

A G E N D A
CITY COUNCIL MEETING
MONDAY, DECEMBER 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 November 21, 2022
- 3. Recognitions and Awards.

- (mot) 4. *Consent Agenda

Licenses:

Exempt Gambling (raffle): Austin Area Chamber of Commerce on March 3, 2023
Food: Hkakabo Razi Asian Restaurant, 501 1st Street NW, Suite 1

Claims:

- a. Pre-list of bills
- b. Credit Card Report.

PETITIONS AND REQUESTS:

- (res) 5. Approving a contract with Baudler, Maus, Forman & King for prosecution services.
- (res) 6. Designating polling locations for 2023 elections.
- (res) 7. Accepting donations to the City of Austin.
- (res) 8. Setting 2023 seasonal, temporary and part-time wage rates.
- (res) 9. Approving a contract with SRF for design of a community entrance sign.
- (res) 10. Approving a contract with SEH for Creekside Business Park infrastructure design services.
- (res) 11. Approving a purchase of service agreement with Austin Aspires for hotspots.

CITIZENS ADDRESSING THE COUNCIL

HONORARY COUNCIL MEMBER COMMENTS

REPORTS AND RECOMMENDATIONS:

City Administrator
City Council

- (mot) Adjourn to **Monday, December 19, 2022** at 5:30 pm in the Council Chambers.

Council Agenda
December 5, 2022

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
November 21, 2022
5:30 PM
Council Chambers

MEMBERS PRESENT: Mayor King. Council Members Paul Fischer, Rebecca Waller, Jason Baskin, Michael Postma, Joyce Poshusta, Geoff Baker 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, Human Resources Director Trish Wiechmann, Public Works Director Steven Lang, Fire Chief Jim McCoy, Park and Rec Director Dave Merrill, City Attorney Craig Byram, Library Director Julie Clinefelter, and City Clerk Ann Kasel

APPEARING IN PERSON: Austin Daily Herald, Honorary Council Member Alexander Stoltz Peter Waldman, Laura Helle

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

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

Moved by Council Member Fischer, seconded by Council Member Postma, approving Council minutes from November 7, 2022. Carried.

AWARDS AND RECOGNITIONS

Mayor King recognized Randy Overocker's retirement from the Public Works Department. Public Works Director Steven Lang stated he had almost 43 years with the City.

CONSENT AGENDA

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

Licenses:

Catering: Green Mill Restaurant & Bar, Albert Lea
Food: Twice is Nice, 417 North Main Street

Claims:

- a. Pre-list of bills

b. Investment and Financial Reports.

Carried.

PUBLIC HEARINGS

A public hearing was held for the renewal of a currency exchange license for Tienda Y. Taqueria Guerrero. City Clerk Ann Kasel stated the City has not received any complaints about the establishment since last year's renewal and recommended approval of the license.

There were no public comments.

Moved by Council Member Fischer, seconded by Council Member Postma, adopting a resolution approving the renewal of a currency exchange license for Tienda Y. Taqueria Guerrero. Carried 7-0.

BID AWARD

The City received the following bids for the Riverside Arena siding project:

Contractor	Bid	Contingency Item
Equity Builders & Construction Services, Inc.	\$138,750	\$25
Norse Valley Construction	\$325,000	\$5

Public Works Director Steven Lang stated the siding on Riverside Arena will be replaced. He recommended awarding the contract to Equity Builders & Construction Services, Inc.

Moved by Council Member Postma, seconded by Council Member Fischer, adopting a resolution awarding the bid for the Riverside Arena siding project to Equity Builders & Construction Services, Inc. Carried 7-0.

PETITIONS AND REQUESTS

City Clerk Ann Kasel requested the Council certify the results from the November 8, 2022 election. She thanked the City's team of election judges for their service to the community.

Moved by Council Member Baker, seconded by Council Member Postma, adopting a resolution certifying the results of the November 8, 2022 general election. Carried 7-0.

Moved by Council Member-at-Large Austin, seconded by Council Member Baker, adopting a resolution setting a public hearing for December 19, 2022 on the adoption of the 5-year Capital Improvement Plan. Carried 7-0.

Administrative Services Director Tom Dankert stated the following grants have been awarded to the City for 2023:

1. CHIP II Loan Expansion / Curb Appeal program - \$125,000
2. Pedestrian Trail, ESL to Highway 218 - \$120,000
3. Business Encouragements/Enhancement Program (BEEP) - \$70,000
4. Delivering the Data: Hotspot Data Plans 2023 - \$61,000
5. Jay C. Hormel Nature Center Education Programs - \$45,000
6. Fire Prevention and Education - \$5,000

The Hormel Foundation also approved an additional \$50,000 grant for a Technology Coordinator for 2023 at the Austin Public Library and the following pass-thru grants: Quality of Life - \$93,826 (this includes \$0 for Leadership Austin; \$23,000 for the 4th of July festival; \$73,253 to the Austin Artworks Center for rent and property tax reimbursement).

Moved by Council Member-at-Large Austin, seconded by Council Member Baskin, accepting 2023 Hormel Foundation Grants. Carried 7-0.

City Clerk Ann Kasel requested Council approval of the 2023 liquor licenses.

Moved by Council Member Fischer, seconded by Council Member Baskin, adopting a resolution granting 2023 off-sale liquor licenses, club on-sale licenses and wine on-sale licenses. Carried 7-0.

Moved by Council Member Fischer, seconded by Council Member Poshusta, adopting a resolution adopting the 2023 City fee schedule. Carried 7-0.

Public Works Director Steven Lang requested the Council approve an individual control mechanism agreement with International Paper which sets forth the limits for strong waste in the sanitary sewer.

Moved by Council Member Postma, seconded by Council Member Fischer, adopting a resolution approving an ICM agreement with International Paper. Carried 7-0.

Public Works Director Steven Lang requested the Council request the feasibility reports for the 2023 street reconstruction projects.

Moved by Council Member Fischer, seconded by Council Member Poshusta, adopting a resolution requesting feasibility reports for 2023 street projects. Carried 7-0.

Public Works Director Steven Lang stated the City is planning to replace the existing siphon crossing under the Cedar River in Driesner Park. The DNR is requiring a botanical survey to determine the presence of a state listed endangered, threatened or special concern plant species within a one-mile radius. Mr. Lang recommended awarding a contract to Salix Environmental for the services.

Moved by Council Member Baskin, seconded by Council Member Fischer, adopting a resolution approving a contract with Salix Environmental for a botanical survey. Carried 7-0.

Public Works Director Steven Lang stated the City would like soil boring information in 21 locations to prepare for the 2023 street construction projects. He received a bid in the amount of \$14,892 from Chosen Valley Testing, Inc. for the work and recommending awarding the bid.

Council Member Baskin asked why is the testing being completed.

Mr. Lang stated sometimes the testing is done with the project so there isn't a separate proposal approved by Council.

Moved by Council Member Baker, seconded by Council Member Postma, adopting a resolution approving a contract for soil borings with Chosen Valley Testing, Inc. Carried 7-0.

City Administrator Craig Clark requested the Council approve the 2023-2025 base pay system for City employees. He also stated that the City has settled a labor contract with Minnesota Public Employees Association. Mr. Clark requested approval of the base pay document along with the MNPEA.

Moved by Council Member Baker, seconded by Council Member Poshusta, adopting a resolution approving 2023, 2024 and 2025 base pay schedules. Carried 7-0.

Moved by Council Member Baskin, seconded by Council Member Baker, adopting a resolution approving the Minnesota Public Employee Association 2023-2025 labor agreement. Carried 7-0.

Moved by Council Member Fischer, seconded by Council Member Waller, appointing Terri Stough to the Austin-Mower County Homeownership Fund, term expiring December 31, 2025. Carried.

Moved by Council Member Baker, seconded by Council Member Fischer, appointing Ed Schmitt to the Park and Recreation Board, term expiring December 31, 2022, which is the currently unexpired term that was vacated in October.

Moved by Council Member Fischer, seconded by Council Member Postma, Granting the Planning and Zoning Department authorization to remove junk at 409 12th Street NE, Chavez/Ramos Property. Carried.

CITIZENS ADDRESSING THE COUNCIL

Peter Waldman, 57834 240th Street, stated he was in an accident on 7th Street and 5th Avenue NW and was concerned about the uncontrolled intersections in the City after he was involved in an accident.

REPORTS

Administrative Services Director Tom Dankert reminded the Council of the Truth in Taxation hearing on December 7th at 6:00 p.m.

Council Member Baskin congratulated the Austin Packer Swim Team for making it to State.

Council Member Geoff Baker thanked Tom Dankert for his work on the Hormel Foundation Grants.

Council Member Michael Postma thanked the Austin Enhancement Group for their events on the day after Thanksgiving.

Council Member Poshusta noted the Library Board is grateful to the Hormel Foundation Board for their support.

Moved by Council Member Baker, seconded by Council Member Postma, adjourning the meeting to December 5, 2022. Carried.

Adjourned: 5:58 p.m.

Approved: December 5, 2022

Mayor: _____

City Recorder: _____

THREE YEAR CONTRACT – PROSECUTORIAL SERVICES

This Agreement is entered into effect as of January 1, 2023, by and between Baudler, Maus, Forman & King, LLP (“Baudler”), and the City of Austin, Minnesota (“City”). The purpose of the Agreement is to hire Baudler to provide to the City of Austin, Minnesota prosecution services for certain criminal offenses occurring within, or requiring prosecution services for, the jurisdiction of Austin, Minnesota between January 1, 2023 and December 31, 2025.

The parties to this contract agree that Baudler is a professional partnership and that the relation created by this contract is that of employer-independent contractor. Baudler is not an employee of the City, and is not entitled to the benefits provided by the City to its employees, including but not limited to group insurance and pension plan. Baudler may practice the legal profession for others during those periods when it is not performing work under this contract for the City. City may, during the term of this contract, engage other independent contractors to perform the same work that Baudler performs hereunder.

Baudler agrees to prosecute the following matters for the City: ordinance violations, petty misdemeanor and misdemeanor violations occurring within the City of Austin, and certain gross misdemeanor offenses as provided for by statute (i.e. gross misdemeanor DWI offenses and other driving related offenses, and gross misdemeanor property-related offenses). Baudler agrees to provide malpractice insurance for its attorneys and will ensure that its attorneys are validly licensed to practice law within the State of Minnesota. All costs of licensing, continuing education and office supplies will be Baudler’s responsibility. The City shall pay to Baudler as follows: \$17,622 per month for the duration of this contract. Baudler will send an invoice to the City after each 30-day period and City will pay Baudler in a timely manner thereafter. Baudler will assume all expenses in connection with the prosecution, including postage, copying and record procurement. The Mower County Court Administrator has indicated that it is possible that the City will be charged for copies of documents made by the Court for City prosecutions. These potential costs, and other out-of-pocket expenses not yet known will be paid by the City. These costs include, but will not be limited to, transcript expense, out-of-county service fees and other out-of-pocket expenses which may be incurred. Copies of those bills will be sent to the City along with any monthly bill.

The City certifies that it will have \$10,000 available for “conflict” prosecutions. That is, there will be circumstances where professional ethical standards prevent Baudler from prosecuting a case. In those instances, other “conflict” attorneys will be contracted by Baudler. All bills from these attorneys will be first submitted to Baudler, then to the City for payment. The City shall have no obligation to pay for other attorney services on conflict cases beyond \$10,000 per year. Any payment to attorneys for conflict cases in excess of \$10,000 annually shall be deducted from Baudler’s monthly payments. There shall be no additional charges for attorneys’ fees by Baudler for appeals taken.

It is understood that the City will retain all fine money collected and will receive its statutory share of all personal property forfeitures, including any share designated for the prosecuting attorney. Baudler and the City will arrange with the Mower County Court

Administrator that funds collected from fines will be forwarded to the City of Austin. Baudler will provide the City Council the information periodically concerning prosecutions, such as: the number of cases taken to arraignment, the number of cases sentenced, the number of probation revocation matters heard, the number of cases disposed of in other ways and the number of Complaints filed. The City shall inform Baudler of the amount of fine money collected upon request.

This Agreement is for three years: January 1, 2023 – December 31, 2025. The term of this Agreement shall automatically be renewed and extended for successive periods of one year, unless at least 45 days prior to the expiration of the initial or any renewal term, either party notifies the other party of its election not to extend or renew. If the parties are in agreement to renew the Agreement after the year 2025, negotiations regarding pricing may continue after the expiration of any renewal term, with the current pricing to remain in effect during such negotiation period; provided, however, that any price change agreed to by the parties shall be retroactive to the renewal date. If, however, the parties are unable to agree upon a price change within 90 days after the expiration of this Agreement or any renewal term, either party may terminate this Agreement by providing the other party with 90 days prior written notice.

CITY OF AUSTIN

BY: _____
Stephen M. King, Mayor

BY: _____
Tom Dankert, City Recorder

BAUDLER, MAUS, FORMAN & KING, LLP

BY: _____
Thomas C. Baudler

RESOLUTION NO.

**DESIGNATING ALL POLLING LOCATIONS FOR 2023 CITY, UTILITY,
SCHOOL DISTRICT, COUNTY, STATE AND FEDERAL ELECTIONS**

BE IT RESOLVED, by the City Council of the City of Austin, Minnesota, that following locations shall be set as voting places for future City, Utility, School District, County, and State Elections:

FIRST WARD

First Election Precinct - Voting Place: City Council Chambers – City Hall
Second Election Precinct - Voting Place: Austin High School, Hastings Gym

SECOND WARD

First Election Precinct - Voting Place: Southgate School
Second Election Precinct - Voting Place: Banfield School

THIRD WARD

First Election Precinct - Voting Place: Mower County Senior Citizen Center
Second Election Precinct - Voting Place: Ellis Middle School

BE IT FURTHER RESOLVED, that the City Clerk is hereby authorized and directed to certify these locations to the Mower County Auditor per Minn. Statute 204B.16

Passed by a vote of Yeas and Nays this 5th day of December, 2022

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

James McCoy, Fire Chief
Austin Fire Department



122 First Avenue NE
Austin, Minnesota 55912
Phone: 507-433-3405
Fax: 507-433-3525
www.ci.austin.mn.us

TO: Honorable Mayor and City Council
FROM: Fire Chief Jim McCoy 
DATE: November 30, 2022
SUBJECT: International Paper Grant

After applying for the 2022 International Paper Grant, our department was informed we were awarded the grant. International Paper offers grants to communities where they have a significant employee presence.

The Austin Fire Department was awarded a grant in the amount of \$5,000. This grant will be used to purchase a thermal imaging camera.

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

RESOLUTION NO.

ACCEPTING DONATIONS TO THE CITY OF AUSTIN

WHEREAS, the City has received gift as follows:

Gift	Donor	For
\$250	Diane and Geoff Baker	Library Project 25
\$10,000	SEMAC	2023 Culture and Arts Commission
\$5,000	International Paper	Thermal Imager - Fire Dept

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

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

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
500 4th Avenue NE
Austin, MN 55912
507-437-9940
www.ci.austin.mn.us



Tricia Wiechmann
Human Resources Director
507-437-9942
twiechma@ci.austin.mn.us

MEMORANDUM

TO: Mayor and City Council

FROM: Tricia Wiechmann
Human Resources Director

RE: 2023 Seasonal, Temporary and Part-time Wage Rates

DATE: November 29, 2022

Annually we review the wage rates for our seasonal, temporary and part-time employees and make adjustments as necessary based on positions, duties and in some cases, the ability to fill open seasonal positions and be competitive within the job market.

The attached resolution also reflects an increase to the minimum wage effective January 1, 2023, of \$10.59. Department heads have provided input to these wage rates and have incorporated the necessary adjustments in their department's annual budgets.

If you have any questions, please feel free to contact me.

RESOLUTION NO.

Resolution Setting Positions and Policy for the Administration of Wage Rates of Seasonal, Temporary and Part-time Positions Not Covered by a Labor Agreement

WHEREAS, the City of Austin employs persons in seasonal, temporary and part-time positions up to 40 hours per week; and

WHEREAS, the City of Austin employs persons on a regular part-time basis; and

WHEREAS, the City of Austin wishes to designate the positions and set wage rates for the designated functions; and

WHEREAS, the employment of persons in seasonal, temporary and part-time positions not covered by a labor agreement shall comply with Council-adopted authorization and policy; and

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

1. The following positions are authorized and approved provided the positions have been funded by the annual budget of the city approved by Council for each filled position in an amount sufficient for the allocated hours at the wage within each level.

Level I – \$10.60 – \$14.00/hr.

Office Assistant	Street Laborers
Park Maintenance	Park Construction
Concession Stand Attendant	Ski Rental Attendant
Paint Crew	Summer Recreation Instructor
Arena Supervisor	Outside Ice Rink Attendant
Library Page	Election Judge

Level II – \$11.00 – \$15.00/hr.

Lifeguard and Sub – Lifeguard	Flower Maintenance
Swim Lesson Instructor	Weed Inspector
Crossing Guard – (top \$13.50/hr.)	Library Clerk
Nature Center Custodian	
Concession Stand Supervisor – (top \$13.00/hr.)	

Level III – Special Services

Engineering Technician – \$11.00 – \$16.00/hr.
Cable TV Programmer/recorder – \$12.00 – \$14.00/hr.
Arena Supervisor/Ice Resurfacer – \$12.00 – \$15.00/hr.
Nature Center Intern & Seasonal Naturalist – \$13.00 – \$16.00/hr.
Park & Recreation Assistant – \$12.00 – \$16.00/hr.
Arena Building Custodian (lead) – \$12.00 – \$16.00/hr.
Pool Manager – \$13.00 – \$17.00/hr.

Recreation Officials – \$20.00 – \$25.00/hr.
Paid On-Call Firefighter, initial training period – \$10.60/hr.
Paid On-Call Firefighter, after initial training – \$15.15/hr.
Board of Review – \$25.00/hr.
Nature Center Environmental Education Outreach Coordinator – \$19.00 – \$21.00/hr.
Part-time Substitute Librarian – \$22.00/hr.

2. Supervisors do have the ability to pay less than the minimum wage established within each level for any newly hired seasonal, temporary or part-time employee. However, the minimum wage will not be less than State of Minnesota minimum wage standards. If an employee returns the following year and worked a full ‘season’, employees may receive up to but no more than a .50¢ an hour increase, not to exceed the maximum wage amount allowed per level, or as provided for within the department budget.
3. Positions not specifically listed, will be placed at the wage scale of the position with duties that best represents the position not identified.
4. Persons with relevant experience, may be advanced to a higher wage rate in the appropriate level as determined and reviewed by the department head and Human Resources Director.
5. All persons employed in these positions shall be placed on the city employee payroll in accordance with the requirements of the Human Resource and Finance Departments.
6. If the departments are not able to find the necessary number of employees for specific positions, the department head will review with the City Administrator and Human Resources Director for deviation from the pay scale guidelines. These petitions would need to be reviewed on a case by case basis.
7. The minimum wage identified in Level I, will not be less than \$10.60 in order to be in compliance with the State of Minnesota minimum wage standards.
8. These positions and wage ranges shall be in effect from January 1, 2023 until changed by the City Council.

Passed by a vote of Yeas and Nays this 5th of December 2022

Yea

Nay

ATTEST:

City Recorder

APPROVED:

Mayor

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



Page 1 of 1

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

Memorandum

To: Mayor & Council
From: Steven J. Lang, P.E.
Date: December 1, 2022
Subject: Community Entrance Sign, Design Services

As part of the Municipal Consent process with MnDOT for the I-90 corridor project it was identified that a new community entrance would be included with the project. The community upgrades to the standard bridge designs were developed as part of the 2016 Visual Quality Manual. This manual identified aesthetic design guidelines, such as, structural design features, color patterns, railings, lighting, landscaping, and entrance signs. These I-90 corridor aesthetic improvements were part of the Vision2020 Gateway to Austin committee's goals and the project has been supported by the Hormel Foundation.

For your consideration is a proposal from SRF in the amount of \$34,021 for services required to complete the design of the community entrance sign, which is to be located on the north side of I-90 between 4th Street & 14th Street NW. Work will include the following tasks:

- 1.0 Project management and coordination with the large I-90 Bridge replacement project
- 2.0 Preparatory work involving incorporating the Visual Quality Manual sign guidance into current MnDOT requirements for sizing and view.
- 3.0 Sign concept design involves confirming sign placement and concept 3D views
- 4.0 Sign aesthetic design plans, specifications, and estimates
- 5.0 Structural design plans, specifications, and estimates
- 6.0 Electrical and lighting design plans, specifications, and estimates

This project will be funded with a grant from the Hormel Foundation supporting the original Vision2020 Gateway to Austin committee's goals. I would recommend approving this budget for SRF in the amount of \$34,021 for design of the community entrance sign. Please let me know if you have any questions.



Image 16: Entrance Sign Concept

RESOLUTION NO.

**APPROVING DESIGN SERVICES
FOR A COMMUNITY ENTRANCE SIGN**

WHEREAS, the City has received a proposal from SRF Inc. for design services of a community entrance sign; and

WHEREAS, the proposal is for the entrance sign located on the north side of I-90 between 4th Street & 14th Street NW; and

WHEREAS, the proposal for the design services is in the amount of \$34,021;

WHEREAS, funding for the project will be from the Hormel Foundation; and

NOW THEREFORE, BE IT RESOLVED, that the City Council approves the design services in the amount of \$34,021 with SRF.

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

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

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



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

Memorandum

To: Mayor & Council
From: Steven J. Lang, P.E.
Date: December 1, 2022
Subject: Creekside Business Park, Infrastructure Design Services
 EDA Grant, 06-79-06439

As you may recall the City of Austin and Austin Port Authority were successful in receiving an EDA grant for infrastructure expansion at the Creekside Business Park. During the grant application process, the City solicited proposals to assist with grant submission and, if successful, engineering services for project development. Through that process, SEH was selected to complete the work. Before you now is a contract with SEH for design services related to the development of infrastructure improvements as identified in the EDA grant. SEH has provided a proposal in the amount of \$358,340.94 to complete the following design development services:

- Project Administration
- Assist the City with EDA grant compliance
- Complete geotechnical, surveying and site exploration
- Permitting
- Engineering design
- Bidding and Award

EDA Grant Project Budget

Costs to Date

COST CLASSIFICATION		
Administrative and legal expenses	\$50,000	\$ 24,340.94
Land, structures, rights-of-way, etc.	\$ -	
Relocation expenses and payments	\$ -	
Architectural and engineering fees	\$264,000	\$264,000.00
Other architectural and engineering fees	\$70,000	\$ 70,000.00
Project inspection fees	\$141,000	
Site work	\$ -	
Demolition and removal	\$ -	
Construction	\$3,516,000	
Equipment	\$ -	
Miscellaneous	\$ -	
Contingencies	359,523	
Total Project Costs	\$4,400,523	\$358,340.94

These costs will be funding using the 50% EDA grant up to \$2,212,848 and 50% matching local funds from Capital Improvement Fund 49. I would recommend awarding this contract to SEH in the amount of \$358,340.94 for design, bidding and bid award services. Please let me know if you have any questions.

Agreement for Professional Services

This Agreement is effective as of November 14, 2022, between City of Austin, MN (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **Consulting services associated with the design, bidding and bid award for the Creekside Business Development Park.**

Client's Authorized Representative: Holly Wallace, Planning and Zoning Administrator
Address: 500 4th Avenue NE
Austin, MN 55912
Telephone: 507.437.9950 **email:** Hollyw@ci.austin.mn.us

Project Manager: Jenna Obernolte
Address: 3535 Vadnais Center Drive
St. Paul, MN 55110
Telephone: 507.316.6650 **email:** jobernolte@sehinc.com

Scope: The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 05.15.22), which is incorporated by reference herein and subject to Exhibits attached to this Agreement. The scope of services is outlined in **Exhibit A-1**.

Schedule: See **Exhibit A-1**

Payment: The lump sum fee is \$358,340.94 including expenses and equipment. See **Exhibit A-2**.

The payment method, basis, frequency and other special conditions are set forth in attached **Exhibit A-2**.

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein: **Exhibit D-Anti-Lobbying Certification.**

x:\ae\laustin\pursuits\p163264_creekside business park\agreement\final design agreement\ltr agreement for prof services.docx

Short Elliott Hendrickson Inc.

By: _____


Bob Cohrs

Title: Principal

City of Austin, MN

By: _____

Title: _____

Exhibit A-1

Scope of Services – Creekside Business Park

The City of Austin and the Austin Port Authority received a grant award from the Economic Development Administration (EDA), EDA Award Number 06-79-06439 for the Creekside Business Park Project. The project is described as follows: a 57-acre project area, will encompass new roadways including 9th Street NW, 26th Avenue NW, 27th Avenue NW, water main, sanitary sewer, expand the existing storm water pond, electric, natural gas, streetlights, and all related appurtenances (The Project).

This Scope of Services provides for a deliverable of plans and specifications for The Project through the bidding and contractor award phase.

A separate agreement will be provided for the construction administration phase after the design phase is completed.

Task 1 – Project Administration

Includes internal project meetings necessary for a smooth and successful project. SEH will provide updates and perform functions necessary for coordination with the EDA, project management team, design team, City of Austin and private utilities. SEH will develop a Quality Control Plan and Schedule to coordinate plan reviews with the City and EDA representative.

Consultant will provide monthly project updates and invoice monthly.

Task 2 – EDA Grant Requirements

This task includes time and effort for EDA grant requirements based on the EDA project schedule deadlines and includes:

5. PROJECT DEVELOPMENT TIME SCHEDULE: The Recipient agrees to the following project development time schedule: **9/5/2022**

Item	Due Date
Return of executed Financial Assistance Award	30 days from <i>Date of Award</i> 10/5/2022
Return of OIG Fraud Awareness Training Certificate	60 days from <i>Date of Award</i> 11/4/2022
Start of Construction	18 months from <i>Date of Award</i> 3/5/2024
Construction Completed	36 months from <i>Date of Award</i> 9/5/2025
Authorized Award End Date	40 months from <i>Date of Award</i> 1/5/2026

a. Quarterly progress reports (14 included). Reports are due 30 days after the end of each quarter. City will complete Sections I, II, III, IV. SEH will complete Sections A, B, C, D and E. City will sign and submit quarterly reports to EDA.

a. 2023

- Quarter 1 – October 1 – December 31. Submit by January 30, 2023
- Quarter 2 – January 1 – March 31. Submit by April 30, 2023
- Quarter 3 – April 1 – June 30. Submit by July 30, 2023

- iv. Quarter 4 – July 1 – September 30. Submit by October 30, 2023
- b. 2024
 - i. Quarter 1 – October 1 – December 31. Submit by January 30, 2024
 - ii. Quarter 2 – January 1 – March 31. Submit by April 30, 2024
 - 1. Construction Start 3/5/2024
 - iii. Quarter 3 – April 1 – June 30. Submit by July 30, 2024
 - iv. Quarter 4 – July 1 – September 30. Submit by October 30, 2024
- c. 2025
 - i. Quarter 1 – October 1 – December 31. Submit by January 30, 2025
 - ii. Quarter 2 – January 1 – March 31. Submit by April 30, 2025
 - iii. Quarter 3 – April 1 – June 30. Submit by July 30, 2025
 - iv. Quarter 4 – July 1 – September 30. Submit by October 30, 2025
 - 1. Construction Completed 9/5/2025
- d. 2026
 - i. Quarter 1 – October 1 – December 31. Submit by January 30, 2026
 - ii. Quarter 2 – January 1 – March 31. Submit by April 30, 2026
 - 1. Authorized Award End Date 1/5/2026
- b. Architect/Engineer Contract Checklist
 - a. SEH will complete checklist for each SEH agreement.
 - b. City will sign and submit to EDA.
- c. Site Certificate
 - a. SEH will prepare descriptions and maps describing the property. SEH will complete Part One, Certificate of Architect/Engineer, Description of Property Requirements for EDA project.
 - b. Part Two – City to complete
 - c. Part Three – City to complete
- d. Plans and Specifications
 - a. SEH will submit plans and specifications, including engineers estimate, and bid document review checklist to EDA for review prior to advertising the bid.
 - b. SEH will respond to EDA comments and make necessary revisions to receive EDA authorization to advertise.
 - c. SEH will include in specification the following contractor requirements:
 - i. Davis-Bacon Wage Rates
 - ii. Lobbying Certification
 - iii. Affirmative Action EEO
 - iv. EDA Contracting Provisions for Construction Projects
 - v. EDA Sign requirements
 - vi. EDA Change Order Form
- e. Permits (also covered in permit section). Provide evidence satisfactory to the EDA that permits were obtained or not necessary.
 - a. U.S. Army Corps of Engineers. Prior to award of construction contract.
 - b. U.S. Fish & Wildlife. Prior to advertising for construction bids
 - i. Provide satisfactory evidence of complying with the 10/29/21 and 4/12/22 letters. Include in bid package, as needed.

- c. NPDES Permit. Prior to awarding construction bids.
- f. Contract Award
 - a. Bid opening Checklist
 - i. SEH will provide to city for submission to EDA:
 - 1. Item 2 – N/A.
 - 2. Item 3 – City to provide statement that sealed bids were opened in EDA grant recipient's representative.
 - 3. Item 4b – Tabulations of bids
 - 4. Item 4c – Proposal of recommended contractor
 - 5. Item 4e - Copy of recommended contractor's bid bond
 - 6. Item 4f – Architect/Engineer's recommendation of award
 - ii. City to provide remaining bid opening checklist items and submit checklist to EDA.
 - g. Executed Contract Checklist – Completed by City.
 - h. Notice to Proceed – Completed by City.
 - i. Change Orders – SEH will include the EDA change order form in the bidding documents. SEH will provide information to complete the form for the city to submit to EDA.
 - j. Grant Amendments – Should a grant amendment be necessary, SEH will prepare notice of amendment letter for city to submit to EDA.
 - k. Final Acceptance Report – SEH will prepare and process for signature the final acceptance form. City to submit to EDA as the final signature.
 - l. City to complete all other EDA forms, checklists, reports and any other EDA requirements.

Task 3 – Meetings/Monthly Updates

Consultant will attend the EDA Kickoff Meeting and up to 3 City Council Meetings and hold utility meetings, design review meetings and coordinate the project review process with the City of Austin and EDA representative.

Task 4 – Geotechnical

Geotechnical Testing Services

Soil borings will be performed for the proposed improvements as well as lab testing and a geotechnical investigation. The field investigation will consist of soil borings and laboratory testing, which will be performed by a drilling and testing subcontractor(s) under subcontract to SEH. The geotechnical investigation analysis and reporting will be completed by SEH.

Site Access, Staking and Utility Clearance

The owner will grant SEH and its drilling subcontractor access to the site. SEH will mark proposed boring locations prior to the drilling crews mobilization to the site. Our subcontractor will clear public utilities using Gopher State One Call (GSOC). If there are private utilities i.e. not marked by GSOC locators, city will notify SEH so proper locates can be arranged. Note additional fees will apply.

Site Exploration

We propose the following scope for the field subsurface investigation:

- Six (6) standard penetration test (SPT) borings will be performed to depths of ranging from about 15 to 25 feet along the proposed alignments. These borings will help estimate soil parameters, pavement and utility subgrade recommendations and a 10-ton flexible pavement design.

Sample Review and Laboratory Tests

Samples retrieved during drilling will be reviewed, classified using the Unified Soil Classification System (USCS) and logged under the direction of a geotechnical engineer. Select samples may be set aside for laboratory testing. We may request routine laboratory tests on selected soil samples obtained from the exploration. This may include determinations of natural moisture content and unconfined compressive strength with a calibrated penetrometer if cohesive soils are encountered and gradations on select sand samples from the borings.

Such tests will aid in determining soil classification and properties and potential behavior characteristics to help guide our recommendations.

Geotechnical Investigation Report

Data obtained from the borings and laboratory tests will be used to evaluate the subsurface profile and groundwater conditions, perform engineering analyses related to utility design and prepare a report, including:

- A soil boring location figure showing approximate soil boring locations.
- Logs of the borings describing the materials encountered and presenting the results of groundwater measurements and laboratory tests.
- A summary of the subsurface soil profile and groundwater conditions.
- Discussion identifying the site conditions and the potential impact on the proposed utilities and the pavements, qualifying the nature of their impact, and outlining alternatives for mitigating their impact.
- Discussion regarding the reuse of on-site materials during construction and the impact of groundwater on construction.
- Recommendations for preparing subgrades, including excavation support and the selection, placement and compaction of backfill and structural fill.

Schedule: Based on our subcontractors current drilling backlog, they anticipate that they can mobilize their drilling equipment to the site in about 5-7 weeks from the time that written authorization is provided. Laboratory work and report preparation will take about 2 weeks following completion of the field work. Schedule may change based on timing of notice to proceed, site conditions and other factors.

Task 5 – Permitting

SEH will assist the City of Austin in the application of permits through the Minnesota Department of Health (MDH) for the watermain extension as well as with the Minnesota Pollution Control Association (MPCA) for sanitary sewer extension permit and the storm water management in compliance with the current Municipal Separate Storm Sewer System (MS4) and National Pollutant Discharge Elimination System (NPDES) requirements.

Wetland permitting requires development of project plans, which include cross sections of wetland impact areas, and calculations of wetland impacts identified as temporary, permanent, cut, and fill. Sequencing is required to identify opportunities to reduce impacts through alternatives analysis, avoidance and minimization. Once these exercises have been completed, a Wetland Permit Application will be prepared. This application will identify the project, define the purpose and need, summarize sequencing, and a wetland replacement plan. If mitigation is required, we propose to proceed with acquisition of credits through an approved wetland bank. The costs and fees associated with purchasing wetland credits are not included in this agreement. However, the associated costs are considered a project component, if required, and should be an allowable cost with the EDA. Signatures will be required to be signed by the project proposer responsible for compliance with the permit conditions. SEH will act as agent to allow representation in the process.

The wetland permitting phase of this project will be initiated following approval of the wetland delineation, and when design details are sufficiently understood to prepare a complete application. The review process typically takes between 60 and 120 days and must be completed before construction can begin.

Preliminary Plans indicate that permanent and/or temporary impacts to wetland habitat may occur for the construction of a storm water outlet into Murphy Creek. If wetlands are impacted from the proposed project, wetland permits will be required by the Wetland Conservation Act and the USACE. It is anticipated that the project will be authorized using under a USACE Nationwide Permit and through a Wetland Conservation Act Replacement Plan Approval.

See additional EDA permitting requirements outlined in Task 2.

Task 6 - Wetland Delineation and Report

SEH will complete a wetland delineation within the proposed industrial park expansion area using the 1987 Manual and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region*. This will delineate and map any wetlands that may be present. Presently, based on the environmental review completed for the project, we anticipate this will include Murphy Creek, which is located on the south side of the property, but all areas will be investigated. Areas with some wetland indicators will be assessed to verify their wetland status. Because the site has a history of agricultural land use, a crop slide analysis will be completed to see if any farmed wetlands are present.

After the completion of the field delineation, we will provide a wetland delineation report. This report will describe the site conditions, identify the wetland boundaries, and serve to be a basis for follow up permitting if unavoidable wetland impacts will occur.

The delineation report will be provided to Mower County SWCD, which administers the Minnesota Wetland Conservation Act (WCA), in addition to their local requirements. The United States Army Corps of Engineers (USACE) also regulates the wetlands in the project area and will be also provided a copy of the report. A request will be made at submittal to complete a field review of the wetland boundaries. This meeting may serve as a pre-application discussion to expedite the project schedule.

If the field review results in any adjustments to the wetland boundary, they will be modified by SEH, and provided in electronic format as the final approved boundary. It is presumed that the draft boundaries will serve for planning prior to the final boundary approval.

The wetland delineation will be completed in fall of 2022. A request to review the wetland delineation will be made to allow it to occur within the 2022 growing season, however that schedule is determined by Mower County, and may be deferred by the County until spring 2023.

Task 7 – Engineering Design

SEH will provide data collection, geotechnical investigation and analysis to verify design conditions, topographic survey and field investigation to obtain known information about the site to aide in the design process.

SEH will create the preliminary and final plats and will be submitted for approval by the City of Austin in accordance with the City of Austin's Ordinances.

SEH will prepare preliminary and final street geometric design along with a pavement design and utility design for the sanitary sewer, storm sewer size for a 10-year event capacity, alignment, profile and treatment to meet Minnesota Pollution Control Agency (MPCA) Municipal Separate Storm Sewer System (MS4) requirements utilizing pond expansion and outlet improvements to satisfy the needs during the 10-year and 100-year storm events, and stormwater management and treatment for the area shown on Figure No. 1, Project Overview Creekside Business Park.

SEH will work with Austin Utilities to add the watermain, electric and gas utilities to the construction drawings and for permitting approval from the Minnesota Department of Health (MDH) and MPCA.

Cost estimates and reviews of the construction plans will be completed approximately at the 30%, 60% and 90% of the plan design. Consultant will create a Storm Water Pollution Prevention Plan for proper practices to be utilized during construction. Consultant will provide final bid documents including final construction plans, project bidding manual, final quantities, and an Engineer's Estimate of Probable Cost.

See additional EDA requirements outlined in Task 2.

Task 8 – Bidding

SEH will lead the project through the State of Minnesota bidding process for construction including assistance with public advertising for bidding, create the tabulation of bid, review of the bids and recommendation for award.

See additional EDA requirements outlined in Task 2.

<u>Schedule</u>	<u>Completion Date*</u>
Agency Kick off Meeting	October 4, 2022
Wetland Delineation (On Site)	October 10, 2022
Topographic Survey & Field Investigation	November 18, 2022
Geotechnical Field Work	December 2, 2022

Preliminary Utility Meeting	December 2, 2022
30% Plan Review	December 16, 2022
60% Plan Review	January 27, 2023
Mid-design Utility Meeting	February 3, 2023
90% Plan Review	February 24, 2023
Council Plan Approval & Set Bid Letting	March 20, 2023
Bid Letting Date	April 2023
Award Bid	May 2023

*Dependent of crop harvesting

Construction Administration Services are not included and will be provided under a separate agreement after the completion of the design services.

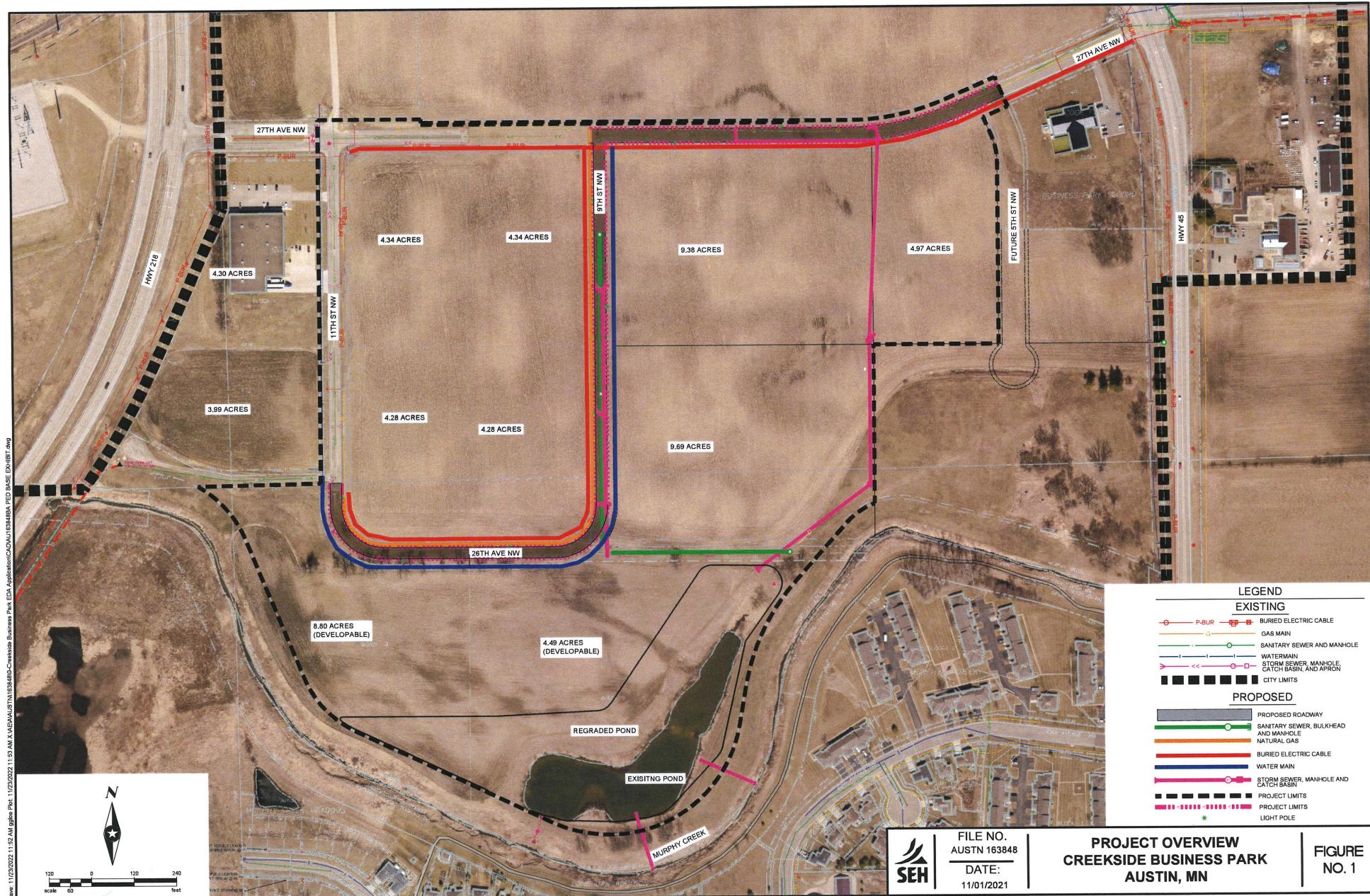


Exhibit A-2

Billing Title	CSM	PM	PE	Grad Eng	Sr Tech	Tech	RPR	Survey Crew Chief	Survey Tech	PLS	Accounting Rep	Admin Tech	Subconsultant & Expenses	Total	
Task 1 - Project Administration															
	Task 1 Hours	2	89	54	0	0	0	0	0	0	0	11	2	0.00	
	Task 1 Cost	\$480.00	\$16,020.00	\$7,290.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,485.00	\$220.00	\$0.00	\$25,495.00	
Task 2 - EDA Grant Requirements															
	Task 2 Hours	56	40	0	0	0	0	0	0	0	0	0	0	0.00	
	Task 2 Cost	\$13,440.00	\$7,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,640.00	
Task 3 - Meetings/Monthly Updates															
	Task 3 Hours	7	31	38	30	30	30	0	0	0	2	2	2	0.00	
	Task 3 Cost	\$1,680.00	\$5,580.00	\$5,130.00	\$3,450.00	\$4,500.00	\$2,850.00	\$0.00	\$0.00	\$0.00	\$330.00	\$270.00	\$220.00	\$0.00	\$24,010.00
Task 4 - Geotechnical & Survey															
	Task 4 Hours	0	50	22	40	12	24	0	0	0	22	0	2	9,550.00	
	Task 4 Cost	\$0.00	\$9,000.00	\$2,970.00	\$4,600.00	\$1,800.00	\$2,280.00	\$0.00	\$0.00	\$0.00	\$3,630.00	\$0.00	\$220.00	\$9,550.00	\$34,050.00
Task 5 - Permitting															
	Task 5 Hours	0	13	28	0	0	0	0	0	0	0	0	1.5	5,560.00	
	Task 5 Cost	\$0.00	\$2,340.00	\$3,780.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$165.00	\$5,560.00	\$11,845.00
Task 6 - Wetlands															
	Task 6 Hours	0	0	0	0	0	0	0	0	0	0	0	0	4,000.00	
	Task 6 Cost	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,000.00	
Task 7 - Engineering/Design/Plan Prep															
	Task 7 Hours	0	222	522	188	122	662	24	0	0	56	0	18	95.94	
	Task 7 Cost	\$0.00	\$39,960.00	\$70,470.00	\$21,620.00	\$18,300.00	\$62,890.00	\$2,760.00	\$0.00	\$0.00	\$9,240.00	\$0.00	\$1,980.00	\$95.94	\$227,315.94
Task 8 - Bidding															
	Task 8 Hours	0	26.5	16	0	0	0	8	0	0	0	0	28.5	0.00	
	Task 8 Cost	\$0.00	\$4,770.00	\$2,160.00	\$0.00	\$0.00	\$0.00	\$920.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,135.00	\$0.00	\$10,985.00
	Total Hours	65	471.5	680	258	164	716	32	0	0	80	13	54	\$19,205.94	
	Total Cost	\$15,600.00	\$84,870.00	\$91,800.00	\$29,670.00	\$24,600.00	\$68,020.00	\$3,680.00	\$0.00	\$0.00	\$13,200.00	\$1,755.00	\$5,940.00	\$19,205.94	

Total Project \$358,340.94

EXHIBIT D

Lobbying Certification

The undersigned certifies, to the best of the undersigned's knowledge and belief, on behalf of Contractor that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. Contractor shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.¹

The undersigned hereby represents and warrants that the undersigned has the authority to sign on behalf of Contractor. The undersigned certifies or affirms the truthfulness and accuracy of each statement of each certification made herein and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

IN WITNESS WHEREOF, the undersigned has caused this Certification to be executed the day and year first above written on behalf of Contractor.

Contractor Name: Benita L. Crow
By: Benita L. Crow
Print Name: Benita L. Crow
Its Vice President

¹ These civil penalty amounts are subject to adjustments for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

General Conditions of the Agreement for Professional Services

SECTION I – SERVICES OF CONSULTANT

A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement ("Services"). Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render Services hereunder will be for a period which may reasonably be required for the completion of said Services.

2. If Client has requested changes in the scope, extent, or character of the Project or the Services to be provided by Consultant, the time of performance and compensation for the Services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform the Services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for the Services, then Consultant shall promptly notify the Client regarding the need for additional Services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional Services and to an extension of time for completion of additional Services absent written objection by Client.

2. Additional Services, including delivery of documents, CAD files, or information not expressly included as deliverables, shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon seven days written notice or, at its option, accept an equitable adjustment of compensation provided for elsewhere in this Agreement to reflect costs incurred by Consultant.

2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the Services hereunder and/or the termination of this Agreement.

4. In the event of termination, Consultant shall be compensated for Services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

SECTION II – CLIENT RESPONSIBILITIES

A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client's requirements for the Services provided by Consultant and access to all public and private lands required for Consultant to perform its Services.

2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling, and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant's Services, such as previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning; deed; and other land use restrictions; as-built drawings; and electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.
3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant's Services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements, and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide Services in a timely manner.
4. Client shall require all utilities within the Project site to locate and mark said utilities upon request, relocate and/or protect said utilities to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review, and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant's reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.
5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.
6. Client agrees to reasonably cooperate, when requested, to assist Consultant with the investigation and addressing of any complaints made by Consultant's employees related to inappropriate or unwelcomed actions by Client or Client's employees or agents. This shall include, but not be limited to, providing access to Client's employees for Consultant's investigation, attendance at hearings, responding to inquiries and providing full access to Client files and information related to Consultant's employees, if any. Client agrees that Consultant retains the absolute right to remove any of its employees from Client's facilities if Consultant, in its sole discretion, determines such removal is advisable. Consultant, likewise, agrees to reasonably cooperate with Client with respect to the foregoing in connection with any complaints made by Client's employees.
7. Client acknowledges that Consultant has expended significant effort and expense in training and developing Consultant's employees. Therefore, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services under this Agreement, whichever is longer, Client shall not directly or indirectly: (1) hire, solicit or encourage any employee of Consultant to leave the employ of Consultant; (2) hire, solicit or encourage any consultant or independent contractor to cease work with Consultant; or (3) circumvent Consultant by conducting business directly with its employees. The two-year period set forth in this section shall be extended commensurately with any amount of time during which Client has violated its terms.

SECTION III – PAYMENTS

A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Services or deliverables until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding Services, deliverables, or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable

costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.

2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

SECTION IV – GENERAL CONSIDERATIONS

A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its Services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods, or procedures of construction. Consultant's Services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. Consultant's Opinions of Probable Construction Cost are provided if agreed upon in writing and made on the basis of Consultant's experience and qualifications. Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions. Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Probable Construction Cost prepared by Consultant. If Client wishes greater assurance as to construction costs, Client shall employ an independent cost estimator.

B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter, or disposer of hazardous or toxic substances. Therefore the Client agrees to hold harmless, indemnify, and defend Consultant and Consultant's officers, directors, subconsultant(s), employees and agents from and against any and all claims; losses; damages; liability; and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind at the site.

C. Limitations on Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed five hundred thousand dollars (\$500,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional five hundred thousand dollars of liability limits, up to a maximum limit of liability of five million dollars (\$5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including without limitation lost rentals; increased rental expenses; loss of use; loss of income; lost profit, financing, business, or reputation; and loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them. Consultant expressly disclaims any duty to defend Client for any alleged actions or damages.
3. It is intended by the parties to this Agreement that Consultant's Services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. The Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or

asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

4. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, not later than either the date of Substantial Completion for acts or failures to act occurring prior to substantial completion or the date of issuance of the final invoice for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Services are substantially completed.

D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

E. Dispute Resolution

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or the Services (except for unpaid invoices which are governed by Section III) shall be submitted to mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.
2. Any dispute not settled through mediation shall be settled through litigation in the state and county where the Project at issue is located.

SECTION V – INTELLECTUAL PROPERTY

A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service"). Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Notwithstanding anything to the contrary, Consultant shall retain all of its rights in its proprietary information including without limitation its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge, and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be work product or work for hire and Consultant shall not be restricted in any way with respect thereto. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities.

B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its Services, Client shall have the right in the form of a nonexclusive license to use Instruments of Service delivered to Client exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of Services, including subpoenas directed from or on behalf of Client are available to Client subject to Consultant's current rate schedule. Consultant shall not be required to provide CAD files or documents unless specifically agreed to in writing as part of this Agreement.

C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify, and hold harmless Consultant from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.

RESOLUTION NO.

**APPROVING ENGINEERING DESIGN SERVICES
FOR CREEKSIDER BUSINESS PARK**

WHEREAS, the City has received a proposal from SEH, Inc. for infrastructure design services at Creekside Business Park; and

WHEREAS, the proposal would design the underground infrastructure as identified in the EDA grant; and

WHEREAS, the proposal for the design services is in the amount of \$358,340.94;

WHEREAS, funding for the project will be 50% EDA grant and 50% matching local funds from Capital Improvement Fund 49; and

NOW THEREFORE, BE IT RESOLVED, that the City Council approves the engineering design services in the amount of \$358,340.94 with SEH, Inc.

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

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor



AUSTIN PUBLIC LIBRARY

323 4TH AVENUE NORTHEAST | AUSTIN MINNESOTA

MEMORANDUM

DATE: 12/1/2022

TO: City Council

FROM: Julie Clinefelter, Library Director

The Austin Public Library is entering into a Purchase of Service Agreement with Austin Aspires whereby Austin Aspires has grant dollars available to purchase the data plans for 100 hotspots through December 31, 2023. Those funds will be paid to the library through quarterly invoices not to exceed \$35,700. The library, in return, will manage the distribution of the devices paid for by Austin Aspires.

The library board has reviewed the agreement and asks that the City approve the agreement with Austin Aspires.

RESOLUTION NO.

APPROVING A PURCHASE OF SERVICE AGREEMENT

WHEREAS, the City of Austin desires to enter into a purchase of service agreement with Austin Aspires for hotspots, and

WHEREAS, Austin Aspires has the grant dollars to purchase data plans for 100 hot spots through December 31, 2023; and

WHEREAS, the Library would manage the distribution of devices paid for by Austin Aspires.

NOW THEREFORE, BE IT RESOLVED that the Austin City Council authorizes the Mayor and City Recorder to sign a purchase of service agreement with Austin Aspires for 100 hotspots for 2023.

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

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor