	ADJUST FRAME AND RING CASTING	EACH	16.00	500.00	8,000.00
2521518	4" CONCRETE WALK	SQ FT	580.00	7.00	4,060.00
2521618	CONCRETE WALK	SQ FT	253.00	14.00	3,542.00
2531603	CONCRETE CURB AND GUTTER	LIN FT	65.00	45.00	2,925.00
2531618	TRUNCATED DOMES	SQ FT	38.00	50.00	1,900.00
2563601	TRAFFIC CONTROL	LUMP SUM	0.02	35,000.00	700.00
2565616	PEDESTRIAN CROSSWALK FLASHER SYSTEM	SYSTEM	1.00	30,000.00	30,000.00
2572503	TEMPORARY FENCE	LIN FT	147.00	6.00	882.00
2575618	SITE RESTORATION	SQ FT	446.00	2.25	1,003.50
				TOTAL	\$61,261.25
	(1) 100% CITY COST		\$61,261.25		

CITY OF AUSTIN

RESOLUTION

IT IS RESOLVED that the City of Austin enter into MnDOT Agreement No. 1035330 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the City to the State of the City's share of the costs of the utility adjustments, sidewalk, and Pedestrian Crosswalk Flasher System construction and other associated construction to be performed upon, along, and adjacent to Trunk Highway No. 105 from 75 feet south of Turtle Creek to the State of Minnesota and State of Iowa Border within the corporate City limits under State Project No. 5007-34 (T.H. 105=199).

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

CERTIFICATION

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

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

RESOLUTION NO.

**AUTHORIZING MNDOT AGREEMENT No. 1035330
HIGHWAY 105, 12TH STREET SW
CONSTRUCTION AGREEMENT**

IT IS RESOLVED, that the City of Austin enter into MnDOT agreement No. 1035330 with the State of Minnesota, Department of Transportation for the following purposes:

To provide payment by the City to the State of the City's share of State Highway 105/12th Street SW from Turtle Creek to the City limits including pedestrian ramp improvements at Faith Free Church; pedestrian flashing beacon and pedestrian ramp improvements at 19th Avenue SW; sidewalk and pedestrian ramp improvements adjacent to the service road at 21st Avenue SW; and manhole adjustments.

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

Passed by a vote of yeas and nays this 1st day of November, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

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



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

Memorandum

To: Mayor and Council
From: Steven J. Lang, P.E.
Date: October 28, 2021
Subject: 21st Avenue NE and 11th Street NE
Prescriptive Easements for Public Right-of-Way

Attached for your consideration is a resolution prepared by the City Attorney, which memorializes right-of-way segments of “11th Street NE Extension” and “21st Avenue NE Extension”. As noted in the resolution, the long-term use of the parcels as public right-of-way allows the city to meet certain statute requirements for designating these prescriptive easements. This document has been prepared as part of the right-of-way certification that is required for the Federal Street reconstruction project planned for 2022.

We would recommend that Council pass the attached resolution. If you have any questions, please contact me or the City Attorney. Thank you.

RESOLUTION NO. _____
RESOLUTION DECLARING AND DESIGNATING DESCRIPTIVE EASEMENTS FOR
PUBLIC ROADWAY PURPOSES OVER CERTAIN PROPERTIES NEAR
INTERSECTION OF 8th DRIVE NE and 21st AVENUE NE

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

Section 1. Background.

1.01 In the Southeast corner of what is now Todd Park, there are two parcels of land upon which there are presently or were previously public roadways. Said roadways are described more particularly below but are herein referred to as the “11th Street NE Extension” and the “21st Avenue NE Extension.” The purpose of this resolution is to document and record the public’s ownership of both such roadways and associated Rights-of-Way. The public interests in and to such roadways and associated Rights-of-Way is consistent with the actual use and occupation of the parcels described below and is not intended to encroach on any private properties.

1.02 The parcel herein referred to as the “11th Street NE Extension” is described as follows:

The easterly 33 feet of the following described parcel:

The following portion of the Southeast Quarter of the Southwest Quarter of Section 26, Township 103, Range 18, to-wit: Beginning at the Southeast corner of said quarter section, then North 370.5 feet along the East line of the said quarter section, thence North 84 ° 23' West to a point on the East line of the right of way of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 395.8 feet Northerly from the intersection of said line with the South line of said quarter section, thence Southerly 395.8 feet along the East line of said right of way to the South line of said quarter section, thence East 231.4 feet along said South line to the place of beginning; subject to the easement of any public highways on said premises; except the south 33 feet thereof.

Alternatively, the 11th Street Extension is described as a strip 33 feet in width along the east line of, and between the easterly extensions of the north line and south line of the following described parcel:

Beginning 166.9 feet west and 33 feet north of the Southeast corner of the Southwest Quarter of Section 26, Township 103 North, Range 18 West, Mower County, Minnesota, this point also being on the easterly right-of-way line of 8th Drive NE (C.S.A.H. 16), thence easterly on a line parallel with the south line of said Quarter a distance of 133.9 feet; thence northerly at a right angle a distance of 172.2 feet this point also being on the easterly right-of-way line of 8th Drive NE; thence southwesterly along this easterly right-of-way line of 8th Drive NE to the point of beginning.

1.03 The parcel herein referred to as the “21st Avenue NE Extension” is described as follows:

Beginning 166.9 feet west and 33 feet north of the Southeast corner of the Southwest Quarter of Section 26, Township 103 North, Range 18 West, Mower County, Minnesota, this point also being on the easterly right-of-way line of 8th Drive NE (C.S.A.H. 16), thence easterly on a line parallel with the south line of said Quarter a distance of 166.9 feet; thence southerly at a right angle along the east line of the Southwest Quarter of said

Section 26, a distance of 33 feet to the south line of the Southwest Quarter of said Section 26; thence westerly along the south line of the Southwest Quarter of said Section 26 to the easterly right-of-way line of 8th Drive NE (C.S.A.H. 16), thence Northeasterly along said east right-of-way line of 8th Drive NE (C.S.A.H. 16) to the point of beginning.

Alternatively, the 21st Avenue NE Extension is described as follows:

The South 33 feet of that portion of the Southwest Quarter of Section 26, Township 103 North, Range 18 West, Mower County, Minnesota lying between the east right-of-way line of 8th Drive NE (C.S.A.H. 16) on the east and the plat of Austin Industrial Park Northeast as said plat is recorded in the Mower County Recorder's Office.

Alternatively, the 21st Avenue NE Extension is described as follows:

That portion of the Southwest Quarter of Section 26, Township 103 North, Range 18 West lying South of a westerly extension of the North line of 21st Avenue as shown on the Plat of Austin Industrial Park Northeast as said plat is recorded in the Mower County Recorder's Office, and lying between the boundary of said Plat on the west and the east right-of-way line of 8th Drive NE on the west.

1.04 The City of Austin has maintained and continues to maintain a public road upon the 21st Avenue NE Extension, that together with its necessary accompanying shoulders and drainage systems has occupied and continues to occupy the parcel above described. Said public road has been open to the public and has been consistently used by the public for east-west travel from 8th Drive NE to and from Todd Park and the remainder of the properties located within the Austin Industrial Park Northeast as the same is platted and recorded in the Mower County Recorder's Office.

1.05 The public road described in 1.04 above has been in place, and constantly maintained since at least the 1920's without interruption and remains in place today. The following city and municipal utilities are installed beneath said public road: sanitary sewer, gas, and water.

1.06 The City of Austin has used and maintained this existing roadway as a public road for at least six continuous years as required by Minnesota Statute No. 160.05 and further, that this roadway has been used by the city for at least 15 years as required by Minnesota Statute No. 541.02. Finally, this public road has been established by Common Law Dedication.

1.07 The City of Austin having met the requirements of Minnesota Statutes 160.05 and 541.02, and having met the requirements for Common Law Dedication, now determines that it is in the public interest to document the existence of the roadway as above described.

1.08 The City of Austin has historically maintained a public road upon the 11th Street NE Extension, that together with its necessary accompanying shoulders and drainage systems has occupied and continues to occupy the parcel above described. Said public road was open to the public and was consistently used by the public for north-south travel from 21st Avenue NE to 8th Drive NE (C.S.A.H. 16) as additional ingress and egress to and from Todd Park and the properties located within the Austin Industrial Park Northeast as the same is platted and recorded in the Mower County Recorder's Office. Said historical public road is shown on the aerial photographs from 1938, 1968, and 1980, all attached hereto as **Exhibit A**.

1.09 The public road described in 1.08 above was in place, and constantly maintained since at least the 1920's without interruption, and was removed at some point between 1980 and 1987 (road is visible in

1980 aerial photograph and is long longer found in 1990 aerial photograph) to incorporate the former public road into the adjacent Todd Park. Aerial photographs are attached hereto as **Exhibit A**. The following city and municipal utilities are installed beneath said public road: gas main.

1.10 By Warranty Deed dated October 15, 1981, Marguerite M. Kuhn and John H. Kuhn, married to each other, transferred the following parcel to the City of Austin as part of the City of Austin's efforts to develop and establish what is now Todd Park:

Beginning 166.9 feet west and 33 feet north of the Southeast corner of the Southwest Quarter of Section 26, Township 103 North, Range 18 West, Mower County, Minnesota, this point also being on the easterly right-of-way line of 8th Drive NE (C.S.A.H. 16), thence easterly on a line parallel with the south line of said Quarter a distance of 133.9 feet thence northerly at a right angle a distance of 172.2 feet this point also being on the easterly right-of-way line of 8th Drive NE thence southwesterly along this easterly right-of-way line of 8th Drive NE to the point of beginning.

At the time of said transfer, Marguerite M. Kuhn and John H. Kuhn were fee title owners of the land from which both the 21st Avenue NE Extension and the 11th Street NE Extension were carved. This transfer was careful to accommodate the then already existing 21st Avenue NE and 11th Street NE Extension parcels then both occupied by the public roadways described above.

1.11 Shortly after the recording of the deed described in 1.10 above, the City of Austin removed the public roadway then existing on the 11th Street NE Extension to incorporate the 11th Street NE Extension into Todd Park as the same is used today. However, the public road right-of-way was never vacated and the City's established rights thereto remain.

1.12 The City of Austin used and maintained this historical roadway as a public road for at least six continuous years as required by Minnesota Statute No. 160.05 and further, that this historical roadway was used by the city for at least 15 years as required by Minnesota Statute No. 541.02. Finally, this historical public road was been established by Common Law Dedication.

1.13 The City of Austin having met the requirements of Minnesota Statutes 160.05 and 541.02, and having met the requirements for Common Law Dedication, now determines that it is in the public interest to document the existence of the roadway as above described and establishing the location of the ongoing public right-of-way upon the 11th Street NE Extension.

Section 2. Council Action. The City Council of the City of Austin, Minnesota declares that the properties described above as the 11th Street NE Extension and the 21st Avenue NE Extension, along with all Public Rights-Of-Way associated therewith are, have been, and continue to be designated as public roadway until lawfully vacated.

Passed by a vote of yeas and nays this _____ day of November, 2020

YEAS

NAYS

ATTEST:

City Recorder

APPROVED:

Mayor

EXHIBIT A
Aerial Photographs from 1938, 1968, 1980, and 1990

NORTH

1938

-22- 38

9-8





1968





MARKHURD

13400 68TH AVENUE NORTH • MINNEAPOLIS / MAPLE GROVE, MN 55369

900104

SCALE 1"=200'
DATE PHOTOGRAPHIC APRIL, 1990

CITY OF AUSTIN
SECTION 26
T103N, R18 W

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



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

Memorandum

To: Mayor and Council
From: Steven J. Lang, P.E.
Date: October 27, 2021
Subject: Airport Zoning Update

We have received a proposal from SEH to assist city staff with updates to the airport zoning. The Austin Municipal Airport zoning ordinance was adopted in 1977 for what was at the time a 4800 ft runway. In the mid-2000's the airport was expanded to 5800 ft with plans for future extension to 6500 ft. To-date the zoning ordinance has not been updated to meet current or future runway standards.

The project scope is detailed out to meet MnDOT FAA requirements for rezoning. Those details include:

- 1) Development or recall of the Joint Airport Zoning Board (JAZB)
- 2) Facilitate JZAB meetings, public hearings and open houses
- 3) Development of zoning maps
- 4) Development of zoning ordinance
- 5) Research of zoning conflict areas
- 6) Submittals to MnDOT

We have received notice from MnDOT that they have funding available for this project and they approve of the project scope. The SEH proposal to complete the project scope in the amount of \$48,700. The project would be funded using a 70% MnDOT State grant and 30% local costs. We would recommend extending a contract to SEH for this project, contingent upon acceptance of a MnDOT State grant. Please let me know if you have any questions.

Project Funding	\$48,700
MnDOT State Grant	\$34,090 (70%)
Local Airport Construction Fund	\$14,610 (30%)



Airport Zoning Enactment

Austin Municipal Airport
Austin, Minnesota

Draft Schedule

October 25, 2021
AUSTN

Tasks	2021			2022									
	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	
City Council Approve Contract													
MnDOT Grant Request													
Create or Recall JAZB													
Mail Invitations & Advert. (Juris. & Hearings)													
Prepare Draft Ordinance & Maps													
MnDOT Review of Ordinance													
Revisions to Ordinance (as needed)													
Submit to MnDOT for Commissioners Order													
JAZB Adopts Ordinance													
File Ordinance with County Recorder													
Meetings													
JAZB (2 In-Person; 2 Virtual)													
Public Hearings (2)													
Public Open House (2)													

ARCHITECT/ENGINEER AGREEMENT
Between

City of Austin, Minnesota

(OWNER)

and

Short Elliott Hendrickson Inc.

(CONSULTANT)

for

PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into this _____ day of _____, 2021, by and between the City of Austin, Minnesota, hereinafter referred to as the OWNER, and Short Elliott Hendrickson Inc.® (SEH), with a regular place of business at 3535 Vadnais Center Drive, St. Paul, Minnesota 55110, hereinafter referred to as the CONSULTANT.

WITNESSETH:

That the OWNER and CONSULTANT, for the consideration hereinafter named, agree as follows:

ARTICLE 1. GENERAL DESCRIPTION OF WORK TO BE DONE

The OWNER agrees to and hereby does retain and employ CONSULTANT and CONSULTANT agrees to perform Architectural, Engineering and/or other Professional Services for the project at the Austin Municipal Airport, entitled:

Airport Zoning Enactment,

hereinafter referred to as the Project.

The Project and those services to be performed hereunder are more particularly described in ATTACHMENT A, a part hereof, and may be financed in part by grant-in-aid programs of the Minnesota Department of Transportation (Mn/DOT), Office of Aeronautics, and/or the Federal Aviation Administration (FAA) as described in Article 14.

ARTICLE 2. PERIOD OF SERVICE

Compensation for CONSULTANT'S services as provided elsewhere in this Agreement has been agreed to in anticipation of an orderly and continuous progress of CONSULTANT'S services through completion. In this regard, if the services covered by this Agreement have not been completed within 12 months of the date hereof, through no fault of CONSULTANT, any lump sum or maximum payment amounts shall be equitably adjusted.

ARTICLE 3. COMPENSATION TO CONSULTANT

A. Compensation to CONSULTANT for services described in this Agreement shall be on a Lump Sum basis, Cost Reimbursement Plus Fixed Fee basis and/or an Hourly Rate basis, as designated in the box below, and in ATTACHMENT B and as hereinafter described.

1. A Lump Sum method of payment for CONSULTANT'S services shall typically apply to all or parts of a work scope where CONSULTANT'S tasks can be readily defined and/or where the level of effort required to accomplish such tasks can be estimated with a reasonable degree of accuracy. The OWNER shall make monthly payments to CONSULTANT within 30 calendar days of date of invoice based on an estimated percentage of completion of CONSULTANT'S services.

Reimbursement for Direct Expenses incurred in the performance of the work shall be included in the Lump Sum amount, unless otherwise set forth in ATTACHMENT B.

2. A Cost Reimbursement Plus Fixed Fee method of payment for CONSULTANT'S services shall typically apply to all or parts of work scope where CONSULTANT'S tasks cannot be readily defined and/or where the level of effort required to accomplish such tasks cannot be established with any reasonable degree of accuracy. Under a Cost Reimbursement Plus Fixed Fee method of payment, the CONSULTANT shall be paid for the actual costs of providing required services plus a fixed fee payment as defined in FAA Advisory Circular 150/5100-14E, dated September 30, 2014, and as further defined as follows:

- a. Direct Salary Costs incurred by CONSULTANT for employee's time directly chargeable to the Project, and in accordance with the CONSULTANT'S SALARY SCHEDULE included in ATTACHMENT B. Periodic revisions to the schedule may be made and any such revisions shall be submitted by CONSULTANT to the OWNER for approval.
- b. Overhead Costs including overhead on direct labor including, but not limited to, employment taxes, fringe benefits, holidays, vacation, and sick leave and all allowable general and administrative overhead costs. Overhead Costs shall be calculated as a percentage of Direct Salary Costs, with such percentage based on CONSULTANT'S audited records. The Overhead Rate to be applied to this Agreement and any special provisions relating thereto shall be set forth in ATTACHMENT B.
- c. Direct Non-Salary Expenses incurred by CONSULTANT for costs directly chargeable to the project, including but not limited to:
 - 1) Travel and subsistence.
 - 2) Computer services.

- 3) Outside professional and technical services.
- 4) Identifiable reproduction and reprographic charges.
- 5) Expendable field supplies and special field equipment rental.
- 6) Other acceptable costs for such additional items and services as may be required by the OWNER to fulfill the terms of this Agreement.

d. Fixed Fee. In addition to the above reimbursement of costs, CONSULTANT shall be paid a fixed fee in the amount set forth in Attachment B. It is agreed that the fixed fee will be subject to adjustment in case of a work scope change, abandonment of the work prior to completion, or deletion of specific tasks.

The OWNER shall make monthly payments to CONSULTANT within 30 calendar days of date of invoice based on computations made in accordance with the above charges for services provided and expenses incurred to date, including a proportionate amount of the fixed fee. Invoices shall be accompanied by supporting evidence as required.

3. If no Federal funds are involved in this Agreement, an Hourly Rate method of payment for CONSULTANT'S services may be utilized as an alternative to the Lump Sum or Cost Reimbursement Plus Fixed Fee methods. Under an Hourly Rate method of payment, CONSULTANT shall be paid for the actual hours worked on the Project by CONSULTANT'S technical personnel times an hourly billing rate established for each employee. Hourly billing rates shall include compensation for all salary costs, payroll burden, general and administrative overhead and professional fee. A rate schedule shall be furnished by CONSULTANT to OWNER upon request.

In addition to the foregoing, CONSULTANT shall be reimbursed at cost for the following Direct Expenses when incurred in the performance of the work:

- a. Travel and subsistence.
- b. Computer services.
- c. Owner approved outside professional and technical services.
- d. Identifiable reproduction and reprographic charges.
- e. Expendable field supplies and special field equipment rental.
- f. Other acceptable costs for such additional items and services as may be required by the Owner to fulfill the terms of this Agreement.

The OWNER shall make monthly payments to CONSULTANT within 30 calendar days of date of invoice based on computations made in accordance with the above charges for services provided and expenses incurred to date, accompanied by support evidence as required.

B. The OWNER, The Mn/DOT, Office of Aeronautics, the FAA, or their authorized representatives shall have access to CONSULTANT'S records for the purpose of accounting and audit. The CONSULTANT shall maintain all records relative to this Agreement for a period of not less than three years, subsequent to the OWNER'S final payment to CONSULTANT and until the project is financially closed-out by the FAA.

ARTICLE 4. EXTRA WORK AND SERVICES NOT INCLUDED IN THIS CONTRACT

If CONSULTANT is of the opinion that any services it has been directed to perform is beyond the Scope of this Agreement, or that the level of effort required significantly exceeds that estimated due to changed conditions and thereby constitutes extra work, it shall promptly notify the OWNER of that fact. Extra work, additional compensation for same, and extension of time for completion shall be covered by a Supplemental Agreement entered into by both parties and approved by Mn/DOT and FAA, prior to proceeding with any extra work or related expenditures.

ARTICLE 5. ABANDONMENT, CHANGE OF PLAN AND TERMINATION

Either Party has the right to terminate this Agreement upon seven calendar days' written notice. In addition, the OWNER may at any time, reduce the scope of this Agreement. Such reduction in scope shall be set forth in a written notice from the OWNER to CONSULTANT. In the event of unresolved dispute over change in scope or changed conditions, this Agreement may also be terminated, upon seven calendar days' written notice as provided above.

In the event of termination, all documents finished or unfinished, prepared by CONSULTANT under this Agreement shall be made available by CONSULTANT to the OWNER pursuant to Article 7, and there shall be no further obligation of the OWNER to CONSULTANT under this Agreement, except for payment of amounts due and owing for work performed and expenses incurred to the date and time of termination, computed in accordance with Article 3.

In the event of a reduction in scope of the Project work, CONSULTANT shall be paid for the work performed and expenses incurred on the project work thus reduced and for any completed and abandoned work for which payment has not been made, computed in accordance with Article 3.

ARTICLE 6. DISPUTE RESOLUTION

In the event of an irreconcilable dispute under this Agreement, which is not resolvable through informal means, the parties may, upon written agreement, submit to the resolution process set out in this provision. Once the parties have agreed to the resolution process, each party shall have seven (7) calendar days to designate one representative, who shall have authority to act on this Agreement. If either party fails within that time to inform the other party in writing of its designation, the other party is free to pursue all other legal and equitable remedies. Within ten (10) calendar days of designation of the representative, the representatives shall meet and shall entertain such presentation of testimony and other evidence as the CONSULTANT and the OWNER may wish to present with respect to the dispute. Within seven (7) calendar days after the close of such presentation, the representative shall resolve the dispute or either party is free to pursue all other legal and equitable remedies. When the representatives resolve the dispute, their decision shall be final and conclusive. Should the representatives be unable to agree on a resolution of the dispute, then the parties are free to pursue all other legal and equitable remedies. Each party's costs for the dispute resolution shall be borne by the respective party.

If the parties do not agree in writing to the resolution process set out above, either party is entitled to pursue any other legal or equitable remedies available.

ARTICLE 7. DISPOSITION OF PLANS, REPORTS, AND OTHER DATA

At the time of completion or termination of the work, CONSULTANT shall make available to the OWNER, all maps, tracings, reports, resource materials and other documents pertaining to the work or to the Project. All such documents are not intended or represented to be suitable for reuse by the OWNER or others on extension of the Project or any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT. In this regard, the OWNER will indemnify and hold harmless CONSULTANT from any and all suits or claims of third parties arising out of such reuse, which is not specifically verified, adapted or authorized by CONSULTANT.

ARTICLE 8. DOCUMENTS FORMING THE CONTRACT

The contract documents shall be deemed to include this Agreement with all accompanying attachments of part hereof.

ARTICLE 9. OWNER'S RESPONSIBILITY

- A. To permit CONSULTANT to perform the services required hereunder, the OWNER shall supply in proper time and sequence, the following at no expense to CONSULTANT.
 1. Provide all necessary information regarding its requirements as necessary for orderly progress of the work.
 2. Designate in writing, a person to act as OWNER'S representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive instructions, receive information, interpret, and define OWNER'S policies with respect to CONSULTANT'S services.
 3. Furnish, as required for performance of CONSULTANT'S services (except to the extent provided otherwise in ATTACHMENT A), data prepared by or services of others, including without limitation, core borings, probings and subsurface explorations, hydrographic and geohydrologic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data not covered in ATTACHMENT A.
 4. Provide access to, and make all provisions for CONSULTANT to enter upon publicly- and privately-owned property as required to perform the work.
 5. Act as liaison with other agencies to carry out necessary coordination and negotiations; furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
 6. Examine all reports, sketches, drawings, specifications and other documents prepared and presented by CONSULTANT, obtain advice of an attorney, insurance counselor or others as OWNER deems necessary for such examination and render in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.

7. Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT'S services or any defect in the work of Construction Contractor(s), Consultants or CONSULTANT.
8. Initiate action, where appropriate, to identify and investigate the nature and extent of asbestos and/or pollutant in the Project and to abate and/or remove the same as may be required by federal, state or local statute, ordinance, code, rule, or regulation now existing or hereinafter enacted or amended. For purposes of these General Provisions, "pollution" shall mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, alkalis, chemicals and hazardous or toxic waste. Hazardous or toxic waste means any substance, waste, pollutant or contaminant now or hereafter included within such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended.

If CONSULTANT encounters, or reasonably suspects that it has encountered, asbestos, or pollution, including soil contamination in the project area, CONSULTANT shall cease activity in said area and promptly notify the OWNER who shall proceed as set forth above. Unless otherwise specifically provided in ATTACHMENT A, the services to be provided by CONSULTANT do not include identification of asbestos or pollution, including soil contamination and CONSULTANT has no duty to identify or attempt to identify the same in the project area.

9. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or CONSULTANT may reasonably request with regard to legal issues pertaining to the Project and such auditing services as OWNER may require to ascertain how or for what purpose any Contractor has used the monies paid under the construction contract.
10. Provide such inspection services (except to the extent provided otherwise in ATTACHMENT A) as OWNER may require to ascertain that Contractor (s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
11. Provide "record" drawings and specifications for all existing physical plants or facilities which are pertinent to the Project.
12. Provide written notice to CONSULTANT when the project has been financially closed-out by FAA.
13. Provide other services, materials, or data as may be set forth in ATTACHMENT A.

B. CONSULTANT shall be entitled to rely on the accuracy and completeness of information or services furnished by the OWNER. If CONSULTANT finds that any information or services furnished by the OWNER is in error or is inadequate for its purpose, CONSULTANT shall promptly notify the OWNER.

ARTICLE 10. OPINIONS OF COST

Opinions of probable project cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs provided for in ATTACHMENT A, a part hereof, are to be made on the basis of CONSULTANT'S experience and qualifications and represent CONSULTANT'S best judgement as an experienced and qualified design professional. It is recognized, however, that CONSULTANT does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractor's methods of determining their prices, and that any evaluation of any facility to be constructed or reacquired, or work to be performed on the basis of CONSULTANT'S cost opinions, must of necessity, be speculative until completion of construction or acquisition. Accordingly, CONSULTANT cannot and does not guarantee that proposals, bids, or actual costs will not substantially vary from opinions, evaluations or studies submitted by CONSULTANT to OWNER hereunder.

ARTICLE 11. CONSTRUCTION PHASE SERVICES

OWNER acknowledges that it is customary for the architect or engineer who is responsible for the preparation and furnishing of Drawings and Specifications and other construction-related documents to be employed to provide professional services during the Bidding and Construction Phases of the Project, (1) to interpret and clarify the documentation so furnished and to modify the same as circumstances revealed during bidding and construction may dictate, (2) in connection with acceptance of substitute or equal items of materials and equipment proposed by bidders and contractor(s), (3) in connection with approval of shop drawings and same submittals, and (4) as a result of and in response to CONSULTANT'S detecting in advance of performance of affected work inconsistencies or irregularities in such documentation. OWNER agrees that if CONSULTANT is not employed to provide such professional services during the Bidding (if the work is put out for bids) and the Construction Phases of the Project, CONSULTANT will not be responsible for, and OWNER shall indemnify and hold CONSULTANT (and CONSULTANT'S professional associates and consultants) harmless from, all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by OWNER or others. Nothing contained in this paragraph shall be construed to release CONSULTANT (or CONSULTANT'S professional associates or consultants) from liability for failure to perform in accordance with professional standards any duty or responsibility which CONSULTANT has undertaken or assumed under this Agreement.

ARTICLE 12. INSURANCE

CONSULTANT shall procure and maintain insurance for protection from claims against it under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims for damages against it because of injury to or destruction of property including loss of use resulting therefrom.

Also, CONSULTANT shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by any negligent act, error, or omission for which CONSULTANT is legally liable. However, CONSULTANT hereby states and the OWNER acknowledges, that CONSULTANT has no professional liability (errors and omissions) or other insurance, and is unable to reasonably obtain such insurance, for claims arising out of the performance or failure to perform professional services, including but not limited to the preparation of reports, designs, drawings and specifications, related to the investigation, detection, abatement, replacement, modification, removal or disposal of (1) pollutants or of (2) products, materials or

processes containing asbestos. Pollutants herein under (1) above meaning any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, alkalis, chemicals and hazardous or toxic waste. Accordingly, the OWNER hereby agrees to bring no claim for non-negligent services, breach of contract, or other cause of action against CONSULTANT, its principals, employees, agents and consultants if such claim in any way arises out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants, or the investigation of or remedial work related to such pollutants or asbestos in the project. Certificates of insurance will be provided to the OWNER upon request.

ARTICLE 13. INDEPENDENT CONTRACTOR

The CONSULTANT in performance of work hereunder operates as an independent contractor and covenants and agrees that it will conduct itself consistent with such status, that is will neither hold itself out as nor claim to be an officer or employee of the OWNER by reason hereof, and that it will not by reason hereby, make any claim, demand or shall it apply for any right or privilege applicable to an officer or employee of the OWNER, including, but not limited to, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

ARTICLE 14. FEDERAL AND STATE PARTICIPATION

Work performed under this Agreement may be financed in part by State and Federal funds. However, payments to CONSULTANT will be made by the OWNER.

The State of Minnesota and the United States are not parties to this Contract and no reference herein to the Mn/DOT, Office of Aeronautics, and to the FAA or any representatives thereof makes the State of Minnesota or the United States a party to the Contract.

ARTICLE 15. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that no person or legal entity has been employed or retained to solicit or secure this contract upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona-fide employees or bona-fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the OWNER shall have the right to annul this Agreement without liability or in its discretion to deduct from payment to CONSULTANT the full amount of each commission, percentages, brokerage, or contingent fee.

ARTICLE 16. FEDERAL CONTRACT CLAUSES

If this Agreement is to be financed in part by Federal funds, certain federally-required, contract clauses must be incorporated. These federally-required, contract clauses, included as ATTACHMENT C, are hereby incorporated herein and made a part of this Agreement. The ATTACHMENT C incorporated is for Non-Construction Contract of (check as appropriate):

- \$10,000 or less
- \$10,001 to \$25,000
- \$25,001 to \$100,000 or
- \$100,001 and over

The term "contractor" as used in said ATTACHMENT is understood to mean CONSULTANT.

ARTICLE 17. ASSIGNMENT

This Agreement, being intended to secure the personal service of the individuals employed by and through whom CONSULTANT performs work hereunder, shall not be assigned, sublet or transferred without written consent of the OWNER.

ARTICLE 18. NOTICES

All notices required by law or by this Agreement to be given to the CONSULTANT must be written and may be given personally or by depositing the same in the United States mail, postage prepaid, and addressed to CONSULTANT at such premises and at the following address:

Short Elliott Hendrickson Inc.
3535 Vadnais Center Drive
St. Paul, Minnesota 55110

All notices required or permitted to be given to the OWNER hereunder shall be given by United States mail, postage prepaid, and addressed to:

City of Austin
c/o Steven Lang, City Engineer/Dir. of Public Works
500 Fourth Avenue N.E.
Austin, MN 55912-3773

Notice shall be deemed given as of the date said notice is deposited in the mail or personally delivered.

The parties must notify each other promptly in the event of a change in name or address.

ARTICLE 19. CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Minnesota.

ARTICLE 20. SPECIAL CONDITIONS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

City of Austin, MN	Short Elliott Hendrickson Inc.
OWNER	CONSULTANT
By _____	By _____
Attest _____	

Attachments: A, B

Attachment A
Scope of Work
Airport Zoning Enactment
Austin Municipal Airport
Austin, Minnesota
October 25, 2021

General – The Austin Municipal Airport (AUM) is a public use, publicly owned airport in the City of Austin, Minnesota. The Airport currently has one paved runway, Runway 17/35, which is 5,800 feet long and 100 feet wide.

The Airport currently has zoning in place (adopted November 1977) for Runway 17/35 for a total length of 4,800 feet. In 2006, Runway 17/35 was extended 1,000 feet south for a total length of 5,800 feet. Additionally, the 2011 conditionally approved Airport Layout Plan (ALP) shows an ultimate 700-foot extension to a total length of 6,500 feet. The Airport Sponsor desires to update its Airport Zoning Ordinance to reflect the planned ultimate condition as shown on the approved 2011 ALP to stay in compliance with Minnesota State Statutes set forth in Chapter 360 Section 260.061 to 360.074 and remain eligible for State funding.

Project Deliverables – SEH's project deliverables for this scope include:

1. An updated Airport Zoning Ordinance and associated maps to reflect the Airport's ultimate runway condition and the current rules of MnDOT Office of Aeronautics.

This work scope includes:

Study Element 1: Project Initiation, Coordination, and Administration

Task 1.1 – Project Scoping and Contract Development – Short Elliott Hendrickson (SEH and/or Consultant) will coordinate with the City of Austin to develop the appropriate work scope, define tasks, lines of communication and establish project goals, objectives, or areas of interest. Project fees will be prepared using the final Scope of Work. An agreement will be developed from the Final Scope of Work and approved fees. The scope and fee will be provided to MnDOT for review and approval prior to a contract being executed.

Task 1.2 – Project Coordination - SEH will maintain contact with the City, Joint Airport Zoning Board (JAZB), and MnDOT through e-mail, regular mail, phone, and deliverables. The City, JAZB, and MnDOT will have the opportunity to review and comment on the project deliverables. This task includes time to coordinate and build consensus with these groups and time to make revisions per their recommendations. *No meetings are included in this task.*

Task 1.3 – Project Administration – SEH will provide project administration and management services as required to complete the project within the conditions of this agreement. Administration and management duties include preparation of a budget and schedule, holding internal project meetings to monitor progress, and preparing monthly invoices.

Task 1.4 – Quality Assurance and Control – SEH will implement and carry-out internal quality control for the project. Independent peer review will be conducted at each phase of the project to check content and product quality. Throughout the project, SEH will be responsible for draft and final proof-reading, final word processing, editing, graphics, reports, and other products included in this Scope of Work.

Deliverables: Project scope, fee, and agreement.

Study Element 2: Airport Zoning Procedural Steps and Documents

The Zoning Procedural Steps, Maps, and Ordinance will comply with Minnesota State Statutes set forth in Chapter 360 Section 260.061 to 360.074, and Minnesota Rules Chapter 8800.2400. The deliverable for this element is stated at the end of this section:

Task 2.1 – Creation or Recall of Joint Airport Zoning Board (JAZB) - *The City will be responsible for either Recalling JAZB and/or Creating the JAZB.*

Task 2.2 – Prepare Jurisdiction Invitations - SEH will assist the City with identifying jurisdictions within Part 77 Height Zoning and Zones A, B, and C, and will prepare a jurisdiction invitation letter to join the JAZB. An electronic copy of the invitation letter will be provided to the City. *The City will be responsible for distributing and mailing the invitation letters.*

Task 2.3 – Meeting Attendance –

Tasks 2.3.1 - JAZB Meetings - SEH will attend up to two (2) in-person meetings and two (2) virtual with the JAZB (1 Kick-Off Meeting & 3 Progress Meetings). SEH will prepare and distribute presentation/meeting materials for each JAZB Meeting. *The City is responsible for providing facilities for the in-person JAZB meetings*

Tasks 2.3.2 – Public Hearings - SEH will attend and assist the City in conducting up to two (2) public hearings. SEH will prepare presentation boards and/or PowerPoint presentation that displays proposed zoning information. *The City is responsible for providing facilities for the Public Hearings, and meeting minutes/transcriptions/records, including records of comments received.*

Tasks 2.3.3 – Open Houses - SEH will prepare and lead up to two (2) open houses. The open houses will include large-format presentation boards that display proposed zoning information, and staff will be available to answer questions one-on-one. A short presentation followed by Q&A session may be given by project staff during the open house. Comment cards will be made available to receive written feedback on the proposed zoning ordinance. Attendees will be asked to sign in. It is expected that the open houses be held on a day concurrent with Public Hearings. *The City is responsible for providing facilities for the Public Open Houses.*

Task 2.4 – Develop “Draft” Airport Zoning Maps - SEH will develop draft Airport Zoning Maps that reflect the existing and ultimate proposed condition of Runway 17/35, and conforms to Minnesota Rules Chapter 8800.2400. It is expected that the Zoning Maps will include: Title Sheet, Airport Airspace Height Zoning Sheet, Airport Land Use and Safety Zoning Sheet, Runway 17 Safety Zone Sheet, and Runway 35 Safety Zone Sheet.

Task 2.5 – Develop “Draft” Airport Zoning Ordinance - SEH will develop a draft Airport Zoning Ordinance that will amend and replace the 1977 Austin Municipal Airport Zoning Ordinance and conforms to Minnesota Rules Chapter 8800.2400.

Task 2.6 – Research property owners’ names, addresses in proposed Safety Zones A & B - SEH will provide the parcel ID numbers for parcels within Safety Zones A & B for the proposed zoning ordinance. *The City will be responsible for identifying names and mailing addresses for parcel owners impacted.*

Task 2.7 – Research existing variances, nonconforming uses, and/or “Established Residential Neighborhood” residences in the proposed Safety Zones – SEH will identify existing parcel ID numbers with variances, nonconforming uses, and/or “Established Residential Neighborhood” residences within Safety Zones A & B for the proposed zoning ordinance. *The City will be responsible for identifying contact names and mailing addresses for parcel owners impacted.*

Task 2.8 – Legal Review of Draft Ordinance and Maps - *The City will be responsible for legal review of the Draft Ordinance and Maps.*

Task 2.9 – Publish and Mail Hearing Notice and Hearing Costs - *The City will be responsible for publishing notices of each Public Hearings in at least three (3) newspapers. For each Public Hearing, the City will also be responsible for mailing out notices to any property owners within Safety Zones A and B, “Established Residential Neighborhood”*

Residents, and to the governing body of each political subdivision whose territory is affected by the area to be zoned.

Task 2.10 – File Ordinance with the County Recorder - *The City will be responsible for this task, fees, and will file the adopted ordinance with the County Recorder.*

Task 2.11 – Submittals to MnDOT – SEH will submit the “Draft” Airport Zoning Maps and Ordinance for MnDOT Aeronautics’ for first review and comment. SEH will submit required Forms No. 1-9 and Exhibits A-E completed as part of the Airport Zoning Ordinance Process to MnDOT Aeronautics. SEH will submit the “Final Draft” of Airport Zoning Maps and Ordinance to MnDOT Aeronautics for Commissioner’s Order of Approval. SEH will submit the Recorded Ordinance to MnDOT Aeronautics.

Deliverables: “Draft” Airport Zoning Maps and Ordinance; “Final” Airport Zoning Maps and Ordinance

Attachment B
Estimated Fee and Expenses
Airport Zoning Enactment
Austin Municipal Airport
Austin, Minnesota

Task No.	Task Description	Principal	Sr. Planner / Project Manager	Graduate Planner	Senior CAD Technician	Admin Technician
Study Element 1: Project Initiation, Coordination, and Administration						
1.1	Project Scoping and Contract Development	2	8			
1.2	Project Coordination	2	16	4		
1.3	Project Administration	2	12	8		
1.4	Quality Assurance and Control	2	20	8		
Study Element 2: Airport Zoning Procedural Steps and Documents						
2.1	Creation or Recall of Joint Airport Zoning Board (JAZB)			<i>City is responsible for this task</i>		
2.2	Prepare Jurisdiction Invitations		2	2		2
2.3	Meeting Attendance					
2.3.1	JAZB Meetings (2 In-Person; 2 Virtual)	8	36	12		
2.3.2	Public Hearings (2)		32	20		
2.3.3	Open Houses (2)	2	8	4		
2.4	Develop "Draft" Airport Zoning Maps		8	32	4	
2.5	Develop "Draft" Airport Zoning Ordinance		4	16		2
2.6	Research property owners names in proposed Safety Zones A & B		4	4		2
2.7	Research existing variance, nonconforming uses, &/or ERN Residences		2	4		2
2.8	Legal Review of Draft Ordinance and Maps			<i>City is responsible for this task</i>		
2.9	Publish and Mail Hearing Notice and Hearing Costs			<i>City is responsible for this task</i>		
2.10	File Ordinance with the County Recorder			<i>City is responsible for this task</i>		
2.11	Submittals to MnDOT		2	6		4
Total hours per labor category		18	154	120	4	12

ESTIMATE OF LABOR COSTS:

Labor Category	Hours	Rate	Extension
Principal	18	\$75.83	\$1,364.94
Sr. Planner / Project Manager	154	\$48.71	\$7,501.34
Graduate Planner	120	\$39.38	\$4,725.60
Senior CAD Technician	4	\$42.39	\$169.56
Admin Technician	12	\$31.06	\$372.72
Total Direct Labor Costs:	308		\$14,134.16
Labor and Administrative Overhead:			\$24,310.76
Total Labor Costs			\$38,444.92

Fee (15%) on Total Labor Costs: \$5,766.74

ESTIMATE OF EXPENSES:

Direct Expenses	Quantity	Rate	Extension
Equipment usage	308	\$3.00	\$924.00
Travel Expenses (4 In-Person Meetings)	4	\$550.00	\$2,200.00
Mileage (4 Meetings)	1,060	\$0.56	\$593.60
Meeting Materials	LS	\$250.00	\$250.00
Reproductions	LS	\$500.00	\$500.00
Total Expenses			\$4,467.60

SUMMARY:

Total Labor Costs + Expenses + Fee	\$48,679.26
Estimated Total	\$48,700.00

RESOLUTION NO.

APPROVING A CONTRACT FOR AIRPORT ZONING
UPDATES AT THE AUSTIN MUNICIPAL AIRPORT

WHEREAS, the City of Austin would like to update the zoning at the Austin Municipal Airport to allow for a runway expansion; and

WHEREAS, the project would need to meet MnDOT FAA requirements for rezoning; and

WHEREAS, SEH, Inc. has provided an estimated project cost of \$48,700 for the rezoning; and

WHEREAS, the project would be funded using a 70% MnDOT State Grant and the remaining 30% with the local airport construction fund; and

WHEREAS, the Engineering Department recommends approving the contract with SEH, Inc..

NOW THEREFORE, BE IT RESOLVED, that the Austin City Council approves the contract with SEH, Inc. for an airport zoning update, contingent upon the acceptance of a MnDOT State grant.

Passed by a vote of yeas and nays this 1st day of November, 2021.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
Craig Clark,
City Administrator



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

TO: Honorable Mayor and City Council Members
FROM: Craig D. Clark, Administrator
RE: Modified Grant Agreement for Public Television Station operated by KSMQ

Due to several factors KSMQ has requested modification to two provisions of the grant agreement with the State of Minnesota related to the bond proceeds of \$2.5 million. Included in the packet is Exhibit 1 which outlines the adjustment of the completion date from February 28, 2022 to December 31, 2022 as well as an increase in the total project costs. The cost increase of \$399,000 will be borne exclusively by KSMQ.

DEED is circulating this document for their approval.

Please let me know if you have any questions.

**Council action is requested to approve these modifications and authorize the Mayor to sign
Recorder to attest the modified grant agreement.**

Contract Start Date:	July 11, 2019	Total Contract Amount:	\$ 2,500,000.00
Original Contract Expiration Date:	Feb 28, 2022	Original Contract:	\$ 2,500,000.00
Current Contract Expiration Date:	Feb 28, 2022	Previous Amendment(s) Total:	\$ 0.00
Requested Contract Expiration Date:	Dec 31, 2022	This Amendment:	\$ 0.00

This amendment is by and between the State of Minnesota, through its Commissioner of the Minnesota Department of Employee and Economic Development ("State") and the City of Austin, 500 4th Avenue NE, Austin, MN 55912 ("Grantee").

Recitals

1. Under the provisions contained in Minnesota Session Laws 2018, Chapter 214, Article 1, Section 21, Subdivision 5, the State has a contract with the Grantee identified as SPAP-18-0009-P-FY20, "dated May 20,2020" ("Original Contract") to be used as a matching grant to assist in completing the Austin Public Television Station facility.
2. The Grant Completion Date is being amended to extend the term of the projected grant completion date from February 28, 2022 to December 31, 2022.
3. The Approved Grant Budget is being amended to reflect an increase in construction project costs. Those additional funds are proposed to be solely born by the City of Austin and are limited to the construction line item of the project budget. By this change the total project cost increases by an additional \$399,000.00 as expressed by the below REVISION 2. ATTACHMENT III "SOURCE AND USE OF FUNDS FOR THE PROJECT".
4. The State and the Grantee are willing to amend the Original Contract as stated below.

Contract Amendment

REVISION 1. Article 1, Section 1.01 "Completion Date" is amended as follows:

Article 1, Section 1.01 "Completion Date:" – means ~~February, 28 2022~~ December 31, 2022, the date of projected completion of the project.

REVISION 2. Attachment III "SOURCE AND USE OF FUNDS FOR THE PROJECT" is amended as follows:

Funded Activities	Grant Revision I (Current)	Match Revision I (Current)	Grant Revision II (Proposed)	Match Revision II (Proposed)
Site Acquisition	\$ 0.00	\$ 460,856.20	\$ 0.00	\$ 460,856.20
Predesign/Design Costs	\$ 225,621.66	\$ 296,726.34	\$ 225,621.66	\$ 296,726.34
Construction Costs	\$ 2,069,421.39	\$ 1,787,578.61	\$ 2,069,421.39	\$ 2,180,578.61
Professional Fees	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
FFE	\$ 204,956.95	\$ 177,043.05	\$ 204,956.95	\$ 177,043.05
Technology	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Relocation and Administrative Costs	\$ 0.00	\$ 50,000.00	\$ 0.00	\$ 50,000.00
Contingency	\$ 0.00	\$ 90,484.92	\$ 0.00	\$ 90,484.92
Total	\$ 2,500,000.00	\$ 2,862,689.12	\$ 2,500,000.00	\$ 3,255,689.12

Except as amended herein, the terms and conditions of the Original Contract and all previous amendments remain in full force and effect.

1. STATE ENCUMBRANCE VERIFICATION

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

Signed: _____

Date: _____

CFMS Contract No. A- _____ Object Code: _____

2. GRANTEE

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

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

3. STATE AGENCY

Individual certifies the applicable provisions of Minn. Stat. §16C.08, subdivisions 2 and 3 are reaffirmed.

By: _____
(with delegated authority)

Title: _____

Date: _____

RESOLUTION NO.

**RESOLUTION APPROVING CONSTRUCTION GRANT AMENDMENT #1
FOR THE AUSTIN PUBLIC TELEVISION STATION**

WHEREAS, the City of Austin, Minnesota has worked with the Department of Employment and Economic Development (DEED) to utilize State bonding funds for the Austin Public Television Station project with KSMQ; and

WHEREAS, the City of Austin signed a construction grant agreement for the project with DEED on May 18, 2020 by resolution no. 16065; and

WHEREAS, the parties desire to extend the completion date from February 28, 2022 to December 31, 2022; and

WHEREAS, the parties desire to increase the project funding by \$399,000.

NOW, THEREFORE BE IT RESOLVED that the Mayor and the City Recorder are hereby authorized to execute grant amendment number 1 to the construction grant agreement for the Austin Public Television Station.

Passed by a vote of yeas and nays this 1st day of November, 2021.

YEAS

NAYS

ATTEST:

City Recorder

APPROVED:

Mayor

RESOLUTION NO.

Granting Transfer of On-Sale Liquor License

WHEREAS, Cuatro Copas Bar and Lounge, LLC has applied to the City Council of Austin, Minnesota for transfer of license for off-sale liquor at the respective address hereinafter mentioned; and

WHEREAS, after due investigation it appears said applicants for transfer of said on-sale liquor license have complied with all the provisions of the law relative thereto and are entitled to have the license transferred for the above described purposes at the hereinafter named address.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Austin does hereby grant license for on-sale liquor to the following named licensees at the following location in Austin, Minnesota, which license shall expire December 31, 2021:

Emmanuel Vergas Paredes dba Cuatro Copas Bar, LLC
324 North Main Street
Austin, MN 55912

to

Cuatro Copas Bar & Lounge, LLC
324 North Main Street
Austin, MN 55912

Approved by the Austin City Council this 1st day of November, 2021

YEAS

NAYS

ATTEST:

City Recorder

APPROVED:

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: October 28, 2021

Re: Reviewing a resolution declaring the official intent of the city to have MN Stat. §272.162 enforced by Mower County.

The city is responsible for planning and zoning activities to promote the health, safety and general welfare of the community. As part of this responsibility, the city has adopted a subdivision ordinance, which regulates divisions and transfers of parcels of property within the city boundaries and extraterritorial area.

Mower County recorder and auditor are responsible for recording such transfers and divisions and assigning tax identification numbers to the parcels. The county will typically record documents that are in the correct format for recording, without additional approvals by the subdivision authority. This sometimes results in illegal non-conforming parcels or non-compliant subdivisions.

MN Stat. §272.162, may be adopted by the city, by resolution, to require that Mower County not process or record any subdivision located in the city that has not received city approval. With this authority, municipalities can protect land owners from land transfer and division missteps which block property owners from using their land as they intended. City oversight will prevent future boundary disputes and ensure that land owners are compliant with other land use rules and regulations.

Action: Please approve the attached resolution assuming authority to enforce the parcel transfer and division restrictions of Minnesota Statutes 272.162.

RESOLUTION NO.

**RESOLUTION DECLARING THE OFFICIAL INTENT OF THE CITY OF AUSTIN TO
HAVE MINNESOTA STATUE §272.162 RELATING TO RESTRICTIONS ON
TRANSFERS OF SPECIFIC PARCELS OF PROPERTY ENFORCED BY MOWER
COUNTY**

WHEREAS, the City of Austin [City] has adopted a Subdivision Ordinance which requires City approval of various types of subdivisions; and,

WHEREAS, the City desires that the Mower County Auditor and the Mower County Recorder not process or record any subdivision of land located within the City which has not received City approval.

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

1. That the City hereby declares its intent to have Minnesota Statutes §272.162, relating to restrictions on the transfers of specific parcels of property, enforced by the Mower County Auditor and the Mower County Recorder as provided in said §272.162.
2. The City Clerk is hereby directed to file a certified copy of this Resolution with the Mower County Auditor and the Mower County Recorder and to record a certified copy of the City's Subdivision Ordinance at the Mower County Recorder's office.

Passed by a vote of yeas and nays this 1st day of November, 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

Memorandum

To: Mayor and City Council

Cc: Jacinto Quetzecua
205 9th St NW, Austin MN 55912

From: Holly Wallace, Planning & Zoning Administrator

Re: Hazardous Structure located at **807 9th St NE, Austin MN 55912**

Date: **October 27, 2021**

May I ask the City Council to review and approve this resolution classifying the property located at 807 9th St NE Austin, Minnesota, as hazardous pursuant to Minnesota Statues 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!



September 3rd, 2021

Jacinto Quetzecua
205 9th St NW
Austin, MN 55912

RE: Housing Violations at 807 9th St NE, Austin, MN 55912

Dear Jacinto:

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 September 1st, 2021 at this site, and the following issues need to be resolved:

1. Protective treatment on exterior wood on garage
2. Driveway free from hazardous conditions
3. Garage needs to be structurally sound and in good repair
4. Garage footing/foundation system and exterior walls are not plumb and not capable of supporting all nominal loads and resisting all load effects- pull permit

The violation of International Property Maintenance Code Sections 302 & 304 were found. These Property Maintenance Code Sections read as follows:

302.3 Sidewalks and driveways. Sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

302.7 Accessory structures. Accessory structures, including *detached garages*, fences and walls, shall be maintained structurally sound and in good repair.

304.1.1 Unsafe conditions. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the *International Building Code* or the *International Existing Building Code* as required for existing buildings:

1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;
2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects;
3. Structures or components thereof that have reached their limit state;
4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or water tight;

5. Structural members that have evidence of *deterioration* or that are not capable of safely supporting all nominal loads and load effects
6. Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly *anchored* or are not capable of supporting all nominal loads and resisting all load effects;
7. Exterior walls that are not *anchored* to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly *anchored* or are not capable of supporting all nominal loads and resisting all load effects;
8. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of *deterioration*, fatigue or without proper anchorage and incapable of supporting all nominal loads and resisting all load effects;
9. Flooring and flooring components with defects that affect serviceability or flooring components that show signs of *deterioration* or fatigue, are not properly *anchored* or are incapable of supporting all nominal loads and resisting all load effects;
10. Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects;
11. Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes and exhaust ducts not properly *anchored* or that are *anchored* with connections not capable of supporting all nominal loads and resisting all load effects;
12. Exterior stairs, decks, porches, balconies and all similar appurtenances attached thereto, including *guards* and handrails, are not structurally sound, not properly *anchored* or that are *anchored* with connections not capable of supporting all nominal loads and resisting all load effects; or
13. Chimneys, cooling towers, smokestacks and similar appurtenances not structurally sound or not properly *anchored*, or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

Exception:

1. Where substantiated otherwise by an *approved* method.
2. Demolition of unsafe conditions shall be permitted where *approved* by the *code official*.

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.

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,



Brent Johnson
Zoning Inspector



TIME STAMP L

October 27, 2021
11:14 AM

TIME STAMP

September 1, 2021
11:34 AM

TIME STAMP 

September 1, 2021
2:58 PM



RESOLUTION NO. _____

**RESOLUTION ORDERING SECURING AND RAZING OF A HAZARDOUS BUILDING
LOCATED AT 807 9TH ST NE AUSTIN, MINNESOTA
OWNED BY JACINTO QUETZECUA.**

WHEREAS, Pursuant to Minnesota Statutes, Section 463.15 to 463.61, the City Council of Austin, Minnesota, finds the building located at 807 9th St NE to be a hazardous building for the following reasons:

- 1. Protective treatment on exterior wood on garage**
- 2. Driveway free from hazardous conditions**
- 3. Garage needs to be structurally sound and in good repair**
- 4. Garage footing/foundation system and exterior walls are not plumb and not capable of supporting all nominal loads and resisting all load effects- pull permit**

WHEREAS, The conditions listed above are more fully documented in the inspection report prepared by Brent Johnson on September 3rd, 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. Protective treatment on exterior wood on garage**
 - 2. Driveway free from hazardous conditions**
 - 3. Garage needs to be structurally sound and in good repair**
 - 4. Garage footing/foundation system and exterior walls are not plumb and not capable of supporting all nominal loads and resisting all load effects- pull permit**
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.
Austin, Minnesota 55912-3773
Phone: 507-437-9950
Fax: 507-437-7101
www.ci.austin.mn.us

Memorandum

To: Mayor and City Council

Cc: Argus Nelson Properties LLC
104 11th St NE, Austin, MN 55912

From: Holly Wallace, Planning & Zoning Administrator

Re: Accumulation of Refuse and Junk and Vehicles
At 106 11th St NE, Nelson Property

Date: October 29, 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 106 11th St 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 and 10.33 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

September 30th, 2021

Argus Nelson Properties LLC
104 11th St NE
Austin, MN 55912

RE: Zoning Violations at 34.570.0271, next property north of 104 11th St NE Austin, MN 55912

Dear Argus:

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 September 30th, 2021 at this site and the following issues need to be resolved:

1. Remove junk/garbage from property
2. Water tight container required to receive all refuse between collections
3. Provide current registration for all vehicles, and must be operable. Remove from property or store in an enclosed structure

The violation of Austin City Code Sections 10.01 Subd 2,3 & 4, 10.14 Subd.1(B), 10.33 Subd.1(G)& Subd. 2(B-1) 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 10.01 Subd. 4. Containers.

A. *General requirement.* Every householder, occupant or owner of any residence and any restaurant, industrial establishment or commercial establishment shall provide on the premises one or more containers to receive and contain all refuse which may accumulate between collections or other disposal. All normal accumulations of refuse shall be deposited in such containers, except that leaves, trimmings from shrubs, grass clippings, shavings, excelsior and other rubbish of similar volume and weight may be stored in closed containers not meeting the requirements of Subpar. B. Tree limbs under four inches in diameter in five-foot lengths and tied in bundles not to exceed 60 pounds, bundles of newspapers, cardboard or magazines tied securely not to exceed 60 pounds. Furniture, rugs and carpeting will be accepted by a licensed hauler if notified 24 hours in advance of regular pickup time. The following articles will not be accepted as refuse and must be deposited at a designated demolition site: stone, sod, earth, concrete, building materials unless placed in covered garbage cans, automobile parts, except tune-up parts, inflammable liquids, tree trunk sections over four inches in diameter. Tires and white goods need not be accepted as refuse by licensed garbage haulers, but shall be disposed of at the depository as designated by the County Board.

B. *Container requirements.* Each container shall be watertight, shall be impervious to insects and rodents and shall not exceed 32 gallons in capacity, garbage containers when full shall not exceed 60 pounds in weight, when waste is collected by licensed haulers by mechanical lifting devices, the use of the container shall not exceed 90 gallons or limited, as defined by the hauler. Containers shall be maintained in good and sanitary condition. Any container not conforming to the requirements of this section or having ragged or sharp edges or any other defect likely to hamper or injure the person collecting the contents shall be promptly replaced after notice by the city. Notwithstanding the foregoing, grass clippings and leaves may be temporarily stored in bags provided by licensed garbage haulers for pick up by licensed garbage haulers or in plastic bags provided by the owner for ultimate disposal at a site designated by the Council.

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, junk 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 10.33 Subd. 1 (G)

Operable equipment for transportation of people, goods or material and equipment ordinarily used for recreational purposes. Including shall be, by way of example and not limitation, automobiles, trucks, pick-up trucks, trailers, marine crafts, snowmobiles, all terrain vehicles, motor homes, pick-up campers, buses, and camping trailers.

Subd. 3. Outside parking in non-residential districts.

A. In all commercial, industrial, business and transitional zoning districts, all motor vehicles, agricultural and industrial equipment shall be stored within a building or be fully screened so as not to be visible from adjoining or adjacent lands and streets, except for the following:

1. Motor vehicles bearing current registration licenses, provided the vehicles are necessary for the operation of the business.

2. Licensed or unlicensed motor vehicles, agriculture or industrial equipment held for sale, distribution, repair or rent by authorized dealers or businesses.

3. Licensed or unlicensed motor vehicle, agricultural or industrial equipment used to obtain parts for repair of a customer's motor vehicle, agriculture or industrial equipment, provided that such equipment and/or motor vehicles are removed within 30 days after acquisition by authorized dealers and businesses.

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.

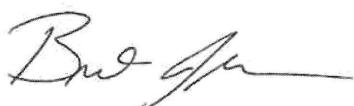
City Code Section 10.14, Subd. 6:

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



October 27, 2021
11:09 AM

106 11th ST NE