

**A G E N D A**  
**CITY COUNCIL MEETING**  
**TUESDAY, JULY 5, 2022**  
**5:30 P.M.**  
**COUNCIL CHAMBERS**

Call to Order.

Pledge of Allegiance.

Roll Call.

(mot) 1. Adoption of Agenda.

(mot) 2. Approving minutes from June 20, 2022

3. Recognitions and Awards.

(mot) 4. \*Consent Agenda

Licenses:

Food: Wing Bazaar, 3401 West Oakland Avenue

Mobile Business: Country Fresh Farms, Union City, Georgia

Claims:

a. Pre-list of bills

b. Credit Card Report.

**BID OPENING AND AWARD**

(res) 5. Receiving bids for the 21<sup>st</sup> Avenue NE street reconstruction project. *-backup to follow*  
a. Awarding bid.

**PETITIONS AND REQUESTS:**

(mot) 6. Reviewing modifications to the tobacco ordinance. *Second reading.*  
(ord) a. For preparation of the ordinance.  
b. For adoption and publication of the ordinance.

(mot) 7. For the placement of flashing stop signs at 10<sup>th</sup> Drive SE and 5<sup>th</sup> Place SE.

(res) 8. Approving a MnDOT master partnership contract.

(res) 9. Approving a joint powers agreement with the State of Minnesota and the Bureau of Criminal Apprehension.

(res) 10. Awarding a contract for City Hall LED lighting replacements.

(res) 11. Approving a liaison officer agreement with Austin Public Schools.

12. Granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at the following locations:
- (mot) a. 204 12<sup>th</sup> Street SE, Bedow Property.
- (mot) b. 507 11<sup>th</sup> Street SW, Diggins Property.
13. Mark Nibaur, Austin Utilities General Manager – Emergency Energy Alerts Update

**CITIZENS ADDRESSING THE COUNCIL**

**HONORARY COUNCIL MEMBER COMMENTS**

**REPORTS AND RECOMMENDATIONS:**

City Administrator

City Council

- (mot) Adjourn to **Monday, July 18, 2022** at 5:30 pm in the Council Chambers.

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



M I N U T E S  
CITY COUNCIL MEETING  
June 20, 2022  
5:30 PM  
Council Chambers

MEMBERS PRESENT: Mayor King. Council Members Paul Fischer, Rebecca Waller, Jason Baskin, Michael Postma, 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, Public Works Director Steven Lang, Fire Chief Jim McCoy, Planning and Zoning Administrator Holly Wallace, City Attorney Craig Byram, Library Director Julie Clinefelter, Assistant City Engineer Mitch Wenum, Human Resources Director Trish Wiechmann and City Clerk Ann Kasel

APPEARING IN PERSON: Representative Patty Mueller, Dave Schenck, Mark and Taylor Bliese, Shawn McAlister, MaryAnn Duren, Austin Daily Herald

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

Moved by Council Member Fischer, seconded by Council Member Postma, approving the agenda with additional backup. Carried.

Moved by Council Member Fischer, seconded by Council Member Baskin, approving Council minutes from June 6, 2022. Carried.

#### AWARDS AND RECOGNITIONS

Representative Patricia Mueller provided a recap of the legislative session stating that the session ended in disappointment since there was unfinished business. She stated that the City's waste water treatment request was on the agenda but was not passed. She is hopeful for a special session to pass the matter.

Mayor King read a proclamation in honor of Juneteenth which is a new federal holiday in 2022.

The Freedom Fest Committee, consisting of MaryAnn Duren, Mark and Taylor Bliese and Shawn McAlister, provided an update for the festival. Mr. McAlister described the festival and thanked the City for its support of the festival which will be two days – July 3 & 4<sup>th</sup>.

Council Member Poshusta asked about mosquito spraying before the festival.

Public Works Director Steven Lang stated he is working on those dates.

## CONSENT AGENDA

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

### Licenses:

Mobile Food: Infuzn Foods, LLC, Pine Island

Temporary Food: La Senda Antigua, 100 4<sup>th</sup> Avenue SE

### Claims:

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

Carried.

## BID OPENING AND AWARD

The City received the following bids for the Oakland Avenue West Trail:

Contractor	Bid
Hansen Hauling & Excavating	\$137,170
Ulland Brothers, Inc.	\$215,000

Public Works Director Steven Lang stated the Council originally rejected the initial bids at the May 16, 2022 meeting because the prices greatly exceeded the budget. Staff then looked into ways to reduce costs on the project. City crews will complete the asphalt milling and paving to reduce out of pocket costs and the project was rebid. There is a \$100,000 Hormel Foundation Grant for the project and the remaining funding would come from the capital improvement fund. He recommended awarding the bid to Hansen Hauling & Excavating.

Moved by Council Member Fischer, seconded by Council Member Baskin, awarding the bid for the Oakland Avenue West trail to Hansen Hauling & Excavating. Carried 6-0.

## PETITIONS AND REQUESTS

Administrative Services Director Tom Dankert reviewed the 2021 audit report stating the City received a clean audit opinion from the CliftonLarsonAllen audit firm. The full audit report was reviewed at the June 6, 2022 work session with the Council.

Moved by Council Member-at-Large Austin, seconded by Council Member Poshusta, approving the 2021 audit report. Carried.

The Council reviewed modifications to the tobacco ordinance. Police Chief David McKichan stated the ordinance needs to be updated to correspond with State Statutes for the provision

regarding administrative penalties.

Moved by Council Member-at-Large Austin, seconded by Council Member Poshusta, for preparation of the ordinance. Carried 5-1 with Council Member Baskin voting nay.

Moved by Council Member-at-Large Austin, seconded by Council Member Fischer, for adoption and publication of the ordinance. Ordinance fails 5-1 due to lack of a unanimous vote. Council Member Baskin voted nay. The ordinance will move to the July 5, 2022 meeting for a second reading.

Administrative Services Director Tom Dankert stated effective July 1, 2022 the federal mileage reimbursement rate will increase to 62.5 cents per mile due to higher gas prices.

Moved by Council Member-at-Large Austin, seconded by Council Member Postma, setting the mileage reimbursement rate. Carried 6-0.

Moved by Council Member Fischer, seconded by Council Member-at-Large Austin, adopting a resolution accepting donations to the City of Austin. Carried 6-0.

Public Works Director Steven Lang stated the Nu-Tek Biosciences plant will be opening in the future and the City had developed an individual control mechanism (ICM) agreement for the sanitary sewer strong waste discharge into the sanitary sewer system. The initial ICM agreement will be for a period of six months while the plant is starting up and will be reevaluated after that six month period.

Moved by Council Member Fischer, seconded by Council Member Poshusta, approving an ICM agreement with Nu-Tek Biosciences, LLC. Carried 6-0.

Planning and Zoning Administrator Holly Wallace requested the Council establish the Joint Airport Zoning Board and appoint members to the board. Members for the City of Austin will be Rick Stoulil and Greg Vortherm and there will be other member from the surrounding townships.

Moved by Council Member Baskin, seconded by Council Member Fischer, adopting a resolution authorizing the creation of a joint airport zoning board. Carried 6-0.

Moved by Council Member Fischer, seconded by Council Member Poshusta, authorizing the municipality to zone areas around its airport. Carried 6-0.

Moved by Council Member Fischer, seconded by Council Member Baskin, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1802 3<sup>rd</sup> Street NE, Andree Property. Carried.

Moved by Council Member Fischer, seconded by Council Member Baskin, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 701 10<sup>th</sup> Avenue SE, Hoffman/Gross Property. Carried.

## REPORTS

City Administrator Craig Clark stated there were three applications for the vacated first ward council seat – Varinh Van Vugt, Geoff Baker and Steve Barrett. They will be evaluated on the July 7<sup>th</sup> Council meeting.

Library Director Julie Clinefelter stated the summer reading program has begun and there are over 450 kids signed up. She also introduced Sally Olson as the youth services librarian.

Public Works Director Steven Lang stated that there are 48 plan holders for the waste water treatment plant bids and that bid will be moved to July 12<sup>th</sup>. He stated there may be a special Council meeting on August 11<sup>th</sup> due to award the bid for the treatment plant.

Council Member Poshusta thanked City staff for the good audit results.

Council Member Postma thanked everyone for 4<sup>th</sup> Avenue Fest and the Pride Event. He also stated the Hormel Institute is celebrating its 80<sup>th</sup> anniversary soon.

Council Member Baskin recognized Austin Utilities for their work in the heat.

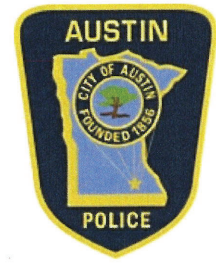
Moved by Council Member-at-Large Austin, seconded by Council Member Fischer, adjourning the meeting to July 5, 2022. Carried.

Adjourned: 6:11 p.m.

Approved: July 5, 2022

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

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



# AUSTIN POLICE DEPARTMENT

## LAW ENFORCEMENT CENTER

201 1<sup>ST</sup> STREET NE STE 2 AUSTIN MN 55912 (507) 437-9400 FAX: (507) 437-9546

6-1-22

Mayor and Council,

In 2019 the City revised the 6.34 section of code as it dealt with tobacco. This was done at the behest of members in the public health sector in order to enact new provisions that barred sales to those under the age of 21. This was referred to as T21. The City of Austin was one of many cities that adopted T21 at that time which set our ordinance as more restrictive than the State's. We also raised and adopted administrative penalties at the time that were more than the State minimums.

It did not affect the possession or use of said products by those 18-20 years of age. It was recommended to Austin by the State advocates at the time to remove our provisions related to possession, use, and purchasing by those under 18 years of age. These are called "PUP" laws. We elected not to remove those provisions from our ordinance. We were however not using that section of ordinance to cite violators but rather section 609.685 of state code to do so.

In 2020 the State of Minnesota made "T21" provisions state law. In this regard, they now had the same standard as Austin. They additionally raised the administrative penalties so that they now exceeded Austin's. The State also struck out the "PUP" provisions from 609.685 that had previously made those certain tobacco offenses by those under 18 illegal. There was also a slight change to some language in how a licensing authority is to complete compliance checks.

At this time, we are asking Council to approve several updates to our ordinance in order to bring it back into alignment with the statutory language.

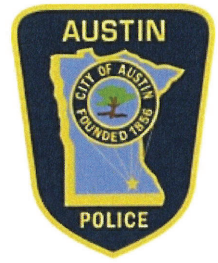
- Set our administrative penalty language to match the State's requirements.
- Modify our compliance check language to match the State's.
- Remove "PUP" language from our ordinance and modify some language to match State language on using a state issued ID to purchase/attempt to purchase tobacco by someone under 21.

The biggest change is going to be the elimination of the possession, use, and purchase offenses by those under 18. While I did not support eliminating this in 2019 nor would I have when the State considered these changes in 2020, this is the direction that the State of Minnesota elected to go in after getting feedback from their public health professionals. Up until that point, we did use 609.685 to cite for these offenses and not 6.34. We have not used 6.34 to cite for these since that law change.

# AUSTIN POLICE DEPARTMENT

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Since our agency is not citing for these offenses frequently at this time it might make sense to remove them from ordinance as well in keeping with the intent of the State legislature. I would also note that while infrequent, challenges under ordinance are not heard in court first but rather a hearing process. Due to some other challenges in processing these citations using our ordinance I do not think it is worth using for "PUP" enforcement if the public health sector does not support "PUP" laws or believe that they are having the desired effect on youth smoking outcomes.

I have attached a flier that explains many of these changes and outlines the thinking on "PUP" law removal from statute.

Respectfully,

Chief David McKichan



## ORDINANCE NO.

### AN ORDINANCE FOR THE CITY OF AUSTIN, MINNESOTA AMENDING CHAPTER 6, SECTION 6.34, REGARDING TOBACCO COMPLIANCE CHECKS AND PENALTIES.

The City Council of the City of Austin does ordain:

SECTION 1. Section 6.34, Subdivision 2 (C), of City Code Chapter 10, shall be amended to read as follows:

§ 6.34, Subd. 2 (A) is revised as follows:

**COMPLIANCE CHECKS.** The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this section. Compliance checks conducted under this section must involve persons at least 17 years of age, but under the age of 21, who, with the prior written consent of a parent or guardian if the person is under the age of 18, attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products under the direct supervision of a law enforcement officer or an employee of the licensing authority. The age requirements for persons participating in compliance checks under this section shall not affect the age requirements in federal law for persons participating in federally required compliance checks of these locations.

§ 6.34, Subd. 10 is revised as follows:

*Compliance checks and inspections.* All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks. In accordance with state law, the city will conduct at least one compliance check that involves the participation of a person between the ages of 17-20 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

§ 6.34, Subd. 11 is revised as follows:

- A. Illegal sales* It shall be a violation of this section for any person to sell or otherwise provide any licensed product to any person who is under the age of 21.
- B. Illegal procurement.* It shall be a violation of this section for any person to purchase or otherwise obtain those items on behalf of a person under age 21. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any licensed product. This division D. shall not apply to minors lawfully involved in a compliance check.
- C. Use of false identification.* A person under the age of 21 years who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices and who uses a driver's license, permit, Minnesota identification card, or any type of

false identification to misrepresent the person's age, shall only be subject to an alternative civil penalty, in accordance with subd 13.B.3..

**§ 6.34, Subd. 13 (B)** is revised as follows:

*Administrative penalties.*

1. *Licensees:* If a licensee or employee of a licensee sells, gives, or otherwise furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years, or violates any other provision of this section, the licensee shall be charged an administrative penalty of \$300 for the first violation. An administrative penalty of \$600 must be imposed for a second violation at the same location within 36 months after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 must be imposed, and the licensee's authority to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at that location must be suspended for not less than seven days and may be revoked. No suspension, revocation, or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.
2. *Other individuals.* An individual who sells, gives, or otherwise furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years may be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.
3. *Alternative penalties for subd. 11.C.* Law enforcement and court system representatives shall consult, as applicable, with interested persons, including but not limited to parents, guardians, educators, and persons under the age of 21 years, to develop alternative civil penalties for persons under the age of 21 years who violate this section. Consulting participants shall consider a variety of alternative civil penalties including but not limited to tobacco-free education programs, community service, court diversion programs, and tobacco cessation programs, and for persons under the age of 18 years, notice to schools and to parents or guardians. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.
4. *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this section.



5. *Statutory penalties.* If the administrative penalties authorized to be imposed by M.S. § 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.

Passed by a vote of yeas and nays this 7th day of September, 2021

YEAS

NAYS

ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor

This ordinance was introduced on June 20, 2022; approved on June 20, 2022; was published in the Austin Daily Herald on \_\_\_\_\_; and becomes effective \_\_\_\_\_.

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



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

## Memorandum

**To:** Mayor & Council  
**From:** Mitch Wenum, PE  
**Date:** June 30, 2022  
**Subject:** Traffic Control at 10<sup>th</sup> Drive SE & 5<sup>th</sup> Place SE

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At the work session on June 20<sup>th</sup>, we presented information about traffic control at the 10<sup>th</sup> Drive SE and 5<sup>th</sup> Place SE intersection.

We reviewed the following intersection related items:

- Intersection History
- Crash History
- Traffic Volumes
- Intersection Geometry
- Warrant Analysis
- Video Monitoring and Observations



### Options to Improve the Intersection

**Option 1** – Return intersection to 2-way stop  
Cost: \$0

**Option 2** – Install solar powered flashing stop signs on 10<sup>th</sup> Dr SE and relocating flashing pedestrian beacons.  
Cost: \$5,000

**Option 3** – Construct roundabout during future 10<sup>th</sup> Drive SE project.  
Cost: \$500,000

We recommend Option 2, installing solar powered flashing stop signs on 10<sup>th</sup> Drive SE and relocating the flashing pedestrian beacons elsewhere in Austin. The costs for the flashing stop signs and relocating the pedestrian beacons would be paid out of the Contingency Fund or Sign Dept Budget.

We will continue to monitor the intersection and consider additional options when the Dobbins Creek bridge replacement project takes place in 2024 or 2025.

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



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## Memorandum

**To:** Mayor & Council  
**From:** Steven J. Lang, P.E.  
**Date:** June 29, 2022  
**Subject:** MnDOT Master Partnership Contract

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Attached is a Master Contract between the Minnesota Department of Transportation and the City of Austin. The current master contract with MnDOT expires at the end of June 2022. Execution of this document would provide for a contract with MnDOT through June 30<sup>th</sup>, 2027 for the following services:

- Lab testing service on State Aid projects.
- Cooperation between the Street Department and local MnDOT truck station on minor maintenance projects.
- Facilitate cooperation between MnDOT and the City for projects such as;
  - I-90 corridor bridge replacement projects.
  - Highway 105 resurfacing project
  - Limited use permits

This is similar to Master Agreements that have been executed in the past with MnDOT and I would recommend approval of the resolution. If you have any questions, please contact me.

**STATE OF MINNESOTA  
MASTER PARTNERSHIP CONTRACT**

This master contract is between the State of Minnesota, acting through its Commissioner of Transportation in this contract referred to as the “State” and the Austin City, acting through its City Council, in this contract referred to as the “Other Party.”

**Recitals**

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1. The parties are authorized to enter into this contract pursuant to Minnesota Statutes, §§15.061, 471.59 and 174.02.
2. Minn. Stat. § 161.20, subd. 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.
3. Each party to this contract is a “road authority” as defined by Minn. Stat. §160.02, subd. 25.
4. Minn. Stat. § 161.39, subd. 1, authorizes a road authority to perform work for another road authority. Such work may include providing technical and engineering advice, assistance and supervision, surveying, preparing plans for the construction or reconstruction of roadways, and performing roadway maintenance.
5. Minn. Stat. §174.02, subd. 6, authorizes the Commissioner of Transportation to enter into contracts with other governmental entities for research and experimentation; for sharing facilities, equipment, staff, data, or other means of providing transportation-related services; or for other cooperative programs that promote efficiencies in providing governmental services, or that further development of innovation in transportation for the benefit of the citizens of Minnesota.
6. Each party wishes to occasionally purchase services from the other party, which the parties agree will enhance the efficiency of delivering governmental services at all levels. This Master Partnership Contract (MPC) provides a framework for the efficient handling of such requests. This MPC contains terms generally governing the relationship between the parties. When specific services are requested, the parties will (unless otherwise specified) enter into a “Work Order” contracts.
7. After the execution of this MPC, the parties may (but are not required to) enter into “Work Order” contracts. These Work Orders will specify the work to be done, timelines for completion, and compensation to be paid for the specific work.
8. The parties are entering into this MPC to establish terms that will govern all of the Work Orders subsequently issued under the authority of this Contract.

**Contract**

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1. **Term of Master Partnership Contract; Use of Work Order Contracts; Survival of Terms**
  - 1.1. **Effective Date:** This contract will be effective on July 1st, 2022, or upon the date last signed by all State officials as required under Minn. Stat. § 16C.05, subd. 2, whichever occurs last. The Other Party must not begin work under this Contract until ALL required signatures have been obtained and the Other Party has been notified in writing to begin such work by the State’s Authorized Representative.
  - 1.2. **Expiration Date.** This Contract will expire on June 30, 2027.
  - 1.3. **Exhibits.** Exhibit A is attached and incorporated into this agreement.
  - 1.4. **Work Order Contracts.** A work order contract must be negotiated and executed (by both the State and the Other Party) for each particular engagement, except for Technical Services provided by the State to the Other Party as specified in Article 2. The work order contract must specify the detailed scope of work and deliverables for that project. A party must not begin work under a work order until the work order is fully



executed. The terms of this MPC will apply to all work orders contracts issued, unless specifically varied in the work order. The Other Party understands that this MPC is not a guarantee of any payments or work order assignments, and that payments will only be issued for work actually performed under fully-executed work orders.

- 1.5. **Survival of Terms.** The following clauses survive the expiration or cancellation of this master contract and all work order contracts: 12. Liability; 13. State Audits; 14. Government Data Practices and Intellectual Property; 17. Publicity; 18. Governing Law, Jurisdiction, and Venue; and 22. Data Disclosure. All terms of this MPC will survive with respect to any work order contract issued prior to the expiration date of the MPC.
- 1.6. **Sample Work Order.** A sample work order contract is available upon request from the State.
- 1.7. **Definition of "Providing Party" and "Requesting Party".** For the purpose of assigning certain duties and obligations in the MPC to work order contracts, the following definitions will apply throughout the MPC. "Requesting Party" is defined as the party requesting the other party to perform work under a work order contract. "Providing Party" is defined as the party performing the scope of work under a work order contract.

## 2. Technical Services

- 2.1. Technical Services include repetitive low-cost services routinely performed by the State for the Other Party. If requested and authorized by the Other Party, these services may be performed by the State for the Other Party without the execution of a work order, as these services are provided in accordance with standardized practices and processes and do not require a detailed scope of work. Exhibit A – Table of Technical Services is attached.
  - 2.1.1. Every other service not falling under the services listed in Exhibit A will require a work order contract (If you have questions regarding whether a service is covered under 2.1.1, please contact Contract Management).
- 2.2. The Other Party may request the State to perform Technical Services in an informal manner, such as by the use of email, a purchase order, or by delivering materials to a State lab and requesting testing. A request may be made via telephone, but will not be considered accepted unless acknowledged in writing by the State.
- 2.3. The State will promptly inform the Other Party if the State will be unable to perform the requested Technical Services. Otherwise, the State will perform the Technical Services in accordance with the State's normal processes and practices, including scheduling practices taking into account the availability of State staff and equipment.
- 2.4. **Payment Basis.** Unless otherwise agreed to by the parties prior to performance of the services, the State will charge the Other Party the State's then-current rate for performing the Technical Services. The then-current rate may include the State's normal and customary additives. The State will invoice the Other Party upon completion of the services, or at regular intervals not more than once monthly as agreed upon by the parties. The invoice will provide a summary of the Technical Services provided by the State during the invoice period.

## 3. Services Requiring a Work Order Contract

- 3.1. **Work Order Contracts:** A party may request the other party to perform any of the following services under individual work order contracts.
- 3.2. **Professional and Technical Services.** A party may provide professional and technical services upon the request of the other party. As defined by Minn. Stat. §16C.08, subd. 1, professional/technical services "means services that are intellectual in character, including consultation, analysis, evaluation, prediction, planning, programming, or recommendation; and result in the production of a report or completion of a task." Professional and technical services do not include providing supplies or materials except as incidental to performing such services. Professional and technical services include (by way of example and without limitation) cultural resources, engineering services, surveying, foundation recommendations and reports, environmental documentation, right-of-way assistance (such as performing appraisals or providing

relocation assistance, but excluding the exercise of the power of eminent domain), geometric layouts, final construction plans, graphic presentations, public relations, and facilitating open houses. A party will normally provide such services with its own personnel; however, a party's professional/technical services may also include hiring and managing outside consultants to perform work provided that a party itself provides active project management for the use of such outside consultants.

- 3.3. **Roadway Maintenance.** A party may provide roadway maintenance upon the request of the other party. Roadway maintenance does not include roadway reconstruction. This work may include but is not limited to snow removal, ditch spraying, roadside mowing, bituminous mill and overlay (only small projects), seal coat, bridge hits, major retaining wall failures, major drainage failures, and message painting. All services must be performed by an employee with sufficient skills, training, expertise or certification to perform such work, and work must be supervised by a qualified employee of the party performing the work.
- 3.4. **Construction Administration.** A party may administer roadway construction projects upon the request of the other party. Roadway construction includes (by way of example and without limitation) the construction, reconstruction, or rehabilitation of mainline, shoulder, median, pedestrian or bicycle pathway, lighting and signal systems, pavement mill and overlays, seal coating, guardrail installation, and channelization. These services may be performed by the Providing Party's own forces, or the Providing Party may administer outside contracts for such work. Construction administration may include letting and awarding construction contracts for such work (including state projects to be completed in conjunction with local projects). All contract administration services must be performed by an employee with sufficient skills, training, expertise or certification to perform such work.
- 3.5. **Emergency Services.** A party may provide aid upon request of the other party in the event of a man-made disaster, natural disaster or other act of God. Emergency services includes all those services as the parties mutually agree are necessary to plan for, prepare for, deal with, and recover from emergency situations. These services include, without limitation, planning, engineering, construction, maintenance, and removal and disposal services related to things such as road closures, traffic control, debris removal, flood protection and mitigation, sign repair, sandbag activities and general cleanup. Work will be performed by an employee with sufficient skills, training, expertise or certification to perform such work, and work must be supervised by a qualified employee of the party performing the work. If it is not feasible to have an executed work order prior to performance of the work, the parties will promptly confer to determine whether work may be commenced without a fully-executed work order in place. If work commences without a fully-executed work order, the parties will follow up with execution of a work order as soon as feasible.
- 3.6. When a need is identified, the State and the Other Party will discuss the proposed work and the resources needed to perform the work. If a party desires to perform such work, the parties will negotiate the specific and detailed work tasks and cost. The State will then prepare a work order contract. Generally, a work order contract will be limited to one specific project/engagement, although "on call" work orders may be prepared for certain types of services, especially for "Technical Services" items as identified section 2.1.. The work order will also identify specific deliverables required, and timeframes for completing work. A work order must be fully executed by the parties prior to work being commenced. The Other Party will not be paid for work performed prior to execution of a work order contract and authorization by the State.

#### 4. Responsibilities of the Providing Party

- 4.1. **Terms Applicable to ALL Work Order Contracts.** The terms in this section 4.1 will apply to ALL work order contracts.
  - 4.1.1. Each work order will identify an Authorized Representative for each party. Each party's authorized representative is responsible for administering the work order, and has the authority to make any decisions regarding the work, and to give and receive any notices required or permitted under this MPC or the work order.
  - 4.1.2. The Providing Party will furnish and assign a publicly employed licensed engineer (Project Engineer), to be in responsible charge of the project(s) and to supervise and direct the work to be performed under each work order contract. For services not requiring an engineer, the Providing Party will

furnish and assign another responsible employee to be in charge of the project. The services of the Providing Party under a work order contract may not be otherwise assigned, sublet, or transferred unless approved in writing by the Requesting Party's authorized representative. This written consent will in no way relieve the Providing Party from its primary responsibility for the work.

- 4.1.3. If the Other Party is the Providing Party, the Project Engineer may request in writing specific engineering and/or technical services from the State, pursuant to Minn. Stat. Section 161.39. The work order Contract will require the Other Party to deposit payment in advance. The costs and expenses will include the current State additives and overhead rates, subject to adjustment based on actual direct costs that have been verified by audit.
- 4.1.4. Only the receipt of a fully executed work order contract authorizes the Providing Party to begin work on a project. Any and all effort, expenses, or actions taken by the Providing Party before the work order contract is fully executed are considered unauthorized and undertaken at the risk of non-payment.
- 4.1.5. In connection with the performance of this contract and any work orders issued, the Providing Agency will comply with all applicable Federal and State laws and regulations. When the Providing Party is authorized or permitted to award contracts in connection with any work order, the Providing Party will require and cause its contractors and subcontractors to comply with all Federal and State laws and regulations.
- 4.2. **Additional Terms for Roadway Maintenance.** The terms of section 4.1 and this section 4.2 will apply to all work orders for Roadway Maintenance.
  - 4.2.1. Unless otherwise provided for by contract or work order, the Providing Party must obtain all permits and sanctions that may be required for the proper and lawful performance of the work.
  - 4.2.2. The Providing Party must perform maintenance in accordance with MnDOT maintenance manuals, policies and operations.
  - 4.2.3. The Providing Party must use State-approved materials, including (by way of example and without limitation), sign posts, sign sheeting, and de-icing and anti-icing chemicals.
- 4.3. **Additional Terms for Construction Administration.** The terms of section 4.1 and this section 4.3 will apply to all work order contracts for construction administration.
  - 4.3.1. Contract(s) must be awarded to the lowest responsible bidder or best value proposer in accordance with state law.
  - 4.3.2. Contractor(s) must be required to post payment and performance bonds in an amount equal to the contract amount. The Providing Party will take all necessary action to make claims against such bonds in the event of any default by the contractor.
  - 4.3.3. Contractor(s) must be required to perform work in accordance with the latest edition of the Minnesota Department of Transportation Standard Specifications for Construction.
  - 4.3.4. For work performed on State right-of-way, contractor(s) must be required to indemnify and hold the State harmless against any loss incurred with respect to the performance of the contracted work, and must be required to provide evidence of insurance coverage commensurate with project risk.
  - 4.3.5. Contractor(s) must pay prevailing wages pursuant to applicable state and federal law.
  - 4.3.6. Contractor(s) must comply with all applicable Federal, and State laws, ordinances and regulations, including but not limited to applicable human rights/anti-discrimination laws and laws concerning the participation of Disadvantaged Business Enterprises in federally-assisted contracts.
  - 4.3.7. Unless otherwise agreed in a work order contract, each party will be responsible for providing rights of way, easement, and construction permits for its portion of the improvements. Each party will, upon the other's request, furnish copies of right of way certificates, easements, and construction permits.

- 4.3.8. The Providing Party may approve minor changes to the Requesting Party's portion of the project work if such changes do not increase the Requesting Party's cost obligation under the applicable work order contract.
- 4.3.9. The Providing Party will not approve any contractor claims for additional compensation without the Requesting Party's written approval, and the execution of a proper amendment to the applicable work order contract when necessary. The Other Party will tender the processing and defense of any such claims to the State upon the State's request.
- 4.3.10. The Other Party must coordinate all trunk highway work affecting any utilities with the State's Utilities Office.
- 4.3.11. The Providing Party must coordinate all necessary detours with the Requesting Party.
- 4.3.12. If the Other Party is the Providing Party, and there is work performed on the trunk highway right-of-way, the following will apply:
  - a. The Other Party will have a permit to perform the work on the trunk highway. The State may revoke this permit if the work is not being performed in a safe, proper and skillful manner, or if the contractor is violating the terms of any law, regulation, or permit applicable to the work. The State will have no liability to the Other Party, or its contractor, if work is suspended or stopped due to any such condition or concern.
  - b. The Other Party will require its contractor to conduct all traffic control in accordance with the Minnesota Manual on Uniform Traffic Control Devices.
  - c. The Other Party will require its contractor to comply with the terms of all permits issued for the project including, but not limited to, National Pollutant Discharge Elimination System (NPDES) and other environmental permits.
  - d. All improvements constructed on the State's right-of-way will become the property of the State.

**5. Responsibilities of the Requesting Party**

- 5.1. After authorizing the Providing Party to begin work, the Requesting Party will furnish any data or material in its possession relating to the project that may be of use to the Providing Party in performing the work.
- 5.2. All such data furnished to the Providing Party will remain the property of the Requesting Party and will be promptly returned upon the Requesting Party's request or upon the expiration or termination of this contract (subject to data retention requirements of the Minnesota Government Data Practices Act and other applicable law).
- 5.3. The Providing Party will analyze all such data furnished by the Requesting Party. If the Providing Party finds any such data to be incorrect or incomplete, the Providing Party will bring the facts to the attention of the Requesting Party before proceeding with the part of the project affected. The Providing Party will investigate the matter, and if it finds that such data is incorrect or incomplete, it will promptly determine a method for furnishing corrected data. Delay in furnishing data will not be considered justification for an adjustment in compensation.
- 5.4. The State will provide to the Other Party copies of any Trunk Highway fund clauses to be included in the bid solicitation and will provide any required Trunk Highway fund provisions to be included in the Proposal for Highway Construction, that are different from those required for State Aid construction.
- 5.5. The Requesting Party will perform final reviews and inspections of its portion of the project work. If the work is found to have been completed in accordance with the work order contract, the Requesting Party will promptly release any remaining funds due the Providing Party for the Project(s).
- 5.6. The work order contracts may include additional responsibilities to be completed by the Requesting Party.

**6. Time**

- 6.1. In the performance of project work under a work order contract, time is of the essence.

**7. Consideration and Payment**



- 7.1. **Consideration.** The Requesting Party will pay the Providing Party as specified in the work order. The State's normal and customary additives will apply to work performed by the State, unless otherwise specified in the work order. The State's normal and customary additives will not apply if the parties agree to a "lump sum" or "unit rate" payment.
- 7.2. **State's Maximum Obligation.** The total compensation to be paid by the State to the Other Party under all work order contracts issued pursuant to this MPC will not exceed \$250,000.00.
- 7.3. **Travel Expenses.** It is anticipated that all travel expenses will be included in the base cost of the Providing Party's services, and unless otherwise specifically set forth in an applicable work order contract, the Providing Party will not be separately reimbursed for travel and subsistence expenses incurred by the Providing Party in performing any work order contract. In those cases where the State agrees to reimburse travel expenses, such expenses will be reimbursed in the same manner and in no greater amount than provided in the current "MnDOT Travel Regulations" a copy of which is on file with and available from the MnDOT District Office. The Other Party will not be reimbursed for travel and subsistence expenses incurred outside of Minnesota unless it has received the State's prior written approval for such travel.

**7.4. Payment**

- 7.4.1. **Generally.** The Requesting Party will pay the Providing Party as specified in the applicable work order, and will make prompt payment in accordance with Minnesota law.
- 7.4.2. **Payment by the Other Party.**
  - a. The Other Party will make payment to the order of the Commissioner of Transportation.
  - b. **IMPORTANT NOTE: PAYMENT MUST REFERENCE THE "MNDOT CONTRACT NUMBER" SHOWN ON THE FACE PAGE OF THIS CONTRACT AND THE "INVOICE NUMBER" ON THE INVOICE RECEIVED FROM MNDOT.**
  - c. Remit payment to the address below:  
MnDOT  
Attn: Cash Accounting  
RE: MnDOT Contract Number 1050099W[XX] and Invoice Number: 00000[#####]  
(see note above)  
Mail Stop 215  
395 John Ireland Blvd  
St. Paul, MN 55155
- 7.4.3. **Payment by the State.**
  - a. **Generally.** The State will promptly pay the Other Party after the Other Party presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted as specified in the applicable work order, but no more frequently than monthly.
  - b. **Retainage for Professional and Technical Services.** For work orders for professional and technical services, as required by Minn. Stat. § 16C.08, subd. 2(10), no more than 90 percent of the amount due under any work order contract may be paid until the final product of the work order contract has been reviewed by the State's authorized representative. The balance due will be paid when the State's authorized representative determines that the Other Party has satisfactorily fulfilled all the terms of the work order contract.

**8. Conditions of Payment**

- 8.1. All work performed by the Providing Party under a work order contract must be performed to the Requesting Party's satisfaction, as determined at the sole and reasonable discretion of the Requesting Party's Authorized Representative and in accordance with all applicable federal and state laws, rules, and

regulations. The Providing Party will not receive payment for work found by the Requesting Party to be unsatisfactory or performed in violation of federal or state law.

**9. State's Authorized Representative and Project Manager**

- 9.1. The State's Authorized Representative for this master contract is the District State Aid Engineer, who has the responsibility to monitor the State's performance.
- 9.2. The State's Project Manager will be identified in each work order contract.

**10. Other Party's Authorized Representative and Project Manager**

- 10.1. The Other Party's Authorized Representative for administering this master contract is the Other Party's Engineer, and the Engineer has the responsibility to monitor the Other Party's performance. The Other Party's Authorized Representative is also authorized to execute work order contracts on behalf of the Other Party without approval of each proposed work order contract by its governing body.
- 10.2. The Other Party's Project Manager will be identified in each work order contract.

**11. Assignment, Amendments, Waiver, and Contract Complete**

- 11.1. **Assignment.** Neither party may assign or transfer any rights or obligations under this MPC or any work order contract without the prior consent of the other and a fully executed Assignment Contract, executed and approved by the same parties who executed and approved this MPC, or their successors in office.
- 11.2. **Amendments.** Any amendment to this master contract or any work order 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.
- 11.3. **Waiver.** If a party fails to enforce any provision of this master contract or any work order contract, that failure does not waive the provision or the party's right to subsequently enforce it.
- 11.4. **Contract Complete.** This master contract and any work order contract contain all negotiations and contracts between the State and the Other Party. No other understanding regarding this master contract or any work order contract issued hereunder, whether written or oral may be used to bind either party.

**12. Liability**

- 12.1. Each party will be responsible for its own acts and omissions to the extent provided by law. The Other Party's liability is governed by Minn. Stat. chapter 466 and other applicable law. The State's liability is governed by Minn. Stat. section 3.736 and other applicable law. This clause will not be construed to bar any legal remedies a party may have for the other party's failure to fulfill its obligations under this master contract or any work order contract. Neither party agrees to assume any environmental liability on behalf of the other party. A Providing Party under any work order is acting only as a "Contractor" to the Requesting Party, as the term "Contractor" is defined in Minn. Stat. §115B.03 (subd. 10), and is entitled to the protections afforded to a "Contractor" by the Minnesota Environmental Response and Liability Act. The parties specifically intend that Minn. Stat. §471.59 subd. 1a will apply to any work undertaken under this MPC and any work order issued hereunder.

**13. State Audits**

- 13.1. Under Minn. Stat. § 16C.05, subd. 5, the party's books, records, documents, and accounting procedures and practices relevant to any work order contract are subject to examination by the parties and by the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this MPC.

**14. Government Data Practices and Intellectual Property**

- 14.1. **Government Data Practices.** The Other Party and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this MPC and any work order contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Other Party under this MPC and any work order contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Other Party or the State.
- 14.2. **Intellectual Property Rights**

**14.2.1. Intellectual Property Rights.** The Requesting Party will own all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under work order contracts. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Providing Party, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this master contract or any work order contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Providing Party, its employees, agents, or contractors, in the performance of a work order contract. The Documents will be the exclusive property of the Requesting Party and all such Documents must be immediately returned to the Requesting Party by the Providing Party upon completion or cancellation of the work order contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Providing Party Government assigns all right, title, and interest it may have in the Works and the Documents to the Requesting Party. The Providing Party must, at the request of the Requesting Party, execute all papers and perform all other acts necessary to transfer or record the Requesting Party's ownership interest in the Works and Documents. Notwithstanding the foregoing, the Requesting Party grants the Providing Party an irrevocable and royalty-free license to use such intellectual property for its own non-commercial purposes, including dissemination to political subdivisions of the state of Minnesota and to transportation-related agencies such as the American Association of State Highway and Transportation Officials.

**14.2.2. Obligations with Respect to Intellectual Property.**

- a. **Notification.** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Providing Party, including its employees and subcontractors, in the performance of the work order contract, the Providing Party will immediately give the Requesting Party's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.
- b. **Representation.** The Providing Party must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the Requesting Party, and that neither Providing Party nor its employees, agents or contractors retain any interest in and to the Works and Documents.

**15. Affirmative Action**

- 15.1. The State intends to carry out its responsibility for requiring affirmative action by its Contractors, pursuant to Minn. Stat. §363A.36. Pursuant to that Statute, the Other Party is encouraged to prepare and implement an affirmative action plan for the employment of minority persons, women, and the qualified disabled, and submit such plan to the Commissioner of the Minnesota Department of Human Rights. In addition, when the Other Party lets a contract for the performance of work under a work order issued pursuant to this MPC, it must include the following in the bid or proposal solicitation and any contracts awarded as a result thereof:
- 15.2. **Covered Contracts and Contractors.** If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A Contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

- 15.3. **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
- 15.4. **Minn. R. Parts 5000.3400-5000.3600.**
- 15.4.1. **General.** Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
- 15.4.2. **Disabled Workers.** The Contractor must comply with the following affirmative action requirements for disabled workers:
- a. The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  - b. The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
  - c. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
  - d. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
  - e. The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- 15.4.3. **Consequences.** The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.
- 15.4.4. **Certification.** The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

## 16. Workers' Compensation

- 16.1. Each party will be responsible for its own employees for any workers compensation claims. This MPC, and any work order contracts issued hereunder, are not intended to constitute an interchange of government employees under Minn. Stat. §15.53. To the extent that this MPC, or any work order issued hereunder, is determined to be subject to Minn. Stat. §15.53, such statute will control to the extent of any conflict between the contract and the statute.

**17. Publicity**

- 17.1. **Publicity.** Any publicity regarding the subject matter of a work order contract where the State is the Requesting Party must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Other Party individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from a work order contract.
- 17.2. **Data Practices Act.** Section 17.1 is not intended to override the Other Party's responsibilities under the Minnesota Government Data Practices Act.

**18. Governing Law, Jurisdiction, and Venue**

- 18.1. Minnesota law, without regard to its choice-of-law provisions, governs this master contract and all work order contracts. Venue for all legal proceedings out of this master contract or any work order contracts, or the breach of any such contracts, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**19. Prompt Payment; Payment to Subcontractors**

- 19.1. The parties must make prompt payment of their obligations in accordance with applicable law. As required by Minn. Stat. § 16A.1245, when the Other Party lets a contract for work pursuant to any work order, the Other Party must require its contractor to pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the Other Party for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

**20. Minn. Stat. § 181.59.**

- 20.1. The Other Party will comply with the provisions of Minn. Stat. § 181.59 which requires: 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 shall contain provisions by which the 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, shall, 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, shall, 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, county, city, town, school board, or any other person authorized to grant the 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.

**21. Termination; Suspension**

- 21.1. **Termination by the State for Convenience.** The State or commissioner of Administration may cancel this MPC and any work order contracts at any time, with or without cause, upon 30 days written notice to the Other Party. Upon termination, the Other Party and the State will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 21.2. **Termination by the Other Party for Convenience.** The Other Party may cancel this MPC and any work order contracts at any time, with or without cause, upon 30 days written notice to the State. Upon termination,

the Other Party and the State will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

- 21.3. **Termination for Insufficient Funding.** The State may immediately terminate or suspend this MPC and any work order contract if it does not obtain funding from the Minnesota legislature or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination or suspension must be by written or fax notice to the Other Party. The State is not obligated to pay for any services that are provided after notice and effective date of termination or suspension. However, the Other Party 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 master contract or work order is terminated because of the decision of the Minnesota legislature or other funding source, not to appropriate funds. The State must provide the Other Party notice of the lack of funding within a reasonable time of the State's receiving that notice.

**22. Data Disclosure**

- 22.1. Under Minn. Stat. §270C.65, subd. 3, and other applicable law, the Other Party consents to disclosure of its federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Other Party to file state tax returns and pay delinquent state tax liabilities, if any.

**23. Defense of Claims and Lawsuits**

- 23.1. If any lawsuit or claim is filed by a third party (including but not limited to the Other Party's contractors and subcontractors), arising out of trunk highway work performed pursuant to a valid work order issued under this MPC, the Other Party will, at the discretion of and upon the request of the State, tender the defense of such claims to the State or allow the State to participate in the defense of such claims. The Other Party will, however, be solely responsible for defending any lawsuit or claim, or any portion thereof, when the claim or cause of action asserted is based on its own acts or omissions in performing or supervising the work. The Other Party will not purport to represent the State in any litigation, settlement, or alternative dispute resolution process. The State will not be responsible for any judgment entered against the Other Party, and will not be bound by the terms of any settlement entered into by the Other Party except with the written approval of the Attorney General and the Commissioner of Transportation and pursuant to applicable law.

**24. Additional Provisions**

- 24.1. NONE

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**OTHER PARTY**

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

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

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

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

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

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

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

**COMMISSIONER OF TRANSPORTATION**

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

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

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

**COMMISSIONER OF ADMINISTRATION**

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

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

Exhibit A – Table of Technical Services  
Master Partnership Contract Program FY 2023-2027

Date: 3/28/2022

Source Code	Title	Description
1735	Bituminous Plant Inspection	Performing QA/QC physical testing at the plant; sampling and transporting of materials from the plant to the lab for lab testing, plant reviews, and operations; investigating plant discrepancies; and other technical services in the plant or office associated with bituminous plant inspection.
2830	Bridge Bearing Assemblies	All tasks related to the repair and maintenance of fixed or expansion-bearing assemblies on bridges. Includes related traffic
2819	Bridge Curb, Walk And Railing	Repairing and maintaining bridge curb, walk, rail, coping, and fencing connected to the rail. Includes glare screen and median barriers on bridges. Includes related traffic control.
2820	Bridge Deck	Work associated with bridge deck and slab repair regardless of removal depth or type of material used for patching. Includes deck or slab overlays and replacements and underside deck delamination. Includes related traffic control.
2838	Bridge Deck Crack Sealing	All tasks related to deck crack sealing. Includes related traffic control.
2827	Bridge Expansion, Relief Joints	All maintenance tasks associated with bridge expansion joints, except joint reestablishment. Includes tightening expansion device bolts and replacing seal glands. Includes related traffic control.
2855	Bridge Inspection Direct Support	Activities that support bridge inspection, but are not direct production (i.e., leadership, technical, administrative assistance. All bridge inspection tasks for non-MnDOT bridges funded by the federal Fracture-Critical Bridge Program (Project Code will begin with TSL and with the local bridge number). Includes related inspection reports. For MnDOT Trunk Highway bridges (Project Code begins with TSO followed by the bridge number) and local and Department of Natural Resources (DNR) (bridge number begins with 9A follow by bridge number) bridge inspections to be billed to the local government or Department of Natural Resources (DNR) use Source Code 2824.
2828	Bridge Inspection-Federal Fund	All tasks related to inventory, inspection, and load capacity rating work done on trunk highway bridges to meet the requirements of the National Bridge Inspection System and/or Minnesota Bridge Safety Inspection Program or for billing to local governments. Includes related inspection reports and deck condition surveys.
2824	Bridge Inspection-Non-Federal	
1421	Bridge Management System Operation/Administration/Data	Use for tasks related to the Bridge Management System, including operations, administration, or data entry.
2847	Bridge Poured/ Relief Joint Seal	All tasks associated with resealing bridge construction joints. Includes related traffic control. Related source type codes: Activities that support bridge inspection, but are not direct production (i.e., leadership, technical, administrative assistance).
2829	Bridge Superstructure	All tasks to repair any bridge component above the bridge seat that is not included in other source codes. Includes repairs to all types of bridge superstructure elements such as girders, beams, floor beams, trusses, stringers, t-beams, precast channels, and box girders. Includes related traffic control.
2316	Brush & Tree Removal	Maintaining, watering, trimming, and removing highway right of way tree and brush. Includes chipping of tree limbs and stump removal/grinding. Includes related traffic control.
0032	Business Unit Management	All expenses of business/office managers for general management and administration of support functions. includes administering central facilities maintenance and facilities capital budgets.
3000	Class Of Frequency Coordination	Use for frequency coordination done with APCO, AASHTO or FCCA.



Source Code	Title	Description
1733	Concrete Plant Inspections	Performing QA/QC physical testing at the plant; sampling and transporting of materials from the plant to the lab for lab testing, plant reviews, and operations; investigating plant discrepancies; and other technical services in the plant or office associated with stationary concrete plants or mobile concrete paving plant inspection.
1734	Construction Materials Inspections	Performing construction phase material inspection and engineering, for structural steel, precast and pre-stressed concrete, reinforcement steel, and electrical products and related technical services in the field and office for materials to be used in multiple projects. Includes travel time, sampling, and sample delivery. Includes tasks related to reviewing shop drawings furnished by suppliers or fabricators and contractor working drawings or calculations, and for tasks related to structural metals inspection (materials surveys, physical and chemical laboratory testing, material inspection and engineering, and technical services in the field and offices).
1802	Construction Surveying	Use for surveys to provide staking for the contractor's operations and for any other construction phase surveying
2106	Crack Sealing	All surface crack sealing, crack filling, or rout and seal operations. Includes related materials, hauling, stockpiling, and traffic control.
3023	Elec Comm Eq Rep - Miles	
0400	Equipment Calibration-Mat Insp	Use when performing periodic equipment calibration for equipment used in the materials lab or on construction projects.
1800	Field Inspection	All construction project field inspection (not cyclical inspection of assets), including preparatory plans & spec review, measurement, and verification other than environmental monitoring. Includes field inspection of materials such as gradations, densities/DCP, proctors, compaction, slump tests, and field air tests. Witnessing claims, determination and computation of pay quantities, materials control and certification for progress vouchers, but not for final payments. Includes collecting and transporting samples for lab tests, but not the actual laboratory verifications. Includes all construction phase project related activities for project and resident engineers such as problem resolution, guidance and direction to field technicians. Includes all miscellaneous field engineering expenses used by district offices such as space rental, utilities, or other costs charged to the construction project Includes all work associated with evaluation of implementation of intelligent compaction devices to determine if construction contract terms have been met.
1040	Final Design Surveys	All district field and office tasks needed to respond to supplemental "Requests for Survey Data" and add the data to the surveys base map or DTM.
0601	Gen Training Preparation - Delivery	Use for time, materials, and travel expenses when developing or delivering training. includes course preparation, designing materials, and managing training records.
2210	Guardrail-Install/Repair/Maintenance	Install, repair, or maintain low tension cable, plate beams, and end treatments; cable tension adjustments; and reflector replacement. includes related traffic control.
2624	Indirect Expense	Indirect shop expenses and shop equipment. Allocate to mobile equipment.
1871	Lighting Maintenance & Utilities	All work related to installing, maintaining, restoring, or removing highway lighting systems and fixtures. Includes repairing, maintaining, or replacing supports necessary for roadway lighting luminaries. Includes patrol highway lighting, inspect lighting structures, electrical service for highway lighting, re-lamping, pump stations, anti-icing systems, truck roll-over warning systems and electrical repairs. Includes traffic control in support of roadway lighting activities. Use for tasks related to public inquiries/complaints, review utility billings, provide data, and conduct field reviews.

Source Code	Title	Description
1875	Locate One Call	Finding and marking locations of buried conduit, cables, hand holes, loops, etc. in order to maintain or repair the traffic management system, signal systems, or roadway lighting systems.
1732	Material Testing & Inspection	Performing construction phase and research physical and chemical laboratory testing, and related technical services in the districts and central labs, and for performing research and construction phase non-destructive testing materials surveys, and related technical services in the field and offices. Includes detour surveys. Non-destructive tests include, skid resistance and falling weight deflectometer (FWD) testing.
2660	Misc Revenue	Used only by Office of Financial Management for billing and deposit transactions and to record payments to the department for gravel sold to contractors and others.
2822	Miscellaneous Bridge Maintenance	Miscellaneous maintenance tasks performed on a specific bridge or structure not covered by other source codes. Includes work on items such as stairways, drains, fencing, light bases, transient guards, and access doors. Includes transient removal, ordering materials, and picking up equipment. Includes related traffic control.
3049	On Call Electronic Communications Infrastructure Maintenance	To be used by Statewide Radio Communications personnel to record on-call time.
2142	Overhead Sign Panel Maintenance	Work related to the repair and replacement of overhead sign panels, extruded sign panels mounted on I-beams, and overhead sign structures. Includes related cable locates and traffic control. Does not include structural work.
2102	Patching	Related source type codes: 2103-Heavy patching, 2104-Bituminous paving, 2105-Blow patching
1520	Pavement Management System	For tasks related to the operation of the pavement management system, including development and maintenance/technical support. Includes tasks to meet needs external to MnDOT.
2406	Plowing & Material Application	Shoulder to shoulder snow removal operation, winging back, snow blowing drifts, and the application of de-icing chemicals using mobile equipment. Includes changing cutting edges during event and related traffic control.
3005	Radio - Mobile Equipment	Use for the repair and preventative maintenance of all equipment associated with wireless two-way radio communications systems (includes mobile radios, portable radios, base stations, console workstations, recorders, etc.). Non-MnDOT equipment - Must use Project number assigned to requesting agency (State Patrol, DNR, BCA, Fire Marshall). See OSRC Project Code list.
3027	Radio Programming	Creating or modifying radio frequency programs and programming mobile and portable radios. Does not include mobile radios used as fixed base radios as part of the Inter-OP System (Use 3009).
3002	Radio/Electronic Infrastructure	Use for the repair and preventative maintenance of all equipment associated with wireless two-way radio communications systems (includes mobile radios, portable radios, base stations, console workstations, recorders, etc.). Non-MnDOT equipment - Must use Project number assigned to requesting agency; Department of Public Safety (DPS) includes State Patrol (SP) Bureau of Criminal Apprehension (BCA), Fire Marshall); does not include Department of Natural Resources (DNR). See OSRC Project
3007	Radio/Electronic System Engineering	Use for design of microwave, radio and miscellaneous electronic systems.
3009	Radio/Electronic System Upgrade & Installation	Use for the installation and other services needed to provide major system upgrades or improvements to wireless or electronic systems. Use for all work performed to correct or repair deficiencies found in a new installation.
1716	Record Sampling	Used by Materials and Research Section and district materials staff to verify inspector" sampling and testing procedures and checking inspectors' equipment during project construction as required by FHWA. Use when performing field tests on split sample.

Source Code	Title	Description
2222	Sign/Delineation/Marker Repair	Replacing, repairing, and washing signs (including temporary stop signs). Includes re-sequencing intersection signing and repair/replace overhead and extrude signs mounted on I-beams. Includes related cable locates and traffic control.
1182	Soils/Foundation Field/Laboratory Tests	All laboratory testing necessary to provide geotechnical information to complete roadway soils recommendations and approvals for use in the development of Final Design Plans and Special Provisions. Lab work includes R-value, resilient modulus, soil classification, gradation, proctor testing, unconfined compression, consolidation, direct simple shear, direct shear, permeability and triaxial tests.
1879	State Furnished Materials	Use to record labor hours, equipment usage, and material costs to supply state furnished materials to a state road construction project with federal participation.
1738	State Project - Specific Materials Inspection	Performing material inspection and engineering for materials designated for a specific construction project (SP). Generally applies to inspection of such things as structural steel, prestressed concrete items, and most precast concrete items and related technical services in the field and offices when related to a particular SP. Use for SP specific tasks related to performing the review of shop drawings furnished by suppliers or fabricators and contractor working drawings or calculations, and for tasks related to structural metals inspection (materials surveys, physical and chemical laboratory testing, material inspection and engineering and technical services in the field and offices).
1434	Structural Metals Inspection-Non DOT	Reviewing shop drawings furnished by suppliers, fabricators, and contractors (working drawing or calculations), and for tasks related to structural metals inspection (materials surveys, physical and chemical laboratory testing, material inspection and engineering, and technical services in the field and offices) for local agency projects.
2629	Supplies & Small Tools	Shop tools, small equipment, and supplies that cannot be directly charged to a mobile equipment unit.
0152	Support Services	Work that supports general office management, system management such as entering data into SWIFT, PPMS, PUMA and other MnDOT systems, attending staff meetings and other indirect support activities.
1312	Tech Assist-Outside MnDOT	Use when providing technical assistance to an organization external to MnDOT.
3025	Tower/Building Maintenance	Use for all tasks related to the maintenance of a tower building or site. Includes towers, buildings, generators, LP system, fencing, landscaping, grounding, ice bridge, cable management, climbing ladders, card key systems, and HVAC.
1876	Traffic Counting	Use to record labor, equipment usage, and material costs for activities related to traffic counts made for statewide traffic monitoring or traffic operations. Includes all activities related to traffic counting, such as taking requests, assigning priorities, collecting field data, processing data, and developing new techniques for collection.
1501	Traffic Management System (TMS)	Used by traffic operations staff for all tasks that support the RTMC's operations center (or TOCC) providing traveler information, managing incidents and monitoring the FMS. Includes dynamic message sign maintenance, ramp meter maintenance, camera maintenance, and loop detection activities. Includes maintenance activities related to any ITS or TMS device such as RTMC cables, monitor wall, switchers, routers, or modems. Use to record all costs for maintenance activities related to traffic management fiber optics. Use for tasks related to maintaining traffic operations software including minor software enhancements and fixes. Use when providing traffic operations technical assistance external to MnDOT. Use with

Source Code	Title	Description
1513	Traffic Management System (TMS) Integration	For tasks associated with the incorporation of new and existing TMS devices (cameras, loops, DMS, and other ITS devices) into existing infrastructure to ensure proper operation. Use with the Construction/Program Delivery Appropriation.
1500	Traffic Mgt System Maintenance	Used by staff to maintain various Intelligent Transportation System (ITS) devices such as dynamic message signs, ramp meters, cameras, detection, cables, RICWS, video wall monitors, switches, routers or modems. Used to record all costs for maintenance activities related to traffic management fiber optics. Not to be used for Lighting or Traffic Signal maintenance.
1721	Traffic Sign Work Orders	Use for work involved in preparing work orders for traffic signs. Use only with Maintenance Operations appropriation (T790081).
2863	Traffic Signal Inspection	Work related to cyclical structural and electrical inspection and preventive maintenance checks of traffic signal systems/structures. Includes labor, equipment, materials, and traffic control.
1870	Traffic Signal Maintenance	Work related to the structural repair and replacement of traffic signal system structures and all electrical maintenance for traffic signal systems including electrical power, labor, equipment materials, GSOC locates, traffic control and responses to public inquiries.
2834	Waterway Maintenance	All tasks related to waterway maintenance for deck bridges. Includes debris removal, waterway cleanup, channel repair, and channel protection repair that is not part of slope protection. Includes related traffic control.



## RESOLUTION NO.

Whereas, The Minnesota Department of Transportation wishes to cooperate closely with local units of government to coordinate the delivery of transportation services and maximize the efficient delivery of such services at all levels of government; and

Whereas, MnDOT and local governments are authorized by Minnesota Statutes sections 471.59, 174.02, and 161.20, to undertake collaborative efforts for the design, construction, maintenance and operation of state and local roads; and

Whereas: the parties wish to be able to respond quickly and efficiently to such opportunities for collaboration, and have determined that having the ability to write “work orders” against a master contract would provide the greatest speed and flexibility in responding to identified needs.

Therefore, be it resolved:

1. That the City of Austin enter into a Master Partnership Contract with the Minnesota Department of Transportation, a copy of which was before the City Council.
2. That the proper City officers are authorized to execute such contract, and any amendments thereto.
3. That the City Public Works Director is authorized to negotiate work order contracts pursuant to the Master Contract, which work order contracts may provide for payment to or from MnDOT, and that the City Public Works Director may execute such work order contracts on behalf of the City of Austin without further approval by this Council.

Passed by a vote of yeas and nays this 5th day of July, 2022.

Yeas

Nays

ATTEST:

APPROVED

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

\_\_\_\_\_  
Mayor

## RESOLUTION NO. \_\_\_\_\_

**RESOLUTION APPROVING  
STATE OF MINNESOTA JOINT POWERS AGREEMENTS  
WITH THE CITY OF AUSTIN ON BEHALF OF  
ITS CITY ATTORNEY AND POLICE DEPARTMENT**

WHEREAS, the City of Austin on behalf of its Prosecuting Attorney and Police Department desires to enter into Joint Powers Agreements with the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension to use systems and tools available over the State's criminal justice data communications network for which the City is eligible. The Joint Powers Agreements further provide the City with the ability to add, modify and delete connectivity, systems and tools over the five year life of the agreement and obligates the City to pay the costs for the network connection.

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

1. That the State of Minnesota Joint Powers Agreements by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the City of Austin on behalf of its Prosecuting Attorney and Police Department, are hereby approved.
2. That the Chief of Police, David McKichan, or his successor, is designated the Authorized Representative for the Police Department. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.
3. That the City Attorney - Prosecution, Tom Baudler, or his or her successor, is designated the Authorized Representative for the Prosecuting Attorney. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.
4. That Steve King, the Mayor for the City of Austin, and Tom Dankert, the City Recorder, are authorized to sign the State of Minnesota Joint Powers Agreements.

Passed and Adopted by the Council on this \_\_\_\_\_ day of July, 2022.

CITY OF AUSTIN

\_\_\_\_\_  
By: Steve King  
Its Mayor

ATTEST: \_\_\_\_\_  
By: Tom Dankert  
Its City Recorder

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



Phone: 507-437-9940

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

TO: Mayor and City Council  
FROM: <sup>Tom</sup> Tom Dankert, Director of Administrative Services  
DATE: June 22, 2022  
RE: City Hall lighting replacements  
U:\Word\2022\Miscellaneous\City Hall LED lighting.doc

At the end of 2021 the City set aside funds for the city hall LED lighting and Park and Rec security window projects. Additionally, remaining funds could be used by the Public Works Department to convert as many additional street lights to LED.

Facilities, Energy Maintenance Technician Brian Mason has done a walk thru with both Fox Electric and Austin Electric to replace the remaining non-LED light fixtures at city hall. We had them both quote the same number of fixtures as Brian believes the counts might be off a bit. The actual billing will be based on the actual counts. The quotes are as follows:

- Austin Electric = \$21,186
- Fox Electric = \$27,495

The City shall retain all lighting rebates from Austin Utilities.

By approving this project Council will continue to work forward in reducing the carbon footprint, reducing our utility costs, and becoming a good steward of our environment.

We would request Council approve a resolution for Austin Electric to install the LED lighting at city hall for the low bid of \$21,186. After this bid award, there is still over \$160,000 remaining that could go towards street light LED lighting.

If you have any questions, please do not hesitate to give me a call.

## Tom Dankert

---

**From:** Brian Mason  
**Sent:** Friday, June 17, 2022 1:41 PM  
**To:** Tom Dankert  
**Subject:** Two bids for LED upgrades to the rest of city hall  
**Attachments:** Austin Electric LED for rest of building.pdf; Fox LED for rest of building.pdf

Tom,

I have attached the two bids for upgrading the rest of City Hall to LED lighting. Austin Electric is lower priced on all three phases for a total of \$21,186.00 and Fox came in at \$27,495.00.

I went through and double checked the lighting numbers after getting Fox's quote and found some incorrect counts on fixtures, but I had Austin Electric quote the project like for like for accurate competing quotes. We will have to do a walk through before the project to verify with the winning contractor.

Brian Mason  
City of Austin, Mn  
Building and Facility Maintenance  
[brianm@ci.austin.mn.us](mailto:brianm@ci.austin.mn.us)  
507-381-3249





**Austin Electric, Inc.**  
**(507) 434-8080**

## REMODEL PROJECT

06/17/2022  
SID #: 2206072

Ph: 507-434-8080 | Chad@austinelectric.net

Prepared By: Chad Carlson

**Customer:** Austin, City Of  
**Address:** 500 4th Ave N.E.  
Austin, MN 55912  
**Contact:** Brian Mason  
**Phone:** 507-381-3249  
**Email:** brianm@ci.austin.mn.us

**Job Name:** City of Austin - City Hall Retrofit  
**Jobsite Address:** 500 4th Ave N.E.  
Austin, MN 55912

### JOB ITEMS

#### Price #1

**\$6,833.00**

Lighting in high use areas includes: Lower Hallways, Lower Lobby, Council Chambers, Lower Breakroom, Lower Conference Room & Finance Office

1. Demo (23) 2x2 lay-in u-bend fixtures
2. Furnish and install (23) new led 2x2 fixtures
3. Furnish and install (5) round 8" led insert
4. Furnish and install (22) round 6" led dimmable LAMPS in council chambers
5. Remove ballast and direct connect ends on (18) 4' 2-lamp fixtures and (16) 4' 4-lamp fixtures
6. Furnish and install (100) direct connect led lamps
7. Disposal of old lamps
8. State Inspection Fees

#### Price #2

**\$6,233.00**

Lighting in Low Use Areas Includes; Election Office, Data Room, West Store Room and Lower East Area

1. Demo (18) 2x2 lay-in u-bend fixtures
2. Furnish and install (18) new led 2x2 fixtures
3. Furnish and install (2) round 8" led insert
4. Demo (4) 4' 2-lamp wall lights
5. Furnish and install (4) 4' led wall lights
6. Remove ballast and direct connect ends on (12) 4' 2-lamp fixtures, (21) 4' 4-lamp fixtures and (12) 1-lamp fixtures
7. Furnish and install (120) direct connect led lamps
8. Disposal of old lamps
9. State Inspection Fees

#### Price #3

**\$8,120.00**

No Use Area West 2nd Floor Old Engineering

1. Demo (56) 2x2 lay-in u-bend fixtures



**Austin Electric, Inc.**  
**(507) 434-8080**

## REMODEL PROJECT

06/17/2022  
SID #: 2206072

2. Furnish and install (56) new led 2x2 fixtures
3. Disposal of old lamps
4. State Inspection Fees

<b>TOTAL</b>	<b>\$21,186.00</b>
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**Austin Electric, Inc.**  
**(507) 434-8080**

## REMODEL PROJECT

06/17/2022  
SID #: 2206072

### TERMS & CONDITIONS

Thank you for choosing Austin Electric. We appreciate your business!

Prices are firm for 10 days from date of this proposal.

Billing and payments are to be as follows: 50% deposit required, and final 50% due on day of job completion. The 50% deposit is required before any materials can be ordered and/or work can begin.

Electrical Contractor shall not be liable for failure to perform if prevented by strikes or other labor disputes, accidents, acts of god, governmental or municipal regulation or interference, shortages of labor or materials, delays in transportation, non-availability of the same from manufacturer or supplier, or other causes beyond the Electrical Contractor's control. In no event shall the Electrical Contractor be liable for special or consequential damages whatsoever or however caused.

Notwithstanding any provision herein to the contrary, in the event that, during the performance of this agreement, the price of copper wire and cables, aluminum wire and cables, steel conduit and/or any other necessary commodities significantly increases, through no fault of electrical contractor, the price of any materials, components, or goods to be furnished under this agreement shall be equitably adjusted by an amount reasonably necessary to cover any such significant price increases. As used herein, a significant price increase shall mean any increase in price exceeding three percent (3%) experienced by the electrical contractor from the date of the execution of this agreement. Such price increases shall be documented through commercial quotes, invoices, receipts or other such documentation. Where the delivery of materials, components, or goods required under this agreement is delayed, through no fault of electrical contractor, as a result of the shortage or unavailability of commodities, raw materials, components and/or products, electrical contractor shall not be liable for any additional costs or damages associated with such delay(s).

If trenching is required, the bid price listed above is for a mounded trench only. All re-seeding and/or landscaping if required is not included in this proposal. All private underground facility locations to be marked and notified to Austin Electric before start of project. Austin Electric assumes no responsibilities for private underground facilities not identified by others.

My signature certifies that I have the authority to order the above work and do so order as outlined above. I understand that payment is due upon completion of work. In the event of default by either party, all amounts outstanding shall be due and payable on demand. In addition, the prevailing party shall be entitled to payment for any attorney's fees incurred by reason of the default, including late fees and costs, and interest at the rate designated in paragraph 5 of this contract, on any amounts that may be due. If the phone number you provided us is a mobile phone number, you authorize us to contact you at that number for collection. We are not responsible for any existing defective wiring or code violations in the existing electrical system and any said defective wiring or code violations that requires us to repair or extend the work we have proposed to install or repair, must be paid for in addition to the proposed price declared above. Due to the nature of this work, it is sometimes necessary to create openings in walls, ceilings or floors to gain access to concealed wiring, boxes, splices or to install new wiring. Price does not include patching or painting of walls, ceilings or floors that need to be cut or drilled to gain access for installation.

**BUYER'S RIGHT TO CANCEL** - This provision applies to all RETAIL CONTRACTS in which solicitation is performed at the BUYER'S home and/or if the solicitation is for improvements made to the BUYER'S home. The following statement complies with the requirements of Minnesota Statutes 325G.07, pertaining to the SELLER'S obligation to evidence in writing of the BUYER'S RIGHT TO CANCEL in all forms of indebtedness as it applies herein: THIS IS A HOME SOLICITATION AND/OR HOME IMPROVEMENT SALE. IF YOU DO NOT WANT THE GOODS OR SERVICES, YOU MAY CANCEL THIS AGREEMENT BY PROVIDING WRITTEN NOTICE TO THE SELLER IN PERSON, BY TELEGRAM, OR BY MAIL. THIS NOTICE MUST INDICATE THAT YOU DO NOT WANT THE GOODS OR SERVICES AND MUST BE DELIVERED OR POSTMARKED BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER YOU SIGN THIS AGREEMENT IF YOU CANCEL THIS AGREEMENT, THE SELLER MAY NOT KEEP ALL OR PART OF ANY CASH DOWN PAYMENT.

**LIEN LAW PERTAINING TO REAL PROPERTY CONTRACTS:**  
**ACCORDING TO MINNESOTA'S CONSTRUCTION LIEN LAW**

(SECTIONS 514.011, MINNESOTA'S STATUTES). ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.

UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.

MINNESOTA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

**\*\*\*3% credit card processing fees apply to transactions over \$1,000.\*\*\***



**Austin Electric, Inc.**  
**(507) 434-8080**

## REMODEL PROJECT

06/17/2022  
SID #: 2206072

Please remit to:  
Austin Electric, Inc.  
P.O. Box 307  
Austin, MN 55912

\_\_\_\_\_  
Please sign (Shows Approval)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Please print Above Name



# PROPOSAL

## FOX ELECTRIC CO. INC.

Electrical Contractor  
**SECURITY FIRE ALARM DATA PHONE**  
 500 NE 10<sup>th</sup> Street – Austin, Minnesota 55912  
 Phone: (507) 433-7184 Fax: (507) 433-5111  
 Email: [foxelectric@foxelectricinc.com](mailto:foxelectric@foxelectricinc.com)

PROPOSAL SUBMITTED TO: CITY HALL STREET CITY, STATE and ZIP CODE AUSTIN MN 55912	E-MAIL PHONE	DATE 5/17/2022
JOB NAME RETRO LIGHTING TO LED	JOB LOCATION	

We hereby submit specifications and estimates for:

### PRICE #1

LIGHTING IN HIGH USE AREAS INCLUDES: LOWER HALLWAYS, LOWER LOBBY, COUNCIL CHAMBERS, LOWER BREAKROOM, LOWER CONFERENCE ROOM AND FINANCE OFFICE

1. DEMO (23) 2X2 LAY IN U BEND FIXTURES.
2. FURNISH AND INSTALL (23) NEW LED 2X2 FIXTURES.
3. FURNISH AND INSTALL (5) ROUND 8" LED INSERT.
4. FURNISH AND INSTALL (22) ROUND 6" LED DIMMABLE TRIMS IN COUNCIL CHAMBERS.
5. REMOVE BALLAST AND DIRECT CONNECT ENDS ON (18) 4' - 2LAMP FIXTURES AND FURNISH (16) 4' 4 LAMP FIXTURES.
6. FURNISH AND INSTALL (100) DIRECT CONNECT LED LAMPS.
7. DISPOSAL OF OLD LAMPS.
8. STATE INSPECTION FEES.

TOTAL: \$10,930.00

APPROXIMATE AUSTIN UTILITIES REBATE \$2,111.00

PRICE #2 LIGHTING IN LOW USE AREAS INCLUDES: ELECTION OFFICE, DATA ROOM, WEST STORE ROOM AND LOWER EAST AREA

1. DEMO (18) 2X2 LAY IN U BEND FIXTURES.
2. FURNISH AND INSTALL (18) NEW LED 2X2 FIXTURES.
3. FURNISH AND INSTALL (2) ROUND 8" LED INSERTS.
4. DEMO (4) 4' 2 LAMP WALL LIGHTS.
5. FURNISH AND INSTALL (4) 4' LED WALL LIGHTS.
6. REMOVE BALLASTS AND DIRECT CONNECT ENDS IN (120) 4' 2 LAMP AND (21) 4' 4 LAMP FIXTURE.
7. FURNISH AND INSTALL (120) DIRECT CONNECT LED LAMPS.
8. DISPOSAL OF OLD LAMPS.
9. INSPECTION FEES.

TOTAL: \$7,420.00

APPROXIMATE REBATE \$1,594.00

\*\*\* 3% PROCESSING FEE FOR CREDIT/DEBIT CARD CHARGES OVER \$500.00 \*\*\*

Payment to be made as follows: **50% DOWNPAYMENT UPON ACCEPTANCE OF BID-REMAINDER UPON COMPLETION OF PROJECT**

Any alteration from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. Owner to carry fire, tornado, and other necessary insurance. If additional insured is required on certificate of insurance, there will be an additional fee added to this price in the form of a change order. Price does not include performance bond, bid bond, building permit, or dumpster fees. Price does include State Electrical Inspection Fee.

Note: This proposal may be withdrawn by us if not accepted within 10 days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work specified. Payment will be made as outlined above.

Fox Electric  
Signature

Owner  
Signature

Date of Acceptance: \_\_\_\_\_

PROPOSAL**FOX ELECTRIC CO. INC.**

Electrical Contractor

**SECURITY FIRE ALARM DATA PHONE**500 NE 10<sup>th</sup> Street – Austin, Minnesota 55912

Phone: (507) 433-7184 Fax: (507) 433-5111

Email: [foxelectric@foxelectricinc.com](mailto:foxelectric@foxelectricinc.com)

PROPOSAL SUBMITTED TO: CITY HALL	E-MAIL	PHONE	DATE 5/17/2022
STREET	JOB NAME RETRO LIGHTING TO LED		
CITY, STATE and ZIP CODE AUSTIN MN 55912	JOB LOCATION		

We hereby submit specifications and estimates for:

PRICE #3 NO USE AREA WEST 2<sup>ND</sup> FLOOR OLD ENGINEERING

1. DEMO (56) 2X2 LAY IN U-BEND FIXTURES.
2. FURNISH AND INSTALL (56) NEW LED 2X2 LAY IN FIXTURE.
3. DISPOSAL OF OLD LAMPS.
4. STATE INSPECTION FEES.

TOTAL: \$9,145.00

AUSTIN UTILITES REBATE \$1,792.00

\*\*\* 3% PROCESSING FEE FOR CREDIT/DEBIT CARD CHARGES OVER \$500.00 \*\*\*

Payment to be made as follows: **50% DOWNPAYMENT UPON ACCEPTANCE OF BID-REMAINDER UPON COMPLETION OF PROJECT**

Any alteration from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. Owner to carry fire, tornado, and other necessary insurance. If additional insured is required on certificate of insurance, there will be an additional fee added to this price in the form of a change order. Price does not include performance bond, bid bond, building permit, or dumpster fees. Price does include State Electrical Inspection Fee.

Note: This proposal may be withdrawn by us if not accepted within 10 days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work specified. Payment will be made as outlined above.

Fox Electric  
Signature

Owner  
Signature

Date of Acceptance: \_\_\_\_\_



**RESOLUTION NO.**

**CITY HALL LED LIGHTING IMPROVEMENTS**

**WHEREAS**, the City received quotes on converting the remaining fixtures in City Hall to LED lighting; and

**WHEREAS**, the following quotes were received:

Austin Electric	\$21,186
Fox Electric	\$27,495

**WHEREAS**, it appears Austin Electric is the lowest responsible bidder.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Austin, Minnesota that the quote of Austin Electric is hereby accepted and the Mayor and City Recorder are hereby authorized and directed to enter into a contract with Austin Electric in the name of the City of Austin for LED lighting upgrades in City Hall.

Passed by a vote of yeas and nays this 5th day of July, 2022.

Yeas

Nays

ATTEST:

APPROVED

---

City Recorder

---

Mayor

**LETTER OF AGREEMENT**

THIS AGREEMENT ("Agreement") is made effective as of the 1st day July 2022, by, between and among Independent School District No. 492 (the "District") and the City of Austin.

WHEREAS, the District desires to utilize the services of two (2) police liaison officers pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, it is agreed by, between and among the parties as follows:

1. Subject to the terms and conditions set forth in this Agreement, the District hereby agrees to utilize the services of two (2) police liaison officers for the purpose of student retention from August 29, 2022 through June 1, 2023. The police liaison officers shall service primarily Austin High School and Ellis Middle School and shall be shared with other District sites as needed. The City of Austin shall execute and deliver proper notice to the District that this Agreement constitutes a valid and binding obligation of the City of Austin for the time period stated.
2. In consideration of the full and complete performance of the agreed services in paragraph 1 hereof, District agrees to compensate the City of Austin amounts equal to the following: Eighty percent (80%) of the Ellis and Ninety percent (90%) Austin High School officer's salary and associated benefits. It is understood that all Federal, State and local taxes are included in the cost of said services.

The City of Austin shall invoice the District for the services performed bi- annually, and the District shall pay such invoice within thirty (30) days following receipt. The City of Austin invoices shall show for the City of Austin employee by name and title, and the time period included for the billing.

If circumstance the City of Austin is not able to provide the agreed services in full, the Chief of Police and Director of Human Resources will meet to discuss an adjustment to the terms of this contract.

3. The City of Austin agrees to provide police liaison services as described in Exhibit "A", which is attached hereto and made a part of this Agreement.
4. The District reserves the right to extend the contract term basis, subject to the City of Austin's concurrence.
5. Either District or City of Austin may terminate the Term of Services under this Agreement at any time and for any reason by providing the other party with thirty (30) days written notice.

Further, either District or City of Austin may terminate the Term of Services under this Agreement by providing the other party with five (5) days written notice in the event the other party commits a material breach of this Agreement or otherwise fails to comply with its material obligations under this Agreement.

6. The District and the City of Austin acknowledge and agree that the City of Austin's police liaison officers are not employees of the District, and that the City of Austin or its agents will have no authority to bind the District or otherwise incur liability on behalf of the District without express delegation of authority by the District. The District shall have no obligation to provide any employee benefits or privileges of any kind or nature to the City of Austin police liaison officers, including, without limitation, insurance benefits, pension benefits, or the like.
7. The police liaison officers are not entitled to access private or confidential data maintained by the School District, including, but not limited to, private personnel data and private student data, unless state or federal law allows such access. In the event that the officers learn private student data or private personnel data in connection with their assignment to the schools, such information cannot be shared with individuals other than School District employees who have a legitimate need to know such information, unless otherwise authorized by the law.
8. The School District's authorized representatives in matters relating to this Agreement are Dr. Joey Page and Andrew Beenken-Adams unless the City of Austin is notified in writing of an additional or substitute representative. Said Representative shall have final authority for acceptance of the City of Austin's services as satisfactory and shall certify acceptance on each invoice submitted by the City of Austin. The City of Austin shall not rely on the directives or interpretations of any other individual as representing the School District under this Agreement.
9. The City of Austin acknowledges and agrees that it and its employees and agents that are assigned to perform services under this Agreement shall comply with the policies set forth in Exhibit B hereto and with any amendments to those policies that are made during the term of this Agreement.
10. The City of Austin hereby represents and warrants that it:
  - a. Is not subject to any restrictions whatsoever which would prevent it from entering into or carrying out the provisions of this Agreement;
  - b. Possesses all licenses, permits, approvals and other certificates necessary and required for performing the services pursuant to this Agreement;
  - c. Possesses the proper skill, training, experience and background so as to be able to perform this Agreement in a competent and professional manner; and
  - d. Has full authority to enter into this Agreement and consummate the transaction contemplated hereby.
11. Both parties shall, at its own expense, procure and maintain liability insurance against claims for bodily injury, death and property damage occurring on or about the facilities of the District in conjunction with any use of the District facilities named in paragraph hereto in amounts reasonably satisfactory to the District and the City of Austin.

12. This Agreement contains the entire agreement between the City of Austin and the School District with respect to the services. All prior agreements and understandings are superseded hereby.
13. No provision of this Agreement may be modified, waived, terminated or amended except by a written instrument executed by the parties hereto. No waiver of a breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or other provisions hereof.
14. Any notices or demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been given when delivered personally or three (3) days after deposit in a regularly maintained receptacle of the United States Postal Service, postage prepaid, return receipt requested and addressed as follows or as the parties may from time to time designate in writing:

TO School District:

**U.S. Mail**

Independent School Dist. 492  
Attn: Dr. Joey Page  
401 3rd Ave. NW  
Austin, MN 55912

**Non-Mail**

Independent School Dist. 492  
Attn: Dr. Joey Page  
401 3rd Ave. NW  
Austin, MN 55912

TO City of Austin:

Tom Dankert  
City of Austin  
500 4th Ave NE  
Austin, MN 55912

Tom Dankert  
City of Austin  
500 4th Ave NE  
Austin, MN 55912

15. If any provision of this Agreement is prohibited by law or held to be invalid, illegal, or unenforceable, the remaining provisions hereof shall not be affected, and this Agreement shall continue in full force and effect as if such prohibited illegal or invalid provision had never constituted a part hereof, with this Agreement being enforced to the fullest extent possible.

This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against either party.

Executed as of the day and date first written above.

CITY OF AUSTIN

INDEPENDENT SCHOOL DISTRICT 492  
AUSTIN PUBLIC SCHOOLS

BY: \_\_\_\_\_

BY: 

TITLE: \_\_\_\_\_

TITLE: Exec. Dir. of Finance + Operations

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Executed as of the day and date first written above.



## **Exhibit A Scope of Services**

Provide a technically and professional qualified individuals deemed acceptable to the School District to assist the School District in its retention of students. Scope of work includes, but is not limited to the following:

- 1) Full professional responsibility for all police liaison services provided at the School District.
- 2) Assist in weekly multi-disciplinary team meetings with District staff.
- 3) Provide periodic in-service for District staff regarding student discipline and legal issues.
- 4) Ensure the confidentiality of all student information.
- 5) Assist in the development of appropriate individual student plans.
- 6) Assist in team building and healthy team functioning in all programs.
- 7) Provide consultation to district staff on student discipline issues.
- 8) Ensure that all services are within the scope and duties as appointed by the Court

The City of Austin will adhere to policies adopted by the Austin Public School board and accessible at [Austin.k12.mn.us](http://Austin.k12.mn.us). See Policy 406 and policy 413 attached as a component of Exhibit A.

*[Note: The provisions of this policy accurately reflect the Minnesota Government Data Practices Act and are not discretionary in nature.]*

**I. PURPOSE**

The purpose of this policy is to provide guidance to school district employees as to the data the school district collects and maintains regarding its personnel.

**II. GENERAL STATEMENT OF POLICY**

- A. All data on individuals collected, created, received, maintained or disseminated by the school district, which is classified by statute or federal law as public, shall be accessible to the public pursuant to the procedures established by the school district.
- B. All other data on individuals is private or confidential.

**III. DEFINITIONS**

- A. "Public" means that the data is available to anyone who requests it.
- B. "Private" means the data is available to the subject of the data and to school district staff who need it to conduct the business of the school district.
- C. "Confidential" means the data is not available to the subject.
- D. "Parking space leasing data" means the following government data on an application for, or lease of, a parking space: residence address, home telephone number, beginning and ending work hours, place of employment, location of parking space, and work telephone number.
- E. "Personnel data" means government data on individuals maintained because they are or were employees of the school district, applicants for employment, or volunteers or independent contractors for the school district, or members of or applicants for an advisory board or commission. Personnel data include data submitted to the school district by an employee as part of an organized self-evaluation effort by the school district to request suggestions from all employees on ways to cut costs, make the school district more efficient, or to improve school district operations. An employee who is identified in a suggestion shall have access to all data in the suggestion except the identity of the employee making the suggestion.
- F. "Finalist" means an individual who is selected to be interviewed by the school board for a position.
- G. "Protected health information" means individually identifiable health information

transmitted in electronic form by a school district acting as a health care provider. "Protected health information" excludes health information in education records covered by the federal Family Educational Rights and Privacy Act and employment records held by a school district in its role as employer.

- H. "Public officials" means business managers; human resource directors; athletic directors whose duties include at least 50 percent of their time spent in administration, personnel, supervision, and evaluation; chief financial officers; directors; and individuals defined as superintendents and principals.

#### **IV. PUBLIC PERSONNEL DATA**

- A. The following information on employees, including volunteers and independent contractors, is public:

1. name;
2. employee identification number, which may not be the employee's social security number;
3. actual gross salary;
4. salary range;
5. terms and conditions of employment relationship;
6. contract fees;
7. actual gross pension;
8. the value and nature of employer-paid fringe benefits;
9. the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
10. job title;
11. bargaining unit;
12. job description;
13. education and training background;
14. previous work experience;
15. date of first and last employment;
16. the existence and status of any complaints or charges against the

employee, regardless of whether the complaint or charge resulted in a disciplinary action;

17. the final disposition of any disciplinary action, as defined in Minn. Stat. § 13.43, Subd. 2(b), together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the school district;
18. the complete terms of any agreement settling any dispute arising out of the employment relationship, including superintendent buyout agreements, except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money, and such agreement may not have the purpose or effect of limiting access to or disclosure of personnel data or limiting the discussion of information or opinions related to personnel data;
19. work location;
20. work telephone number;
21. badge number;
22. work-related continuing education;
23. honors and awards received; and
24. payroll time sheets or other comparable data that are used only to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.

B. The following information on applicants for employment is public:

1. veteran status;
2. relevant test scores;
3. rank on eligible list;
4. job history;
5. education and training; and
6. work availability.

C. Names of applicants are private data except when certified as eligible for appointment to a vacancy or when they become finalists for an employment position.

D. Applicants for appointment to a public body.

1. Data about applicants for appointment to a public body are private data on individuals except that the following are public:
  - a. name;
  - b. city of residence, except when the appointment has a residency requirement that requires the entire address to be public;
  - c. education and training;
  - d. employment history;
  - e. volunteer work;
  - f. awards and honors;
  - g. prior government service;
  - h. any data required to be provided or that are voluntarily provided in an application for appointment to a multimember agency pursuant to Minn. Stat. § 15.0597; and
  - i. veteran status.
2. Once an individual is appointed to a public body, the following additional items of data are public:
  - a. residential address;
  - b. either a telephone number or electronic mail address where the appointee can be reached, or both at the request of the appointee;
  - c. first and last dates of service on the public body;
  - d. the existence and status of any complaints or charges against an appointee; and
  - e. upon completion of an investigation of a complaint or charge against an appointee, the final investigative report is public, unless access to the data would jeopardize an active investigation.
3. Notwithstanding paragraph 2., any electronic mail address or telephone number provided by a public body for use by an appointee shall be public. An appointee may use an electronic mail address or telephone number provided by the public body as the designated electronic mail address or



telephone number at which the appointee can be reached.

- E. Regardless of whether there has been a final disposition as defined in Minn. Stat. § 13.43, Subd. 2(b), upon completion of an investigation of a complaint or charge against a public official, as defined in Minn. Stat. § 13.43, Subd. 2(e), or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources.
- F. Data relating to a complaint or charge against a public official is public only if:
  - (1) the complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or
  - (2) potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement. Data that is classified as private under another law is not made public by this provision.

#### **V. PRIVATE PERSONNEL DATA**

- A. All other personnel data are private and will only be shared with school district staff whose work requires such access. Private data will not be otherwise released unless authorized by law or by the employee's informed written consent.
- B. Data pertaining to an employee's dependents are private data on individuals.
- C. Data created, collected or maintained by the school district to administer employee assistance programs are private.
- D. Parking space leasing data are private.
- E. An individual's checking account number is private when submitted to a government entity.
- F. Personnel data may be disseminated to labor organizations to the extent the school district determines it is necessary for the labor organization to conduct its business or when ordered or authorized by the Commissioner of the Bureau of Mediation Services.
- G. The school district may display a photograph of a current or former employee to prospective witnesses as part of the school district's investigation of any complaint or charge against the employee.
- H. The school district may, if the responsible authority or designee reasonably determines that the release of personnel data is necessary to protect an employee from harm to self or to protect another person who may be harmed by the employee, release data that are relevant to the concerns for safety to:
  - 1. the person who may be harmed and to the attorney representing the person

when the data are relevant to obtaining a restraining order;

2. a pre-petition screening team conducting an investigation of the employee under Minn. Stat. § 253B.07, Subd. 1; or

3. a court, law enforcement agency, or prosecuting authority.

I. Private personnel data or confidential investigative data on employees may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, or for the purpose of assisting law enforcement in the investigation of such a crime or alleged crime.

J. A complainant has access to a statement provided by the complainant to the school district in connection with a complaint or charge against an employee.

K. When allegations of sexual or other types of harassment are made against an employee, the employee shall not have access to data that would identify the complainant or other witnesses if the school district determines that the employee's access to that data would:

1. threaten the personal safety of the complainant or a witness; or

2. subject the complainant or witness to harassment.

If a disciplinary proceeding is initiated against the employee, data on the complainant or witness shall be available to the employee as may be necessary for the employee to prepare for the proceeding.

L. The school district shall make any report to the board of teaching or the state board of education as required by Minn. Stat. § 122A.20, Subd. 2, and shall, upon written request from the licensing board having jurisdiction over a teacher's license, provide the licensing board with information about the teacher from the school district's files, any termination or disciplinary proceeding, and settlement or compromise, or any investigative file in accordance with Minn. Stat. § 122A.20, Subd. 2.

M. Private personnel data shall be disclosed to the department of economic security for the purpose of administration of the unemployment insurance program under Minn. Stat. Ch. 268.

N. When a report of alleged maltreatment of a student in a school is made to the Commissioner of Education, data that are relevant and collected by the school about the person alleged to have committed maltreatment must be provided to the Commissioner on request for purposes of an assessment or investigation of the maltreatment report. Additionally, personnel data may be released for purposes of informing a parent, legal guardian, or custodian of a child that an incident has occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.

- O. The school district shall release to a requesting school district or charter school private personnel data on a current or former employee related to acts of violence toward or sexual contact with a student, if an investigation conducted by or on behalf of the school district or law enforcement affirmed the allegations in writing prior to release and the investigation resulted in the resignation of the subject of the data; or the employee resigned while a complaint or charge involving the allegations was pending, the allegations involved acts of sexual contact with a student, and the employer informed the employee in writing, before the employee resigned, that if the employee resigns while the complaint or charge is still pending, the employer must release private personnel data about the employee's alleged sexual contact with a student to a school district or charter school requesting the data after the employee applies for employment with that school district or charter school and the data remain classified as provided in Minn. Stat. Ch. 13. Data that are released under this paragraph must not include data on the student.
- P. The identity of an employee making a suggestion as part of an organized self-evaluation effort by the school district to cut costs, make the school district more efficient, or to improve school district operations is private.
- Q. Health information on employees is private unless otherwise provided by law. To the extent that the school district transmits protected health information, the school district will comply with all privacy requirements.
- R. Personal home contact information for employees may be used by the school district and shared with another government entity in the event of an emergency or other disruption to ensure continuity of operation for the school district or government entity.
- S. The personal telephone number, home address, and electronic mail address of a current or former employee of a contractor or subcontractor maintained as a result of a contractual relationship between the school district and a contractor or subcontractor entered on or after August 1, 2012, are private data. These data must be shared with another government entity to perform a function authorized by law. The data also must be disclosed to a government entity or any person for prevailing wage purposes.
- T. When a teacher is discharged immediately because the teacher's license has been revoked due to a conviction for child abuse or sexual abuse or when the Commissioner of the Minnesota Department of Education (MDE) makes a final determination of child maltreatment involving a teacher, the school principal or other person having administrative control of the school must include in the teacher's employment record the information contained in the record of the disciplinary action or the final maltreatment determination, consistent with the definition of public data under Minn. Stat. § 13.41, Subd. 5, and must provide the Board of Teaching and the licensing division at MDE with the necessary and relevant information to enable the Board of Teaching and MDE's licensing

division to fulfill their statutory and administrative duties related to issuing, renewing, suspending, or revoking a teacher's license. In addition to the background check required under Minn. Stat. § 123B.03, a school board or other school hiring authority must contact the Board of Teaching and MDE to determine whether the teacher's license has been suspended or revoked, consistent with the discharge and final maltreatment determinations. Unless restricted by federal or state data practices law or by the terms of a collective bargaining agreement, the responsible authority for a school district must disseminate to another school district private personnel data on a current or former teacher (employee or contractor) of the district, including the results of background investigations, if the requesting school district seeks the information because the subject of the data has applied for employment with the requesting school district.

#### **VI. MULTIPLE CLASSIFICATIONS**

If data on individuals are classified as both private and confidential by Minn. Stat. Ch. 13, or any other state or federal law, the data are private.

#### **VII. CHANGE IN CLASSIFICATIONS**

The school district shall change the classification of data in its possession if it is required to do so to comply with other judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving agency.

#### **VIII. RESPONSIBLE AUTHORITY**

The school district has designated [*name and title, telephone*] as the authority responsible for personnel data. If you have any questions, contact [*him/her*].

#### **IX. EMPLOYEE AUTHORIZATION/RELEASE FORM**

An employee authorization form is included as an addendum to this policy.

**Legal References:** Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. § 13.02 (Definitions)  
Minn. Stat. § 13.37 (General Nonpublic Data)  
Minn. Stat. § 13.39 (Civil Investigation Data)  
Minn. Stat. § 13.43 (Personnel Data)  
Minn. Stat. § 122A.20, Subd. 2 (Mandatory Reporting)  
Minn. Stat. § 122A.40, Subds. 13 and 16 (Employment; Contracts; Termination)  
Minn. Stat. § 626.556, Subd. 7 (Reporting of Maltreatment of Minors)  
P.L. 104-191 (HIPAA)  
45 C.F.R. Parts 160 and 164 (HIPAA Regulations)

***Cross References:*** MSBA/MASA Model Policy 206 (Public Participation in School Board Meetings/Complaints about Persons at School Board Meetings and Data Privacy Considerations)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)  
MSBA Service Manual, Chapter 13, School Law Bulletin "I" (School Records – Privacy – Access to Data)

Policy Adopted: 10/13/03  
Revised Policy Adopted: 04/04/06  
Revised Policy Adopted: 05/11/15  
Policy Reviewed: 12/11/17  
Policy Reviewed: 11/09/20



## Consent to Release Data – Request from an Individual

*An individual asks the government entity to release his/her private data to an outside entity or person. Because the entity does not have statutory authority to release the data, it must get the individual's written informed consent.*

### Explanation of Your Rights

If you have a question about anything on this form, or would like more explanation, please talk to

\_\_\_\_\_ before you sign it.  
[entity contact person name and contact information]

I, \_\_\_\_\_, give my permission for \_\_\_\_\_  
[name of individual data subject] [name of government entity]

to release data about me to \_\_\_\_\_ as described on this form.  
[name of other entity or person]

1. The specific data I want \_\_\_\_\_ to release \_\_\_\_\_.  
[name of government entity] [explanation of data]
2. I understand that I have asked \_\_\_\_\_ to release the data.  
[name of government entity]
3. I understand that although the data are classified as private at \_\_\_\_\_, the  
[name of government entity]  
classification/treatment of the data at \_\_\_\_\_ depends on laws or  
[name of other entity or person]  
policies that apply to \_\_\_\_\_.  
[name of other entity or person]

This authorization to release expires \_\_\_\_\_.  
[date/time of expiration]

Individual data subject's signature \_\_\_\_\_ Date \_\_\_\_\_

Parent/guardian's signature [if needed] \_\_\_\_\_ Date \_\_\_\_\_

*[Note: State law (Minn. Stat. § 121A.03) requires that school districts adopt a sexual, religious, and racial harassment and violence policy that conforms with the Minnesota Human Rights Act, Minn. Stat. Ch. 363A (MHRA). This policy complies with that statutory requirement and addresses the other classifications protected by the MHRA and/or federal law. While the recommendation is that school districts incorporate the other protected classifications, in addition to sex, religion, and race, into this policy, they are not specifically required to do so by Minn. Stat. § 121A.03. The Minnesota Department of Education (MDE) is required to maintain and make available a model sexual, religious, and racial harassment policy in accordance with Minn. Stat. § 121A.03. MDE's policy differs from that of MSBA and imposes greater requirements upon school districts than required by law. For that reason, MSBA recommends the adoption of its model policy by school districts. Each school board must submit a copy of the policy the board has adopted to the Commissioner of MDE.]*

## **I. PURPOSE**

The purpose of this policy is to maintain a learning and working environment that is free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability.

*[Note: The Minnesota Human Rights Act defines "sexual orientation" to include "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness." Minn. Stat. § 363A.03, Subd. 44.]*

## **II. GENERAL STATEMENT OF POLICY**

- A. The policy of the school district is to maintain a learning and working environment that is free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability. The school district prohibits any form of harassment or violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability.
- B. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel harasses a student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel through conduct or communication based on a person's race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability, as defined by this policy. (For purposes of this policy, school district personnel include school board members, school employees, agents, volunteers, contractors, or persons subject to the supervision

and control of the district.)

- C. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel inflicts, threatens to inflict, or attempts to inflict violence upon any student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel based on a person's race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability.
- D. The school district will act to investigate all complaints, either formal or informal, verbal or written, of harassment or violence based on a person's race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability, and to discipline or take appropriate action against any student, teacher, administrator, or other school district personnel who is found to have violated this policy.

### **III. DEFINITIONS**

- A. "Assault" is:
  - 1. an act done with intent to cause fear in another of immediate bodily harm or death;
  - 2. the intentional infliction of or attempt to inflict bodily harm upon another; or
  - 3. the threat to do bodily harm to another with present ability to carry out the threat.
- B. "Harassment" prohibited by this policy consists of physical or verbal conduct, including, but not limited to, electronic communications, relating to an individual's or group of individuals' race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability when the conduct:
  - 1. has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment;
  - 2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
  - 3. otherwise adversely affects an individual's employment or academic opportunities.
- C. "Immediately" means as soon as possible but in no event longer than 24 hours.

D. Protected Classifications; Definitions

1. "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who:
  - a. has a physical, sensory, or mental impairment which materially limits one or more major life activities;
  - b. has a record of such an impairment; or
  - c. is regarded as having such an impairment.
2. "Familial status" means the condition of one or more minors being domiciled with:
  - a. their parent or parents or the minor's legal guardian; or
  - b. the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian. The protections afforded against harassment on the basis of family status apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.
3. "Marital status" means whether a person is single, married, remarried, divorced, separated, or a surviving spouse and, in employment cases, includes protection against harassment on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.
4. "National origin" means the place of birth of an individual or of any of the individual's lineal ancestors.
5. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
6. "Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult.
7. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

E. “Remedial response” means a measure to stop and correct acts of harassment or violence, prevent acts of harassment or violence from recurring, and protect, support, and intervene on behalf of a student who is the target or victim of acts of harassment or violence.

F. Sexual Harassment; Definition

1. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:
  - a. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment or an education; or
  - b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual’s employment or education; or
  - c. that conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual’s employment or education, or creating an intimidating, hostile, or offensive employment or educational environment.
2. Sexual harassment may include, but is not limited to:
  - a. unwelcome verbal harassment or abuse;
  - b. unwelcome pressure for sexual activity;
  - c. unwelcome, sexually motivated, or inappropriate patting, pinching, or physical contact, other than necessary restraint of student(s) by teachers, administrators, or other school district personnel to avoid physical harm to persons or property;
  - d. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning an individual’s employment or educational status;
  - e. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual’s employment or educational status; or
  - f. unwelcome behavior or words directed at an individual because of sexual orientation, including gender identity or expression.



G. Sexual Violence; Definition

1. Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minn. Stat. § 609.341, includes the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.
2. Sexual violence may include, but is not limited to:
  - a. touching, patting, grabbing, or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
  - b. coercing, forcing, or attempting to coerce or force the touching of anyone's intimate parts;
  - c. coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another; or
  - d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

H. Violence; Definition

Violence prohibited by this policy is a physical act of aggression or assault upon another or group of individuals because of, or in a manner reasonably related to, race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability.

**IV. REPORTING PROCEDURES**

- A. Any person who believes he or she has been the target or victim of harassment or violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability by a student, teacher, administrator, or other school district personnel, or any person with knowledge or belief of conduct which may constitute harassment or violence prohibited by this policy toward a student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel should report the alleged acts immediately to an appropriate school district official designated by this policy. A person may report conduct which may constitute harassment or violence anonymously. However, the school district may not rely solely on an anonymous report to determine discipline or other remedial responses.
- B. The school district encourages the reporting party or complainant to use the report form available from the principal or building supervisor of each building or

available from the school district office, but oral reports shall be considered complaints as well.

- C. Nothing in this policy shall prevent any person from reporting harassment or violence directly to a school district human rights officer or to the superintendent. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant.
- D. In Each School Building. The building principal, the principal's designee, or the building supervisor (hereinafter the "building report taker") is the person responsible for receiving oral or written reports of harassment or violence prohibited by this policy at the building level. Any adult school district personnel who receives a report of harassment or violence prohibited by this policy shall inform the building report taker immediately. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant. The building report taker shall ensure that this policy and its procedures, practices, consequences, and sanctions are fairly and fully implemented and shall serve as a primary contact on policy and procedural matters.
- E. A teacher, school administrator, volunteer, contractor, or other school employee shall be particularly alert to possible situations, circumstances, or events that might include acts of harassment or violence. Any such person who witnesses, observes, receives a report of, or has other knowledge or belief of conduct that may constitute harassment or violence shall make reasonable efforts to address and resolve the harassment or violence and shall inform the building report taker immediately. School district personnel who fail to inform the building report taker of conduct that may constitute harassment or violence or who fail to make reasonable efforts to address and resolve the harassment or violence in a timely manner may be subject to disciplinary action.
- F. Upon receipt of a report, the building report taker must notify the school district human rights officer immediately, without screening or investigating the report. The building report taker may request, but may not insist upon, a written complaint. A written statement of the facts alleged will be forwarded as soon as practicable by the building report taker to the human rights officer. If the report was given verbally, the building report taker shall personally reduce it to written form within 24 hours and forward it to the human rights officer. Failure to forward any harassment or violence report or complaint as provided herein may result in disciplinary action against the building report taker.
- G. In the District. The school board hereby designates the Director of Human Resources as the school district human rights officer(s) to receive reports or complaints of harassment or violence prohibited by this policy. If the complaint involves a human rights officer, the complaint shall be filed directly with the

superintendent.<sup>1</sup>

- H. The school district shall conspicuously post the name of the human rights officer(s), including mailing addresses and telephone numbers.
- I. Submission of a good faith complaint or report of harassment or violence prohibited by this policy will not affect the complainant or reporter's future employment, grades, work assignments, or educational or work environment.
- J. Use of formal reporting forms is not mandatory.
- K. Reports of harassment or violence prohibited by this policy are classified as private educational and/or personnel data and/or confidential investigative data and will not be disclosed except as permitted by law.
- L. The school district will respect the privacy of the complainant(s), the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the school district's legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations.
- M. Retaliation against a victim, good faith reporter, or a witness of violence or harassment is prohibited.
- N. False accusations or reports of violence or harassment against another person are prohibited.
- O. A person who engages in an act of violence or harassment, reprisal, retaliation, or false reporting of violence or harassment, or permits, condones, or tolerates violence or harassment shall be subject to discipline or other remedial responses for that act in accordance with the school district's policies and procedures.

Consequences for students who commit, or are a party to, prohibited acts of violence or harassment or who engage in reprisal or intentional false reporting may range from remedial responses or positive behavioral interventions up to and including suspension and/or expulsion.

Consequences for employees who permit, condone, or tolerate violence or harassment or engage in an act of reprisal or intentional false reporting of violence or harassment may result in disciplinary action up to and including termination or discharge.

Consequences for other individuals engaging in prohibited acts of violence or harassment may include, but not be limited to, exclusion from school district property and events and/or termination of services and/or contracts.

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<sup>1</sup> In some school districts the superintendent may be the human rights officer. If so, an alternative individual should be designated by the school board.

## **V. INVESTIGATION**

- A. By authority of the school district, the human rights officer, within three (3) days of the receipt of a report or complaint alleging harassment or violence prohibited by this policy, shall undertake or authorize an investigation. The investigation may be conducted by school district officials or by a third party designated by the school district.
- B. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.
- C. In determining whether alleged conduct constitutes a violation of this policy, the school district should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.
- D. In addition, the school district may take immediate steps, at its discretion, to protect the target or victim, the complainant, and students, teachers, administrators, or other school district personnel pending completion of an investigation of alleged harassment or violence prohibited by this policy.
- E. The alleged perpetrator of the act(s) of harassment or violence shall be allowed the opportunity to present a defense during the investigation or prior to the imposition of discipline or other remedial responses.
- F. The investigation will be completed as soon as practicable. The school district human rights officer shall make a written report to the superintendent upon completion of the investigation. If the complaint involves the superintendent, the report may be filed directly with the school board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

## **VI. SCHOOL DISTRICT ACTION**

- A. Upon completion of an investigation that determines a violation of this policy has occurred, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. Disciplinary consequences will be sufficiently severe to try to deter violations and to appropriately discipline prohibited behavior. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal law, and applicable school district policies and regulations.

- B. The school district is not authorized to disclose to a victim private educational or personnel data regarding an alleged perpetrator who is a student or employee of the school district. School officials will notify the parent(s) or guardian(s) of targets or victims of harassment or violence and the parent(s) or guardian(s) of alleged perpetrators of harassment or violence who have been involved in a reported and confirmed harassment or violence incident of the remedial or disciplinary action taken, to the extent permitted by law.
- C. In order to prevent or respond to acts of harassment or violence committed by or directed against a child with a disability, the school district shall, where determined appropriate by the child's individualized education program (IEP) or Section 504 team, allow the child's IEP or Section 504 plan to be drafted to address the skills and proficiencies the child needs as a result of the child's disability to allow the child to respond to or not to engage in acts of harassment or violence.

## **VII. RETALIATION OR REPRISAL**

The school district will discipline or take appropriate action against any student, teacher, administrator, or other school district personnel who commits an act of reprisal or who retaliates against any person who asserts, alleges, or makes a good faith report of alleged harassment or violence prohibited by this policy, who testifies, assists, or participates in an investigation of retaliation or alleged harassment or violence, or who testifies, assists, or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment, or intentional disparate treatment. Disciplinary consequences will be sufficiently severe to deter violations and to appropriately discipline the individual(s) who engaged in the harassment or violence. Remedial responses to the harassment or violence shall be tailored to the particular incident and nature of the conduct.

## **VIII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES**

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

## **IX. HARASSMENT OR VIOLENCE AS ABUSE**

- A. Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under Minn. Stat. § 626.556 may be applicable.
- B. Nothing in this policy will prohibit the school district from taking immediate action to protect victims of alleged harassment, violence, or abuse.

## **X. DISSEMINATION OF POLICY AND TRAINING**

- A. This policy shall be conspicuously posted throughout each school building in areas accessible to students and staff members.
- B. This policy shall be given to each school district employee and independent contractor who regularly interacts with students at the time of initial employment with the school district.
- C. This policy shall appear in the student handbook.
- D. The school district will develop a method of discussing this policy with students and employees.
- E. The school district may implement violence prevention and character development education programs to prevent and reduce policy violations. Such programs may offer instruction on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, resourcefulness, and/or sexual abuse prevention.
- F. This policy shall be reviewed at least annually for compliance with state and federal law.

**Legal References:** Minn. Stat. § 120B.232 (Character Development Education)  
Minn. Stat. § 120B.234 (Child Sexual Abuse Prevention Education)  
Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious, and Racial Harassment and Violence Policy)  
Minn. Stat. § 121A.031 (School Student Bullying Policy)  
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)  
Minn. Stat. § 609.341 (Definitions)  
Minn. Stat. § 626.556 *et seq.* (Reporting of Maltreatment of Minors)  
20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)  
29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act)  
29 U.S.C. § 794 (Rehabilitation Act of 1973, § 504)  
42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)  
42 U.S.C. § 2000d *et seq.* (Title VI of the Civil Rights Act of 1964)  
42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)  
42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)

**Cross References:** MSBA/MASA Model Policy 102 (Equal Educational Opportunity)  
MSBA/MASA Model Policy 401 (Equal Employment Opportunity)  
MSBA/MASA Model Policy 402 (Disability Nondiscrimination Policy)  
MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 406 (Public and Private Personnel Data)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)



MSBA/MASA Model Policy 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)  
MSBA/MASA Model Policy 506 (Student Discipline)  
MSBA/MASA Model Policy 514 (Bullying Prohibition Policy)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)  
MSBA/MASA Model Policy 521 (Student Disability Nondiscrimination)  
MSBA/MASA Model Policy 522 (Student Sex Nondiscrimination)  
MSBA/MASA Model Policy 524 (Internet Acceptable Use and Safety Policy)  
MSBA/MASA Model Policy 525 (Violence Prevention)  
MSBA/MASA Model Policy 526 (Hazing Prohibition)  
MSBA/MASA Model Policy 528 (Student Parental, Family, and Marital Status Nondiscrimination)

Policy Adopted: 10/13/03  
Policy Revised: 08/09/04  
Policy Revised: 10/11/08  
Policy Revised: 07/25/11  
Policy Reviewed: 09/09/13  
Policy Revised: 06/08/15  
Policy Revised: 01/08/18  
Policy Revised: 12/14/20

INDEPENDENT SCHOOL DISTRICT NO. 492  
HARASSMENT AND VIOLENCE REPORT FORM

General Statement of Policy Prohibiting Harassment and Violence

Independent School District No. \_\_\_\_ maintains a firm policy prohibiting all forms of discrimination. Harassment or violence against students or employees or groups of students or employees on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity and expression, or disability is strictly prohibited. All persons are to be treated with respect and dignity. Harassment or violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity and expression, or disability by any pupil, teacher, administrator, or other school personnel, which create an intimidating, hostile, or offensive environment will not be tolerated under any circumstances.

Complainant \_\_\_\_\_  
Home Address \_\_\_\_\_  
Work Address \_\_\_\_\_  
Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_

Date of Alleged Incident(s) \_\_\_\_\_

Basis of Alleged Harassment/Violence - circle as appropriate: race \ color \ creed \ religion \ national origin \ sex \ age \ marital status \ familial status \ status with regard to public assistance \ sexual orientation, including gender identity and expression \ disability

Name of person you believe harassed or was violent toward you or another person or group.

\_\_\_\_\_

If the alleged harassment or violence was toward another person or group, identify that person or group. \_\_\_\_\_

\_\_\_\_\_

Describe the incident(s) as clearly as possible, including such things as: what force, if any, was used; any verbal statements (i.e., threats, requests, demands, etc.); what, if any, physical contact was involved; etc. (Attach additional pages if necessary.) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Where and when did the incident(s) occur? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List any witnesses that were present \_\_\_\_\_

\_\_\_\_\_

This complaint is filed based on my honest belief that \_\_\_\_\_ has harassed or has been violent to me or to another person or group. I hereby certify that the information I have provided in this complaint is true, correct, and complete to the best of my knowledge and belief.

\_\_\_\_\_  
(Complainant Signature)

\_\_\_\_\_  
(Date)

Received by \_\_\_\_\_

\_\_\_\_\_  
(Date)

## **ADDENDUM TO LETTER OF AGREEMENT**

THIS ADDENDUM pertains to the Letter of Agreement made effective as of the 1st day of July 2022, by, between, and among Independent School District No. 492 (the "District") and the City of Austin ("the Agreement").

WHEREAS Paragraph 7 of the Agreement provides that the police liaison officers are not entitled to access private student data maintained by the School District, unless state or federal law allows such access; and

WHEREAS the scope of the police liaison officers' duties as outlined in Exhibit A to the Agreement may cause or necessitate the police liaison officers to receive such private student data;

NOW THEREFORE, in consideration of mutual promises and covenants contained in the Agreement, the District and the City of Austin qualify their understanding of Paragraph 7 as follows:

1. The District recognizes that the police liaison officers will be performing services that would otherwise be the responsibility of the District's employees, as delineated in Exhibit A to the Agreement. In the course and scope of these duties, the liaison officers may encounter and/or be required to review educational records, which would be available to District employees performing these same functions. In this limited capacity, the police liaison officers shall be treated as "school officials" who have a "legitimate educational interest" in reviewing these records, as the quoted terms are defined by the Family Educational Rights and Privacy Act (FERPA), the Minnesota Government Data Practices Act (MGDPA), and the regulations thereto.
2. The District and the City of Austin acknowledge that educational records reviewed by the police liaison officers in their capacity as school officials shall not be shared with the City of Austin or its Police Department, unless such disclosure meets one of the exceptions to consent specified in Section 99.31 of FERPA and Section 12.31 of the MGDPA.
3. From time to time, other school employees may disclose educational records to the police liaison officers in their capacity as "school officials." Such disclosures shall comply with FERPA and with the MGDPA. Such disclosure shall not alter the fact that these records are education records and that FERPA and the MGDPA prohibit the police liaison officers from re-disclosing these records or from using them for any purpose other than the purpose for which the disclosure was made, unless there is prior written consent for such re-disclosure.
4. The City of Austin hereby acknowledges the restrictions placed on the police liaison officers' access to and use of student records, as outlined in this section and as required by state and federal law. The District shall direct and supervise the police liaison officers' use and maintenance of education records.

This Addendum is hereby incorporated to the Agreement between the undersigned.

CITY OF AUSTIN

INDEPENDENT SCHOOL DISTRICT 492 –  
AUSTIN PUBLIC SCHOOLS

BY: \_\_\_\_\_

BY:  \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: *Exec. Dir. of Finance + Operations*

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Executed as of the date of the Agreement.

RRM: # 304177

City of Austin  
Zoning Department



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

## Memorandum

**To:** Mayor and City Council

**Cc:** Charles Bedow Jr.  
204 12<sup>th</sup> St SE, Austin, MN 55912

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

**Re:** Accumulation of Refuse and Junk  
At 204 12<sup>th</sup> St SE, Bedow Property

**Date:** July 1, 2022

---

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 204 12<sup>th</sup> St SE. The property owner has been notified of this violation to the City Code Sections 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

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

Thank You



City of Austin  
Zoning Department



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

Charles Bedow Jr  
204 12<sup>th</sup> St SE  
Austin, MN 55912

RE: Zoning Violations at 204 12<sup>th</sup> St SE, Austin, MN

Dear Sir:

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 June 29, 2022 at this site and the following issues need to be resolved:

**1. Remove all junk from property**

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

**1.98 CIVIL PENALTIES.**

Subd. 1. Purpose.

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

Subd. 4. Compliance letter.

- C. Exceptions to issuance of a compliance letter. For violations of any of the following sections, the city shall not be required to issue a compliance letter and may proceed directly to issuance of an administrative citation as provided in division (E) below.
1. Repeat offender. If the same offender commits a subsequent violation within 24 months after a compliance letter has been issued for a same or similar offense.

Subd. 5. Administrative citation

A. Generally.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Johnson", is written over a horizontal line.

Brent Johnson  
Zoning Inspector





TIME STAMP

June 29, 2022  
9:46 AM

204 12th St SE





204



City of Austin  
Zoning Department



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

## Memorandum

**To:** Mayor and City Council

**Cc:** Kyle Diggins  
507 11<sup>th</sup> St SW, Austin, MN 55912

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

**Re:** Accumulation of Refuse and Junk  
At 507 11<sup>th</sup> St SW, Diggins Property

**Date:** July 1, 2022

---

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 507 11<sup>th</sup> St SW. The property owner has been notified of this violation to the City Code Sections 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

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

Thank You

City of Austin  
Zoning Department



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

June 16<sup>th</sup>, 2022

Kyle Diggins  
507 11<sup>th</sup> St SW  
Austin, MN 55912

RE: Zoning Violations at 507 11<sup>th</sup> St SW Austin, MN 55912

Dear Kyle:

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 April 22<sup>nd</sup>, 2022 and June 16<sup>th</sup>, 2022 at this site and the following issues need to be resolved:

**Remove all junk from property- remove tires**

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

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

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

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

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

5. Accumulations of manure, refuse, 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 10.14, 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.

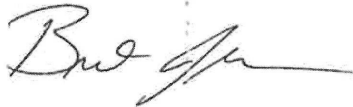
**City Code Section 10.14, Subd. 6:**

**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





507

11th St