

**A G E N D A**  
**CITY COUNCIL MEETING**  
**MONDAY, DECEMBER 19, 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 December 5, 2022 and Truth in Taxation hearing on December 7, 2022
- 3. Recognitions and Awards.
- (mot) 4. \*Consent Agenda  
Licenses:  
2023 License renewals (*complete list in the consent agenda folder*)  
Exempt Gambling (raffle): NWTF Cedar River Longbeards on January 28, 2023

Claims:

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

Making the following appointments and reappointments to Boards and Commissions:

- a. Peggy Young to the Fire Civil Service - term through December 31, 2025
- b. Tim Ruzek to the HRA Board – term through December 31, 2026
- c. Carole Granholm to the HRA Board – term through December 31, 2027
- d. Dylan Kaercher-Berthiaume to the Human Rights Commission – term through Dec. 31, 2023
- e. Stephanie Holtorf to the Human Rights Commission – term through December 31, 2025
- f. Varinh Van Vugt to the Human Rights Commission – term through December 31, 2025
- g. Denver Ritz to the Human Rights Commission – term through December 31, 2025
- h. Kellie Ann Schmidt to the Human Rights Commission – term through December 31, 2024
- i. Stephanie Postma to the Library Board – term through December 31, 2025
- j. Sue Grove to the Library Board – term through December 31, 2025
- k. Gema Alvarado-Guerrero to the Library Board – term through December 31, 2025
- l. Ed Schmitt to the Parks and Recreation Board – term through December 31, 2026
- m. Tom Stiehm to the Parks and Recreation Board – term through December 31, 2026
- n. Milly Burroughs to the Pillars of the City – term through December 31, 2025
- o. Peggy Benzkofer to the Pillars of the City – term through December 31, 2025
- p. Aaron Stewart to the Planning Commission – term through December 31, 2026
- q. Solomon Paul to the Police Civil Service Commission – term through December 31, 2025
- r. Trish Harren to the Culture and Arts Commission – term through December 31, 2025
- s. Molly Maschka to the Culture and Arts Commission – term through December 31, 2024
- t. Steve King to the part-time Fire Relief Trustees – term through December 31, 2023
- u. Tom Dankert to the part-time Fire Relief Trustees – term through December 31, 2023
- v. James McCoy to the part-time Fire Relief Trustees – term through December 31, 2023
- w. Jason Duffy to the Pillars of the City – term through December 31, 2025

- x. Tom Stiehm to the Pillars of the City – term through December 31, 2023
- y. Jason Duffy to the Planning Commission – term through December 31, 2026
- z. Frank Spartz to the Planning Commission – term through December 31, 2026

**PUBLIC HEARINGS:**

- (res) 5. Public hearing on the 5-year Capital Improvement Plan. (*See separate upload for full plan*)
  - a. Adopting the Capital Improvement Plan.

**PETITIONS AND REQUESTS:**

- (res) 6. Approving the tax levy for 2023.
- (res) 7. Adopting the budget for 2023.
- (res) 8. Authorizing the cancellation of certain ad valorem tax levies.
- (res) 9. Authorizing a \$42,216,633 general obligation wastewater revenue note.
- (res) 10. Approving an amendment to the City's 457(b) deferred compensation plan to allow for a Roth IRA conversion.
- (res) 11. Granting renewals of 2023 licenses for the sale of hard liquor on-sale, Sunday hard liquor on-sale, Sunday wine on-sale and 3.2 beer on and off-sale.
- (mot) 12. Designating the Austin Daily Herald as the official newspaper for 2023.
- (res) 13. Approving the Austin Employees Association 2023-2025 labor agreement.
- (res) 14. Approving the Law Enforcement Labor Services 2023-2025 labor agreement.
- 15. Approving ICM agreements with Hormel Foods.
  - (res) a. Approving agreement for the domestic plant.
  - (res) b. Approving agreement for the industrial plant.
- (res) 16. Approving an ICM agreement with Nu-Tek Biosciences, LLC.
- (res) 17. Approving a delegated contract process agreement with MnDOT.
- (res) 18. Consenting to the sale of Austin Utilities' property.
- (res) 19. Accepting donations to the City of Austin.
- (mot) 20. Appointing George Thomas as the Honorary Council Member – January 2023 to March 2023.

**CITIZENS ADDRESSING THE COUNCIL**

**REPORTS AND RECOMMENDATIONS:**

City Administrator  
City Council

(mot)      **Adjourn to Tuesday, January 3, 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  
December 5, 2022  
5:30 PM  
Council Chambers

MEMBERS PRESENT: Mayor King. Council Members Paul Fischer, Jason Baskin, Michael Postma, Geoff Baker and Council Member-at-Large Jeff Austin

MEMBERS ABSENT: Council Member Joyce Poshusta and Rebecca Waller

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, KAUS Radio, Laura Helle, Honorary Council Member Alexander Stoltz

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

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

Moved by Council Member Fischer, seconded by Council Member Baskin, approving Council minutes from November 21, 2022. Carried.

CONSENT AGENDA

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

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

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

Carried.

## PETITIONS AND REQUESTS

City Administrator Craig Clark requested the Council approve a contract with Baudler, Maus, Forman & King for prosecution services. The contract would be for a three-year period at \$17,622 per month.

Moved by Council Member Baker, seconded by Council Member Baskin, adopting a resolution approving a contract with Baudler, Maus, Forman & King for prosecution services. Carried 5-0.

City Clerk Ann Kasel requested the Council designate polling places for 2023. There are no scheduled elections but State statutes require cities to designate them on an annual basis.

Moved by Council Member Baker, seconded by Council Member Baskin, adopting a resolution designating polling locations for 2023 elections. Carried 5-0.

Moved by Council Member Fischer, seconded by Council Member Postma, adopting a resolution accepting donations to the City of Austin. Carried 4-0 with Council Member Baker abstaining.

Moved by Council Member Fischer, seconded by Council Member Baskin, adopting a resolution setting 2023 seasonal, temporary and part-time wage rates. Carried 5-0.

Public Works Director Steven Lang requested the Council approve a contract with SRF for the design of a community entrance on I-90. The proposed contract is in the amount of \$34,021 and would be funded by the Hormel Foundation.

Moved by Council Member Fischer, seconded by Council Member Postma, adopting a resolution awarding a SRF Proposal for a community entrance sign. Carried 5-0.

Public Works Director Steven Lang stated the City is working on the infrastructure project at Creekside Park and requested the Council award a design services contract to SEH, Inc. SEH has provided a proposal in the amount of \$358,340.94 for the services which include project administration, EDA grant compliance, geotechnical and surveying services, permitting, engineering design and bidding.

Moved by Council Member Postma, seconded by Council Member Fischer, adopting a resolution awarding a contract to SEH, Inc. for infrastructure design services at Creekside Business Park. Carried 5-0.

Library Director Julie Clinefelter stated the Library is requesting to enter into a contract with Austin Aspires for the funding of 100 hotspots through 2023. Austin Aspires has the grant dollars available to purchase the data plans and the library will manage the distribution of the devices.

Moved by Council Member Baker, seconded by Council Member-at-Large Austin, adopting a resolution approving a purchase of service agreement with Austin Aspires for hotspots. Carried 5-0.

## CITIZENS ADDRESSING THE COUNCIL

Peter Waldman, 58934 240<sup>th</sup> Street, requested an update on his complaint about uncontrolled intersections in the City of Austin.

Mayor King stated the department heads will contact him in the future regarding the matter.

Honorary Council Member Alexander Stoltz thanked the Council for the opportunity to be the honorary council member.

## REPORTS

Parks and Recreation Director David Merrill stated the Merry and Bright night will take place at the Hormel Nature Center on Thursday and Santa will be there from 4-8 pm.

Administrative Services Director Tom Dankert stated the truth in taxation hearing will be held at 6:00 p.m. on Wednesday, December 7<sup>th</sup>.

Mayor King stated the City swore in a new officer Jessy Betts, from Fillmore County.

Moved by Council Member Baker, seconded by Council Member-at-Large Austin, adjourning the meeting to December 19, 2022. Carried.

Adjourned: 5:49 p.m.

Approved: December 19, 2022

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

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

**M I N U T E S**  
**2023 BUDGET AND TAX LEVY PUBLIC HEARING**  
**DECEMBER 7, 2022**  
**6:00 P.M.**  
**COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Mayor Steve King. Council Members Paul Fischer, Mike Postma, Geoff Baker, Jason Baskin, and Council Member-at-Large Jeff Austin

**MEMBERS ABSENT:** Council Members Rebecca Waller and Joyce Poshusta.

**STAFF PRESENT:** Director of Administrative Services Tom Dankert

**OTHERS APPEARING:** Austin Daily Herald, Elaine Hansen from Austin Chamber of Commerce, Candy Lahann (Mower County Assessor), Scott Felten (Mower County Treasurer), 3 citizens.

Mayor King called the meeting to order at 6:00 P.M.

Mr. Dankert noted the purpose of the meeting is for discussion of the 2023 property tax levy and the 2023 operating budgets for all city departments. Mr. Dankert noted this budget was created based on the direction of the elected officials. The implementation of the Comp and Class study during 2020 and its implications into 2023 resulted in the need for an increase in revenue to pay for such implementation, or further reduction of operations.

Administrative Services Director Tom Dankert gave a brief review of the city's overall budget of \$39,811,892 noting the budgeting process takes the greater part of seven months to complete as we started the budgeting process in June this year. Mr. Dankert further noted that for 2023, LGA is 44.27% of the total General Fund budget, so we are heavily dependent upon the State of Minnesota to keep taxes and services at the level they are at. The total LGA Austin is certified to receive in 2023 is \$8,882,778.

The past tax levies were discussed and Mr. Dankert noted that 2023 will have a proposed tax levy increase of 4.32%, for a tax levy of \$8,283,000. In the past, roughly 2-3% of any tax increase has been paid by new homes and new businesses in the community, however the City's Housing Tax Abatement program will reduce that going forward. The 4.32% tax increase will net the City an additional \$343,000 of tax revenue, all of which will be eaten up in increases in employee compensation and benefits as a result of the Comp and Class study continued implementation.

Full-time equivalent (FTE) employees are projected to increase from 2022 to 2023 by 1.0 FTE's. The proposal for 2023 adds a Technology Coordinator position back into the Library to help oversee the hotspot devices, and utilizes a \$50,000 grant from The Hormel Foundation to pay for the staff in 2023.

Mr. Dankert discussed the portion of the tax levy that goes toward street projects, noting the street debt service levy is now gone, as we no longer finance the middle 50% of a street project with debt. Instead, \$1,446,000 is also being used for current street projects that did

not involve a debt issuance for 2023. Contingency also sits at \$100,000 (about \$50,000 less than normal) for 2023.

Mr. Dankert also discussed maintaining fund balances in the General Fund at the 42% to 48% level. This helps to maintain our Aa2 credit rating, and allows for us to have some cash flow money for the first six months of the year. Mr. Dankert noted at the end of 2021 we were above that fund balance amount, which gives Council an option to use some of this fund balance on a short-term basis to help balance the 2023 budget in the event wage negotiations increase costs above what was budgeted.

Mr. Dankert noted the budgeting process began in early May/June and is not completed until December. Mr. Dankert noted it is typical for the city to take several months to finalize the budgets, as meetings are held with department heads and the council on several occasions before the final budget is approved. Preliminary budgets and tax levies are required by law to be approved by September 30 of each year. Tax levies cannot be increased after September 30 (with some exceptions), but they may be decreased.

Mr. Dankert discussed the breakdown of the 2023 proposed tax levy. Mr. Dankert noted the tax levy is increasing from \$7,940,000 in 2022 to \$8,283,000 in 2023 if Council approves the proposed amount. Mr. Dankert noted the originally proposed levy increase of 7.05% was not supported by a majority of Council, hence then being reduced to the 4.32% proposed increase.

The current breakdown of the citizen's tax dollar is as follows: The City of Austin's tax levy represents about 41% of the tax capacity (41 cents of every local property tax dollar paid comes to the City). Mower County receives 35%, the School District receives 22%, and the Watershed/HRA receives the other 2%. Roughly 67% of the expenditures in the General Fund goes toward wages and benefits.

Mr. Dankert discussed the budgeted expenditures of \$39,811,892 for 2023, noting the Enterprise Fund expenditures of \$10,199,054 are paid for via the users. The revenue sources for the year 2023 budget include the tax levy of \$8,283,000, and state aid of \$10,179,145 (mainly LGA). Mr. Dankert noted other minor line items that balance out the total city budget of \$39,811,892 for the year 2023. Mr. Dankert noted the largest revenue source for the City of Austin is from LGA at \$8,882,778 budgeted for 2023.

Mr. Dankert discussed each budgeted fund and the revenue sources and expenditures that make up each. The governmental funds (General, Fire PERA, Library, Recreation program Funds) budget of \$21,598,080 was discussed by area of expenditure. General Administration's budget of \$2,349,632 pays for the City Clerk, Mayor, Council Members, Finance, Elections, City Attorney, and Administrator, among other things (11% of the General Fund budget). The Public Safety budget of \$8,313,499 is primarily for the Police and Fire Departments and Building Inspection and comprises 38% of the General Fund budget. The Highways and Streets Department's budget of \$3,956,900 funds Engineering, Streets, Highway, and Lighting, among other things (18% of the General Fund budget). Park and Rec has a budget, including the Riverside and Packer arenas, of \$4,957,163 for their programs (23% of the General Fund budget). Other budgeted costs of \$2,020,886 are primarily for capital and contingency, plus economic development (mainly the hotel/motel tax remittance and the DCA payment). Mr. Dankert did note undesignated Contingency is

at \$100,000 (usually we like this number at \$150,000) as cuts had to be made to fit into Council's budget parameters.

Mr. Dankert discussed the tax levy over the last 10 years, noting the levy has doubled in this 10-year time frame. Accordingly, the tax valuation of property subject to tax continues to grow at the same level. Our actual tax rate per \$1,000 of valuation actually decreased a little bit for payable 2022, resulting in a valuation of property that actually increased above our tax rate.

Mr. Dankert briefly discussed the General Fund budget of \$20,065,846. This fund handles the general operations of the City including police, fire, streets, and parks and recreation.

Mr. Dankert briefly discussed the Recreation Programs Fund budget of \$133,186. These funds are generated via the different programs and used to help support each individual group. Mr. Dankert said there is no public tax support for this.

The budget for the Library Fund was discussed. The total budget of \$1,366,048 includes a funding request from the County for just over \$200,000 in 2023. Mr. Dankert noted most of the Library budget is funded by tax payers.

Mr. Dankert discussed the Fire PERA fund. This fund originated from the rebate of the overfunded Fire retirement plan that was originally administered by the City. The Fire PERA funds have planned expenditures in this fund for 2023 of \$33,000 for some confined space rescue equipment.

The Tax Increment Debt Service Fund Budget of \$405,184 is funded via tax increments paid on the affected properties. Expenditures include payments on existing developer agreements.

The Capital Projects budget is being used to continue to with hazardous building removal, sidewalk replacement, local street projects, and some mill and overlays. The tax levy and grants make up most of the revenue sources associated with these expenditures.

The Enterprise Funds are funded primarily from user fees. The Sewer User Fund has budgeted revenues of \$8,041,733 for the year 2023. Reserves are being used to help fund the ongoing capital improvements to the facility. Mr. Dankert noted Hormel Foods Corporation pays 100% of the industrial charges at the Wastewater Treatment Plant. This is an operational budget, so the proposed multi-million-dollar engineering costs for creating the plans and specs for the new WWTP and the expansion itself are not included here.

The Waste Transfer Station budget of \$72,066 has a primary revenue source from a lease with Waste Management. A recent lease with Waste Management should ensure the longevity of the transfer station for our residents' use. The Waste Transfer Station does not use any tax levy to help fund its operations or capital improvements.

The Storm Water Management District is used to meet funding needs for the federal/state storm water unfunded mandates. User fees added to utility bills pay for the normal operations in 2023 of approximately \$1,046,250. The user fee was increased to \$5.50

(effective January 2022), with commercial entities paying a residential equivalency unit charge.

Mr. Dankert discussed the Port Authority budgets. The Port Authority General Fund uses the \$40,000 of tax levy for development purposes. The Walker Building has income projected, and that income has been put back into the building for improvements, and helped to finance other projects over the years. The Port Authority owns the Hormel Institute Phase II expansion, but all of the costs (except depreciation) are on The Hormel Institute as an entity.

Internal Service Funds have revenue sources from other city departments. Funds are accumulated to pay for health insurance, new vehicles, and computer operations. The Central Garage has a budget of \$2,429,901. This includes both the Street Department and the Park and Rec Department. Included in the budgets are building/equipment additions of \$541,500 for the Street Department and \$150,000 for the Park and Rec Department.

The M.I.S. Department has a budget of \$238,764 for 2023. This fund has revenue sources from the city's departments within the General Fund. The employee in this department is available to all city departments to evaluate individual needs. Also, web site development and upkeep are done internally by this position. Mr. Dankert did note that currently \$20,000 is allocated for replacement of equipment.

The Fire Equipment Fund is used for purchasing and maintaining fire vehicles. Mr. Dankert noted there is currently \$26,000 of equipment (new inflatable Zodiac boat) scheduled for 2023.

The Risk Management Fund accounts for all of our insurance programs. The proposed revenues of \$2,363,409 are used to cover the expenditures. The Risk Management Fund includes Health Insurance, Property/Liability Insurance, Workers Comp. Insurance, and Sick Leave payments that are owed.

Questions were answered from the public, noting if bonding money comes through for our wastewater treatment plant, that the sewer rates could be reduced.

Council Member Postma noted the limited LGA increases have not kept up with inflation, hence needing to cut costs are ask tax payers for additional revenue to provide the services citizens are requesting.

Mr. Dankert discussed the resolutions that will need to be passed at the December 19, 2022 city council meeting. The first resolution would certify the tax levy to the County Auditor in the amount of \$8,283,000 if Council desires to levy the proposed amount. The second resolution would certify the adopted budget for the year 2023.

The third resolution would cancel certain tax levies on the Austin Utilities Central Facility bond issue. This levy is not needed as we have alternate sources of revenues to pay off the bond issue.

No additional comments or questions were made by the public.

With no others speaking, motion by Council Member Baker, seconded by Council Member-at-Large Austin, recommending to Council the tax levy of \$8,283,000 for payable 2023. Carried 5-0. Item will be added to the next council agenda.

Motion by Council Member Postma, seconded by Council Member-at-Large Austin to recommend to Council the budget of \$39,811,892 for 2023. Carried 5-0. Item will be added to the next council agenda.

Motion by Council Member Baker, seconded by Council Member Baskin, recommending to Council the cancelation of certain ad valorem taxes for 2023. Carried 5-0. Item will be added to the next council agenda.

Mr. Dankert noted these three resolutions will be acted on at the December 19, 2022 city council meeting at 5:30.

Motion by Council Member Postma, seconded by Council Member Baskin, to adjourn the meeting at 6:45 P.M. Carried.

Approved December 19, 2022

Mayor \_\_\_\_\_

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  
*TD*  
FROM: Tom Dankert, Director of Administrative Services  
DATE: December 19, 20212  
RE: 2023-2027 Capital Improvement Plan  
U:\Word\2022\2023-2027 CIP\2023-2027 CIP Cover Memo - Council Meeting.doc

Attached you will find the Capital Improvement Plan for the years 2023-2027. The plan proposes spending of \$190,336,000 over the next five-year period, but as we have noted, if grant funds are not accessed for a particular project, then the project would need to be put on hold until all of the funding sources are realized.

A big thanks to all of the department heads that participated in the creation of this document. Significant time is spent at the City of Austin planning for the future in many aspects of what staff do for the citizens on a daily basis, and this document should help in identifying the capital needs and the resources to pay for such over the next five years.

If you have any questions, please do not hesitate to give me a call at 437-9959.

**RESOLUTION NO.**

**APPROVING TAX LEVY FOR THE YEAR 2023**

**BE IT RESOLVED**, by the Common Council of the City of Austin that there is hereby levied upon all taxable property in the City of Austin a direct ad valorem tax in the year 2022, payable in 2023, for the following purposes and in the following amounts:

| <u>PURPOSE</u>       |                    |
|----------------------|--------------------|
| GENERAL              | \$5,743,466        |
| LIBRARY              | 1,053,534          |
| PORT AUTHORITY       | 40,000             |
| CAPITAL IMPROVEMENTS | <u>1,446,000</u>   |
|                      | <u>\$8,283,000</u> |

A certified copy of this resolution shall be transmitted to the County Auditor.

Passed by a vote of Yeas and Nays this 19th day of December, 2022.

YEAS

NAYS

ATTEST:

APPROVED:

---

City Recorder

---

Mayor

**RESOLUTION NO.**  
**ADOPTING A BUDGET FOR THE YEAR 2023**

**BE IT RESOLVED**, by the Common Council of the City of Austin that the budget for the year 2023 is hereby approved and adopted with appropriations for each of the purposes to be as follows:

|                                       |                     |
|---------------------------------------|---------------------|
| General Government Services           |                     |
| General Administration                | \$ 2,349,632        |
| Public Safety                         | 8,313,499           |
| Highways and Streets                  | 3,956,900           |
| Park and Recreation                   | 3,457,929           |
| Business Development                  | 343,286             |
| Other General                         | 1,644,600           |
| Recreation Programs                   | 133,186             |
| Library                               | 1,366,048           |
| Fire PERA Refund                      | 33,000              |
| Capital Projects Funds                | <u>2,356,000</u>    |
| <br>Total General Government Services | <u>23,954,080</u>   |
| <br>Tax Increment Revenue Pool        | <u>405,184</u>      |
| <br>Enterprise Funds                  |                     |
| Sewer User                            | 8,041,733           |
| Waste Transfer Station                | 72,066              |
| Storm Water Management Dist.          | 1,046,250           |
| Port Authority Operations             | <u>1,039,005</u>    |
| <br>Total Enterprise Funds            | <u>10,199,054</u>   |
| <br>Internal Service Funds            |                     |
| Equipment Garage                      | 2,429,901           |
| Management Information System         | 238,764             |
| Fire Equipment Services               | 221,500             |
| Risk Management                       | <u>2,363,409</u>    |
| <br>Total Internal Service Funds      | <u>5,253,574</u>    |
| <br>Total Budgets                     | <u>\$39,811,892</u> |

SECTION 2. The estimated gross revenues of the City of Austin for all sources, including ad valorem tax levies as hereinafter set forth for the year 2022, as the same are more fully detailed in the official copy of the 2023 budget, are hereby found and determined as follows:

Revenues and Sources for all Funds:

|                                    |                     |
|------------------------------------|---------------------|
| Current Local Property Taxes       | \$ 8,283,000        |
| Intergovernmental Revenues         | 10,179,145          |
| Charges for Services               | 577,967             |
| Licenses and Permits               | 665,605             |
| Miscellaneous                      | 3,259,663           |
| Other taxes                        | 829,000             |
| Fines and Forfeits                 | <u>159,700</u>      |
| Total for General Government Funds | 23,954,080          |
|                                    |                     |
| Tax Increment Funds                | 405,184             |
| Port Authority Funds               | 1,039,005           |
| Enterprise Funds                   | 9,160,049           |
| Internal Service Funds             | <u>5,253,574</u>    |
| Total Budgets                      | <u>\$39,811,892</u> |

Provisions have also been made in General Fund revenues for receipt of State Local Government Aid.

SECTION 3. A certified copy of this resolution shall be transmitted to the County Auditor.

Passed by a vote of Yeas and Nays this 19th day of December, 2022.

YEAS

NAYS

ATTEST:

APPROVED:

---

City Recorder

---

Mayor

**RESOLUTION NO.**

**RESOLUTION AUTHORIZING CANCELLATION OF  
CERTAIN AD VALOREM TAX LEVIES**

**WHEREAS**, certain resolutions of the City Council of Austin and Austin Port Authority provide for Ad Valorem Tax Levies to be made for the retirement of principal and interest on bond issues; and

**WHEREAS**, it appears desirable to cancel or to reduce such Ad Valorem Tax Levies to be levied in 2022 because there is sufficient fund balance available in these debt service funds to pay all or some of the principal and interest on these bonds due in 2023.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of Austin, Minnesota that tax levies authorized to be made in 2022, collectible in 2023, are hereby canceled by the amounts indicated below:

| <u>Resolution #</u> | <u>Issue</u>                            | <u>Cancellation Amount</u> |
|---------------------|---|----------------------------|
| 14976               | G.O. Capital Improvement Bonds of 2015A | \$1,282,956                |

**BE IT FURTHER RESOLVED**, that a certified copy of this resolution shall be promptly given to the Mower County Auditor.

Passed by a vote of Yeas and Nays this 19th day of December, 2022.

YEAS

NAYS

ATTEST:

APPROVED:

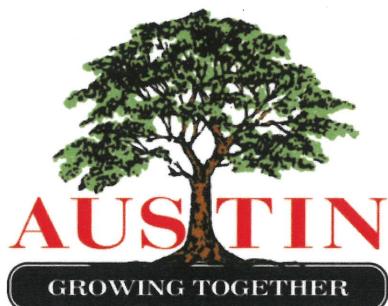
---

City Recorder

---

Mayor

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)

## MEMO

TO: Mayor and City Council  
*TMD*

FROM: Tom Dankert

DATE: December 19, 2022

SUBJECT: WWTP PFA Loan  
U:\Word\2022\Miscellaneous\PFA WWTP Loan.doc

The City of Austin is in the final stages of closing on the PFA loan related to the financing of our share of the wastewater treatment plant upgrades. As you may recall, the estimated cost of the total project is in excess of \$105,000,000, with Hormel Foods Corporation contributing roughly half of the cost.

Attached you will find a resolution that our bond attorneys at Dorsey & Whitney have prepared in conjunction with the city's borrowing related to the project. PFA has written the loan for \$42,216,633 which is the proposed city share after a \$7 million PSIG grant and another \$1 million WIF grant from the State of Minnesota. The City locked in on the 20-year interest rate at 2.638% a few weeks ago.

We would request Council approve the attached resolution which thereby authorizes the Mayor and City Recorder to sign all documents related to the PFA loan. Please give me a call at 437-9959 if you have any questions.

**CERTIFICATION OF MINUTES RELATING TO  
\$42,216,633 GENERAL OBLIGATION WASTEWATER REVENUE NOTE,  
SERIES 2022A**

Issuer: City of Austin, Minnesota

Governing Body: City Council

Kind, date, time and place of meeting: A regular meeting held December 19, 2022, at 5:30 p.m., at the municipal offices in Austin, Minnesota.

Members present:

Members absent:

Documents Attached:

Minutes of said meeting (including):

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

**RESOLUTION RELATING TO \$42,216,633 GENERAL OBLIGATION  
WASTEWATER REVENUE NOTE, SERIES 2022A; AUTHORIZING THE  
ISSUANCE AND SALE, FIXING THE FORM AND DETAILS THEREOF  
AND PROVIDING FOR THE SECURITY THEREFOR**

I, the undersigned, being the duly qualified and acting recording officer of the public corporation issuing the obligations referred to in the title of this certificate, certify that the documents attached hereto, as described above, have been carefully compared with the original records of said corporation in my legal custody, from which they have been transcribed; that said documents are a correct and complete transcript of the minutes of a meeting of the governing body of said corporation, and correct and complete copies of all resolutions and other actions taken and of all documents approved by the governing body at said meeting, so far as they relate to said obligations; and that said meeting was duly held by the governing body at the time and place and was attended throughout by the members indicated above, pursuant to call and notice of such meeting given as required by law.

WITNESS my hand officially as such recording officer this \_\_\_\_\_ day of December, 2022.

---

\_\_\_\_\_  
City Clerk

Councilmember \_\_\_\_\_ introduced the following  
resolution and moved its adoption:

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

RESOLUTION RELATING TO \$42,216,633 GENERAL OBLIGATION  
WASTEWATER REVENUE NOTE, SERIES 2022A; AUTHORIZING THE  
ISSUANCE AND SALE, FIXING THE FORM AND DETAILS THEREOF  
AND PROVIDING FOR THE SECURITY THEREFOR

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

Section 1. Authorization and Recitals.

1.01. Authorization. The City is authorized pursuant to Minnesota Statutes, Section 444.075, as amended, and Chapter 475 to issue and sell its general obligation bonds or notes in order to finance a portion of the cost of improvements to its wastewater treatment system (the “System”). The City is proposing to undertake improvements to the System’s wastewater treatment plant, including upgrades to reduce the discharge of phosphorus, all as detailed in the Minnesota Pollution Control Agency project certification dated June 29, 2021 (the “Project”). The estimated cost of the Project is in excess of \$100,000,000.

1.02. PFA Loan. The Minnesota Public Facilities Authority (the “PFA”) has agreed, subject to certain terms and conditions contained in a Bond Purchase and Project Loan Agreement with Point Source Implementation Grant dated November 16, 2022, entered into between the City and PFA (the “Loan Agreement”), to lend the City \$42,216,633 in order to finance a portion of the cost of the Project (the “PFA Loan”). This Council hereby accepts such offer, authorizes and ratifies the execution of the Loan Agreement by the Mayor and the City Recorder and agrees to issue its General Obligation Wastewater Revenue Note, Series 2022A (the “Note”), to the PFA evidencing such loan. The proceeds from the Note will be disbursed to the City from the PFA on a cost reimbursement basis consistent with a budget presented to the PFA in connection with the application for financing and in accordance with state law applicable to the PFA Loan. If (i) as a result of action by the City or PFA, the entire principal amount is not to be disbursed for such reimbursement or (ii) the entire principal amount is not fully disbursed by the date specified in the Loan Agreement, and an extension is not granted pursuant to the Loan Agreement, the undisbursed balance shall be applied to principal payments on the PFA Loan on a pro rata basis or as otherwise determined by the PFA. The City hereby pledges to use all money disbursed for the Project exclusively for the Project, and to pay any additional amount by which the cost of the Project exceeds such disbursements by an appropriation to the construction account described in Section 4.01 hereof of additional money or proceeds of additional bonds or notes to be issued by the City.

1.03 Tax Exemption. The Loan Agreement requires that the Note be tax-exempt, and that the City take the actions required and within its power to assure the tax-exemption of the bonds issued by the PFA (the “PFA Bonds”).

1.04. Sale. The offer of the PFA to lend the City funds in the aggregate amount of \$42,216,633, as described in Section 1.02 above, is reasonable and advantageous to the City and is hereby accepted. The Loan Agreement is hereby approved in substantially the form presented to the Council, and is hereby incorporated by reference and made a part of this Resolution. Each and all of the provisions of this Resolution relating to the Note are intended to be consistent with the provisions of the Loan Agreement, and to the extent that any provision in the Loan Agreement is in conflict with this Resolution as it relates to the Note, that provision shall control and this Resolution shall be deemed accordingly modified. The Mayor and City Recorder are hereby authorized and directed to execute the Loan Agreement. The execution of the Loan Agreement by the appropriate officers shall be conclusive evidence of the approval of the Loan Agreement in accordance with the terms hereof. The Loan Agreement may be attached to the Note, and shall be attached to the Note if the holder of the Note is any person other than the PFA. The PFA has represented to the City that it is a duly organized agency of the State of Minnesota, and the City is authorized under Minnesota Statutes, Section 475.60, Subdivision 2(4), to sell its obligations at private sale to an agency of the State of Minnesota.

Delivery of an executed counterpart of a signature page of the Loan Agreement by facsimile, docusign, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of the Loan Agreement, to the extent and as provided for in any applicable law, including Minnesota Statutes, Chapter 325L.

1.05. Recitals. All acts, conditions, and things which are required by the Constitution and laws of the State of Minnesota and the City's Home Rule Charter to be done, to exist, to happen, and to be performed prior to the issuance of the Note having been done, existing, and having happened, it is now necessary for this Council to establish the form and terms of the Note, to provide for the security thereof, and to issue the Note forthwith.

## Section 2. Terms and Execution.

2.01. Terms. In order to finance costs of the Project and to evidence the loan referred to in Section 1.02, the City shall forthwith issue the Note in the principal amount of \$42,216,633. The Note shall be dated as of the date of its delivery to the PFA and shall be payable in annual installments of principal maturing on August 20 of the years and in the amounts set forth below:

| <u>Year</u> | <u>Amount</u> | <u>Year</u> | <u>Amount</u> |
|-------------|---------------|-------------|---------------|
| 2023        | \$808,633     | 2033        | \$2,157,000   |
| 2024        | 1,707,000     | 2034        | 2,214,000     |
| 2025        | 1,752,000     | 2035        | 2,273,000     |
| 2026        | 1,798,000     | 2036        | 2,333,000     |
| 2027        | 1,845,000     | 2037        | 2,394,000     |
| 2028        | 1,894,000     | 2038        | 2,457,000     |
| 2029        | 1,944,000     | 2039        | 2,522,000     |
| 2030        | 1,995,000     | 2040        | 2,589,000     |
| 2031        | 2,048,000     | 2041        | 2,657,000     |
| 2032        | 2,102,000     | 2042        | 2,727,000     |

The Note shall bear interest, which includes amounts treated by the PFA as service fees from the date of the Loan Agreement at the rate of 2.638% per annum through the date on which no principal remains unpaid, provided, however, that interest and service fees shall accrue only on the aggregate principal amount of the Note actually disbursed by the PFA. Interest shall be payable on each February 20 and August 20, commencing February 20, 2023. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. The principal of and interest on the Note shall be payable on each payment date by wire, or by check or draft mailed at least five business days prior to the payment date, to the registered holder thereof at the address appearing on the Note register of the City on the date of payment.

2.02. Registration. The Note shall be fully registered as to both principal and interest and shall be initially registered in the name of and payable to the PFA. While so registered, principal of and interest on the Note shall be payable at the address of the registered holder thereof, as it appears on the note register maintained by the City Clerk, or such other place as may be designated by the registered holder in writing, and delivered to the City Clerk. The City Clerk shall act as note registrar and as such shall establish and maintain a note register for the purpose of recording the name and addresses of the registered holder and its assigns, and the date of registration of any transfer.

2.03. Redemption. (a) The City shall have the option to prepay the Note, subject to the approval thereof by the PFA in its sole discretion, in whole or in part on any February 20 or August 20, upon forty-five (45) days prior written notice to the PFA at a price equal to 100% of the principal amount to be prepaid, together with accrued interest and servicing fees thereon to the redemption date and a premium equal to all fees and expenses of the PFA incurred in connection with such prepayment, including any fees, expenses or other costs relating to the payment and redemption of the Note or PFA Bonds, as defined hereinafter, as determined by the PFA. The PFA may require an opinion of a law firm, selected by the PFA, having a national reputation in the field of municipal law whose legal opinions are generally accepted by purchasers of municipal bonds to the effect that such prepayment will not cause the interest on the Note to be included in the gross income of the recipient thereof for federal income tax purposes.

(b) In the event that special assessments and/or connection charges from another municipality are pledged to the payment of the Note, and the City receives prepayments or lump sum payments of such special assessments and/or connection charges, the City is hereby required, and hereby agrees, to notify the PFA immediately upon receipt of any such payment. The PFA, in its sole discretion, may direct the City to use the funds for the payment of eligible construction costs of the Project, or to transmit the funds to the PFA for payment of the Note, immediately or at a later date. Any such payment received by the PFA may be applied to reduce each unpaid annual principal installment required with respect to the Note in the proportion that such installment bears to the total of all unpaid principal installments or, at the sole option and in the sole discretion of the PFA, may be applied to a future principal payment on the Note in a manner determined by the PFA.

(c) The principal amount of a partial prepayment may, at the sole option and discretion of the PFA, (i) held by the PFA without interest and applied to a future principal payment on the PFA Loan in a manner determined by the PFA or (ii) be applied to reduce each unpaid annual

principal installment required with respect to the PFA Loan in the proportion that such installment bears to the total of all unpaid principal installments (i.e., the remaining principal payment schedule shall be re-amortized to provide proportionately reduced principal payments in each year) with respect to the PFA Loan. The PFA Loan and the Note shall be re-amortized on the same basis to result in identical amortization of the PFA Loan and the Note.

(d) Any payments of principal or interest received by the PFA in excess of the principal of and interest on the Loan and the Note which are not mandatory payments described in (b) above or not expressly designated by the City to be treated as a prepayment may, in the sole discretion of the PFA, be (i) held without interest payable by the PFA and applied to a future payment due on the Note in a manner determined by the PFA, (ii) treated as a prepayment of principal on the Note; or (iii) returned to the City as an overpayment.

2.04. Execution and Delivery. The Note shall be prepared under the direction of the City Recorder and shall be executed on behalf of the City by the signature of the Mayor, attested by the City Recorder, and sealed with the official seal of the City. When the Note has been so executed and authenticated, it shall be delivered by the City Recorder to the PFA to evidence the obligation of the City under the Loan Agreement.

2.05. Assignment and Exchange. The Note shall be transferable by the registered owner or the owner's attorney duly authorized in writing upon presentation thereof to the City Clerk together with a written instrument of transfer satisfactory to the City Clerk and duly executed by the registered owner or the owner's attorney. The following form of assignment shall be sufficient for the purpose:

For value received \_\_\_\_\_ hereby sells,  
assigns and transfers unto \_\_\_\_\_ the within  
Note of the City of Austin, Minnesota, and does hereby irrevocably constitute and  
appoint \_\_\_\_\_, Attorney, to transfer the Note on  
the books of the City with full power of substitution in the premises.

Dated: \_\_\_\_\_

---

\_\_\_\_\_  
Registered Owner

Such transfer shall also be noted on the Note and in the note register. No service charge shall be made for such transfer, but the City may require payment of a sum sufficient to cover any tax, fee or governmental charge or other expense incurred by the City with respect thereto.

Section 3. Form of Note. The Note shall be in substantially the form attached hereto as Exhibit A.

Section 4. Use of Proceeds; Security Provisions.

4.01. Use of Proceeds. Upon advancements of principal of the Note by the PFA in accordance with the Loan Agreement, or upon an appropriation of funds described in Section 1.02 hereof, the Administrative Services Director shall deposit such proceeds in a separate

construction fund to be created on the books of the City and expended to pay for the costs of the Project, including the costs of issuance of the Note, as further provided in the Loan Agreement. Any amounts remaining upon completion of the Project shall be transferred to the Bond Fund as described in Section 4.02.

No portion of the proceeds of the Note shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (1) for a reasonable temporary period until such proceeds are needed for the purpose for which the Note was issued, and (2) in addition to the above, in an amount not greater than the lesser of five percent (5%) of the proceeds of the Note or \$100,000. To this effect, any proceeds of the Note or any sums from time to time held in the Bond Fund (or any other City account which will be used to pay principal or interest to become due on the Note) in excess of amounts which under then-applicable federal arbitrage regulations may be invested without regard to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by said arbitrage regulations on such investments after taking into account any applicable "temporary periods" or "minor portion" made available under the federal arbitrage regulations. In addition, moneys in the Bond Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Note to be "federally guaranteed" within the meaning of Section 149 (b) of the federal Internal Revenue Code of 1986, as amended (the Code).

4.02. Bond Fund. So long as any of the Note is outstanding and unpaid, the Administrative Services Director shall maintain a Wastewater Debt Service Fund of the City as a separate and special fund (the "Bond Fund") to be used for no purpose other than the payment of the principal of and interest on the Note and such other general obligation wastewater revenue bonds of the City as may be directed to be paid from the Bond Fund. If the balance in the Bond Fund is ever insufficient to pay all principal and interest then due on bonds or notes payable therefrom, the Administrative Services Director shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from subsequent receipts of net revenues appropriated to the Bond Fund and, if necessary, from the proceeds of the taxes levied for the Fund. The Administrative Services Director shall deposit in the Bond Fund the proceeds of all other money which may at any time be received for or appropriated to the payment of such bonds and interest thereon, including the net revenues herein pledged and appropriated to the Bond Fund, all collections of any ad valorem taxes levied for the payment of the Note.

4.03. Sufficiency of Revenues. It is hereby found, determined and declared that the City owns and operates the System as a revenue-producing utility and convenience; and that the net operating revenues of the System, after deducting from the gross receipts derived from charges for the service, use and availability of the System the normal, current and reasonable expenses of operation and maintenance thereof, will be sufficient, together with any other pledged funds, for the payment when due of the principal of and interest on the Note and on any other outstanding bonds of the City to which such revenues are pledged and, along with other funds dedicated thereto, to provide for the operation and maintenance of the System.

4.04. Rate Covenant; Pledge of Revenues; Additional Obligations. Pursuant to the provisions of Minnesota Statutes, Section 444.075, as amended, the City hereby covenants and agrees with the owners from time to time of the Note that so long as the Note is outstanding, the City will impose and collect reasonable charges for the service, use and availability of the System to the City and its inhabitants according to schedules calculated to produce net revenues which will be sufficient to pay 105% of all principal and interest when due on the Note and any other bonds payable therefrom, and said net revenues, to the extent necessary, are hereby irrevocably pledged and appropriated to the payment of the Note and interest thereon. Nothing herein shall preclude the City or Utility from hereafter making further pledges and appropriations of net revenues of the System for the payment of additional obligations of the City hereafter authorized if the Council determines before the authorization of such additional obligations that the estimated net revenues of the System will, with any other sources of funds pledged, be sufficient for the payment of the Note, any other bonds then payable therefrom and such additional obligations. Such further pledges and appropriations of said net revenues may be made superior or subordinate to or on a parity with the pledge and appropriation herein made.

4.05. Full Faith and Credit Pledged. The full faith and credit and taxing powers of the City shall be and are hereby irrevocably pledged for the prompt and full payment of the principal of and interest on the Note, and the City covenants and agrees that it will make good any deficiency from the general fund of the City. On or before September 1 of each year, beginning in 2022, the Administrative Services Director will calculate and certify to this Council the total amount of cash on hand in the Bond Fund and the available net revenues of the System on hand and estimated to be received and available on or before the 20th day of August of the next succeeding year, and shall determine the sufficiency of such total amount for the payment of principal of and interest on the Note coming due on such August 20 and the interest payable on the immediately preceding February 20.

If such total amount is determined to be insufficient for such payments, this Council shall forthwith appropriate to the Bond Fund sufficient available moneys of the City to make good the deficiency, and if available moneys of the City are not on hand in amounts sufficient for this purpose, this Council shall forthwith levy and certify to the County Auditor of Mower County for collection in the following year a tax at least five percent in excess of the amounts adequate to make good the deficiency. The Administrative Services Director shall also at the same time estimate and certify to this Council the amount which will be on hand in the Bond Fund after payment of principal and interest payable on the 20th day of August of the second succeeding year, and the amount of net revenues of the System to be received and available for such purpose in the period of twelve months ending on said 20th day of August and shall determine the sufficiency of such estimated amounts for the payment of the principal of and interest on the Note coming due during and immediately at the end of such twelve-month period. If the amount of estimated net revenues to become available during such period is determined to be insufficient for such payment, this Council shall forthwith cause to be levied and certified to the County Auditor of Mower County for collection in the following year a tax at least five percent in excess of amounts adequate to make good the deficiency.

## Section 5. Registration and Certification of Proceedings.

5.01. Registration. The City Clerk is hereby authorized and directed to file a certified copy of this resolution with the County Auditor of Mower County, together with such other information as shall be required, and to obtain from the County Auditor a certificate that the Note has been entered on his or her note register as required by law.

5.02. Certification of Proceedings. The officers of the City and the County Auditor for Mower County are hereby authorized and directed to prepare and furnish to the PFA and to Dorsey & Whitney LLP, Bond Counsel to the City, certified copies of all proceedings and records of the City, and such other affidavits, certificates and information as may be required to show the facts relating to the legality and marketability of the Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall be deemed representations of the City as to the facts recited therein.

5.03. Negative Covenants as to Use of Proceeds and Project. The City hereby covenants not to use the proceeds of the Note or to use the Project, or to cause or permit them to be used, or to enter into any deferred payment arrangements for the cost of the Project, in such a manner as to cause the Note to be a "private activity bond" within the meaning of Sections 103 and 141 through 150 of the Code. The City reasonably expects that no actions will be taken over the term of the Note that would cause it to be a private activity bond, and the average term of the Note is not longer than reasonably necessary for the governmental purpose of the issue. The City hereby covenants not to use the proceeds of the Note in such a manner as to cause the Note to be a "hedge bond" within the meaning of Section 149(g) of the Code.

5.04. Tax-Exempt Status of the Note; Rebate. The City shall comply with requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the Note, including without limitation (1) requirements relating to temporary periods for investments, (2) limitations on amounts invested at a yield greater than the yield on the Note, and (3) the rebate of excess investment earnings to the United States if an exception is not available.

5.05. Tax-Exempt Status of the PFA Bonds; Rebate. The City with respect to the Note shall comply with requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the PFA Bonds, including without limitation (1) requirements relating to temporary periods for investments, (2) limitations on amounts invested at a yield greater than the yield on the PFA Bonds, and (3) the rebate of excess investment earnings to the United States. The City covenants and agrees with the PFA and holders of the Note that the investments of proceeds of the Note, including the investment of any revenues pledged to the Note which are considered gross proceeds of the PFA Bonds under the applicable regulations, and accumulated sinking funds, if any, shall be limited as to amount and yield in such manner that the PFA Bonds shall not be arbitrage bonds within the meaning of Section 148 of the Code and any regulations thereunder. On the basis of the existing facts, estimates and circumstances, including the foregoing findings and covenants, the City hereby certifies that it is not expected that the proceeds of the Note will be used in such manner as to cause the PFA Bonds to be arbitrage bonds under Section 148 of the Code and any regulations

thereunder. The Mayor and City Recorder shall furnish a certificate to the PFA embracing or based on the foregoing certification at the time of delivery of the Note to the PFA.

5.06. Not Qualified Tax-Exempt Obligations. The Note is not a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code.

Passed by a vote of yeas and nays this 19th day of December, 2022.

APPROVED:

Mayor

ATTEST:

---

## City Recorder

EXHIBIT A  
FORM OF SERIES 2022A NOTE

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF MOWER

CITY OF AUSTIN

GENERAL OBLIGATION WASTEWATER REVENUE NOTE, SERIES 2022A

No. R-1 \$42,216,633

FOR VALUE RECEIVED, THE CITY OF AUSTIN, Mower County, Minnesota (the "City"), acknowledges itself to be indebted and hereby promises to pay to the Minnesota Public Facility Authority (the "PFA"), or registered assigns, the principal sum of Forty Two Million Two Hundred Sixteen Thousand Six Hundred Thirty Three Dollars and No/100 (\$42,216,633), or such lesser amount as may be advanced by the PFA to the City hereunder, in the following installments on August 20 in the following years:

| <u>Year</u> | <u>Amount</u> | <u>Year</u> | <u>Amount</u> |
|-------------|---------------|-------------|---------------|
| 2023        | \$808,633     | 2033        | \$2,157,000   |
| 2024        | 1,707,000     | 2034        | 2,214,000     |
| 2025        | 1,752,000     | 2035        | 2,273,000     |
| 2026        | 1,798,000     | 2036        | 2,333,000     |
| 2027        | 1,845,000     | 2037        | 2,394,000     |
| 2028        | 1,894,000     | 2038        | 2,457,000     |
| 2029        | 1,944,000     | 2039        | 2,522,000     |
| 2030        | 1,995,000     | 2040        | 2,589,000     |
| 2031        | 2,048,000     | 2041        | 2,657,000     |
| 2032        | 2,102,000     | 2042        | 2,727,000     |

and promises to pay interest and service fees from the date of the Project Loan and Bond Purchase Agreement between the City and the PFA (the "Loan Agreement") on the installments of principal which have been disbursed by the PFA and are from time to time remaining unpaid at the rate of 2.638% per annum through the date on which no principal remains unpaid, said interest being payable semiannually on February 20 and August 20 of each year, commencing February 20, 2023. The principal installments of and interest on this Note are payable by check or draft mailed to the address of the registered holder hereof as it appears on the note register of the City as of the payment date, in any coin or currency of the United States of America which on the respective dates of payment is legal tender for public and private debts. For the prompt and full payment of such principal installments and interest when due, the full faith, credit and taxing powers of the City are hereby irrevocably pledged.

This Note constitutes an issue in the aggregate principal amount of \$42,216,633, issued to defray a portion of the cost of construction of improvements (the "Project") to the wastewater system of the City (the "System"), and is issued pursuant to and in full conformity with the provisions of the Constitution, laws of the State of Minnesota and Home Rule Charter thereunto enabling, including Minnesota Statutes, Section 444.075 and Chapter 475, as amended. This Note is payable primarily from the Wastewater Debt Service Fund (the "Bond Fund") of the City, but the City is required by law to pay maturing principal hereof and interest thereon out of any funds in the treasury if money on hand in the Bond Fund is insufficient therefore.

The City shall have the option to prepay the Note, subject to the approval thereof by the PFA in its sole discretion, in whole or in part on any February 20 or August 20, upon forty-five days prior written notice to the PFA at a price equal to 100% of the principal amount to be prepaid, together with accrued interest to the redemption date and a premium equal to all fees and expenses of the PFA incurred in connection with such prepayment as determined by the PFA in its sole discretion, , including any fees, expenses or other costs relating to the payment and redemption of the Note or PFA Bonds, as defined in the resolution approving issuance of the Note, as determined by the PFA. The PFA may require an opinion of a law firm, selected by the PFA, having a national reputation in the field of municipal law whose legal opinions are generally accepted by purchasers of municipal bonds to the effect that such prepayment will not cause the interest on the Note to be included in the gross income the recipient thereof for federal income tax purposes.

In the event that special assessments and/or connection charges from another municipality are pledged to the payment of the Note, and the City receives prepayments or lump sum payments of such special assessments and/or connection charges, the City is hereby required, and hereby agrees, to notify the PFA immediately upon receipt of any such payment. The PFA, in its sole discretion, may direct the City to use the funds for the payment of eligible construction costs of the Project, or to transmit the funds to the PFA for payment of the Note, immediately or at a later date. Any such payment received by the PFA may be applied to reduce each unpaid annual principal installment required with respect to the Note in the proportion that such installment bears to the total of all unpaid principal installments or, at the sole option and in the sole discretion of the PFA, may be applied to a future principal payment on the Note in a manner determined by the PFA.

The principal amount of a partial prepayment may, at the sole option and discretion of the PFA, (i) be applied to a future principal payment on the loan in a manner determined by the PFA or (ii) be applied to reduce each unpaid annual principal installment required with respect to the PFA Loan in the proportion that such installment bears to the total of all unpaid principal installments (i.e., the remaining principal payment schedule shall be re-amortized to provide proportionately reduced principal payments in each year) with respect to the PFA Loan. The PFA Loan and the Note shall be re-amortized on the same basis to result in identical amortization of the PFA Loan and the Note.

Any payments of principal or interest received by the PFA in excess of the principal of and interest on the Loan and the Note which are not mandatory payments with respect to special assessment and connection charges described above or not expressly designated by the City to be treated as a prepayment may, in the sole discretion of the PFA, be (i) held without interest

payable by the PFA and applied to a future payment due on the Note in a manner determined by the PFA, (ii) treated as a prepayment of principal on the Note; or (iii) returned to the City as an overpayment.

This Note shall be registered in the name of the owner on the note register of the City kept by the City Clerk as Bond Registrar. This Note is transferable by the registered owner or the owner's attorney duly authorized in writing, upon presentation hereof with a written instrument of transfer satisfactory to the City and duly executed by the registered owner or the owner's attorney, subject to reimbursement for any tax, fee or governmental charge or other expense incurred by the City with respect to such transfer. Such transfer shall be noted on the note register and hereon. The City may treat the person in whose name this Note is registered as the absolute owner hereof, whether this Note is overdue or not, for the purpose of receiving payment of principal and interest and all other purposes, and shall not be affected by any notice to the contrary.

The City intends that the interest on this Note will be excluded from gross income for United States income tax purposes and from both gross income and taxable net income for State of Minnesota income tax purposes.

The City may deem and treat the person in whose name this Note is registered as the absolute owner hereof, whether this Note is overdue or not, for the purpose of receiving payment and for all other purposes, and the City shall not be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution, laws of the State of Minnesota to be done, to exist, to happen and to be performed precedent to and in the issuance of this Note in order to make it a valid and binding general obligation of the City according to its terms have been done, do exist, have happened and have been performed in regular and due time, form and manner as so required; that in and by the resolution authorizing the issuance of the Note, the City has covenanted and agreed with the owners of the Note that it will impose and collect charges for the service, use and availability of the System according to schedules sufficient to produce net revenues adequate to pay all principal of and interest on the Note and any other bonds or notes payable therefrom, as such principal and interest respectively become due; that, if necessary to pay such principal and interest, the City is required by law to levy ad valorem taxes upon all taxable property within its corporate limits, without limitation as to rate or amount; and that the issuance of this Note does not cause the indebtedness of the City to exceed any constitutional, charter or statutory limitation.

IN WITNESS WHEREOF, the City of Austin, Minnesota, by its City Council, has caused this Note to be executed on its behalf by the signature of the Mayor, attested by the signature of the City Recorder, and has caused this Note to be dated as of [\_\_\_\_\_, 2022].

ATTEST:

---

City Recorder

---

Mayor

NO WRITING HEREON EXCEPT BY THE CITY CLERK  
AS NOTE REGISTRAR

The Note Registrar has transferred on the books of the City of Austin, Mower County, Minnesota, on the last date noted below, to the registered assign noted opposite said date, ownership of the principal amount of and interest on this Note, except the amounts of principal and interest theretofore paid:

| <u>Date of Transfer</u> | <u>Registered Assign</u> | <u>Signature of Note Registrar</u> |
|-------------------------|--------------------------|------------------------------------|
| _____                   | _____                    | _____                              |
| _____                   | _____                    | _____                              |
| _____                   | _____                    | _____                              |
| _____                   | _____                    | _____                              |

COUNTY AUDITOR'S CERTIFICATE  
AS TO BOND REGISTRATION

The undersigned, being the duly qualified and acting County Auditor of Mower County, Minnesota, hereby certify that there has been filed in my office a certified copy of a resolution duly adopted on December 19, 2022, by the City Council of the City of Austin, Minnesota, setting forth the form and details of a \$42,216,633 General Obligation Wastewater Revenue Note, Series 2022A to be dated as of the date of issuance thereof.

I further certify that the issue has been entered on my note register as required by Minnesota Statutes, Sections 475.61 and 475.63, as amended.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

---

Mower County Auditor

(SEAL)

**MINNESOTA PUBLIC FACILITIES AUTHORITY  
BOND PURCHASE AND PROJECT LOAN AGREEMENT WITH  
POINT SOURCE IMPLEMENTATION GRANT**

This BOND PURCHASE AND PROJECT LOAN AGREEMENT with WATER INFRASTRUCTURE FUNDING GRANT and POINT SOURCE IMPLEMENTATION GRANT ("the Agreement"), is between the Minnesota Public Facilities Authority (the "Authority") and the City of Austin ("Recipient") and is dated November 16, 2022.

The Project consists of expansion and improvement of the city's wastewater treatment plant, including upgrades to reduce the discharge of phosphorus ("the Project"). The Project is further described and detailed in the MN Pollution Control Agency's certification(s) dated June 29, 2021 and June 29, 2021 and in the Recipient's Project application which is incorporated herein.

| <b>Program Funding for the Project</b>                       | <b>Name</b>                         | <b>Legal citations</b>                | <b>Funding IDs</b>   | <b>Amounts</b>      |
|--|-------------------------------------|---------------------------------------|----------------------|---------------------|
| Point Source Implementation Grant Program                    | ("the PSIG Grant")                  | MS 446A.073                           | MPFA-PSIG-G-031-FY23 | \$7,000,000         |
| Clean Water State Revolving Fund Loan                        | ("the Loan")                        | MS 446A.07; MN Rules 7380 .0400-.0480 | MPFA-CWRF-L-031-FY23 | \$42,216,633        |
| Clean Water State Revolving Fund Principal Forgiveness Grant | ("the Principal Forgiveness Grant") | MS 446A.07                            | MPFA-CWRF-G-031-FY23 | \$1,000,000         |
| Water Infrastructure Fund (WIF) Grant-Clean Water            | ("the WIF Grant")                   | MS 446A.072                           |                      | \$0                 |
| <b>Total Authority Project Financing:</b>                    |                                     |                                       |                      | <b>\$50,216,633</b> |

**ARTICLE 1 – TERMS AND CONDITIONS**

**Section 1.1 Terms.** (a) General: The Authority hereby commits, subject to the availability of funds and the conditions and legal citations herein set forth, to provide FIFTY MILLION TWO HUNDRED SIXTEEN THOUSAND SIX HUNDRED THIRTY THREE DOLLARS (\$50,216,633) to the Recipient for the purpose of financing eligible costs of the Project.

(b) Loan: The Loan shall be evidenced by the Note described in Section 1.4 of this Agreement (the "Note"). The final maturity date of the Loan will be August 20, 2042. The aggregate principal amount of the Loan disbursed and outstanding will bear interest and servicing fees collectively at the rate of 2.638% per annum accruing from and after the date of the Note through the date on which no principal of the Loan remains unpaid and all accrued interest and servicing fees thereon have been paid.

(c) Grant(s): The PSIG Grant, the Principal Forgiveness Grant, and the WIF Grant are granted and are not required to be repaid except as otherwise provided in Article 9 of this Agreement.

**Section 1.2 Authority Sources of Funds.** (a) The Recipient acknowledges that the Authority may use the proceeds of one or more series of the Authority's revenue bonds (the "Bonds"), federal capitalization grants, proceeds of state general obligation bonds, state appropriations from the Clean Water Legacy Fund, or other funds of the Authority, or a combination thereof, to fund the Agreement.

(b) At the written request of the Recipient, the Authority will provide information with respect to the funding of the Agreement, from time to time.

(c) Allocation and pledging of Loan: The Authority may, at any time, pledge the Loan as security for its Bonds. The Authority in its sole discretion may allocate the Loan to one or more sources of funds and may from time to time reallocate the Loan to one or more different sources of funds, including one or more different series of Bonds (whether or not that series of Bonds refunded the series of Bonds to which the Loan was originally allocated), or may sell the Loan if permitted by the documents relating to its Bonds.

**Section 1.3 Disbursements.** (a) Delivery of Note: No funds will be disbursed by the Authority to the Recipient until the Recipient has delivered its Note to the Authority as set forth in section 1.4.

(b) All Recipient disbursement requests will be subject to Authority approval and will be disbursed on a cost reimbursement basis, consistent with the budget presented in the Recipient's application. The Authority may withhold or disallow all or part of the amount requested if the Authority determines the request is not in compliance with this Agreement, applicable federal and state laws, regulations or rules as then in effect.

(c) The Authority will disburse funds pursuant to approved disbursement requests complying with the provisions of this Agreement. Each disbursement request must be for eligible costs for completed work on the Project and must be submitted on or before the deadlines established by the Authority and on a form prescribed by the Authority. Each disbursement request must include supporting invoices and billing statements and be signed by an employee or elected official of the Recipient.

(d) The Authority will reimburse the Recipient for eligible Project costs incurred prior to the execution of this Agreement only to the extent approved in connection with the Authority's approval of the Recipient's application.

(e) The Authority will make disbursements to the Recipient within 30 days of receipt of the Recipient's request, unless the Authority determines to withhold disbursement in accordance with the provisions of this Agreement. The Authority will endeavor to pay disbursement requests submitted by the Recipient not later than the 15th day of the month by the last day of the same month.

(f) If the entire amount specified in Section 1.1 is not fully disbursed by June 30, 2026 the Authority will not make any further disbursements. In that event or if final eligible Project costs are less than the total financing amount specified in Section 1.1, the undisbursed balances of the PSIG Grant, the Principal Forgiveness Grant, and the WIF Grant will be cancelled, and the undisbursed balance of the Loan will be applied to the outstanding principal installments of the Loan on a pro rata basis or as otherwise determined by the Authority. The Authority will revise Exhibit A to this Agreement to reflect the reduction in principal amount and promptly deliver a copy to the Recipient.

**Section 1.4 Security.** (a) The Recipient must issue to the Authority its Tax Exempt General Obligation Revenue Note to evidence its obligation to repay the Loan. The Authority will not disburse funds to the Recipient under this Agreement until the Recipient delivers to the Authority the executed Note, a certified copy of resolutions or other authority by the appropriate governing body or bodies as have authorized the execution and performance of this Agreement and the Note in accordance with applicable law, and all opinions, certificates and documents requested by, and in a form acceptable to, the Authority.

(b) The Recipient represents and agrees that the Note is a general obligation debt of the Recipient and will be shown as such on its financial statements and be treated in all respects as a general obligation debt of the Recipient. For purposes of permitting sale of the Note to the Authority, the Authority

represents that it is a "board, department or agency" of the State of Minnesota within the meaning of Minnesota Statutes, Section 475.60, subdivision 2, clause (4), as amended.

(c) The obligations of the Recipient under the Note evidence amounts payable under the Loan. Each payment made pursuant to the Note will be deemed to be a credit against the corresponding obligation of the Recipient under the Loan and any such payment will fulfill the Recipient's obligation to pay that amount hereunder.

(d) The Recipient agrees to impose and collect rates and charges in compliance with Minnesota Statutes and in accordance with the Recipient's service charge system, so that sufficient gross revenues are available, together with other sources as may be applicable, for the payment of system costs, including operation and maintenance expenses and principal, interest and servicing fees due on any outstanding debt payable from those revenues. The Recipient agrees to annually review and ensure that the gross revenues are sufficient for the payment of all system costs.

**Section 1.5 Mandatory Payments.** (a) The Recipient must repay the principal amount of the Loan, together with accrued interest and servicing fees, in the amounts and on the dates set forth in Exhibit A attached hereto (notwithstanding the rate of disbursement of the proceeds of the Loan), subject to adjustment as set forth in Section 1.3 or 1.6. The interest payment shown on Exhibit A is for informational purposes only; the actual interest payment will be the amount of interest which has accrued to the date of payment. The Authority will be entitled to retain for its own purposes any interest earnings on Loan proceeds that are not disbursed and will not be obligated to credit any such interest earnings against any required repayment of principal or payment of interest and servicing fees. Any payment of principal or interest received by the Authority in excess of the amounts set forth in Exhibit A, as then in effect, which is not a mandatory payment as designated in paragraph (b), or not expressly designated by the Recipient to be treated as an optional prepayment may, in the sole discretion of the Authority, be (i) held without interest payable by the Authority and applied to a future payment due on the Loan in a manner determined by the Authority, (ii) treated as a prepayment of principal on the Loan, or (iii) returned to the Recipient as an overpayment. Other than prepayments, the Authority will apply any payments received under the Note as follows: first, to the payment of any costs or expenses incurred by the Authority in enforcing any provision of the Note or this Agreement; second, to the payment of accrued and unpaid interest and servicing fees on the Note; and third, to the payment of principal of the Note then due.

(b) If the Recipient has pledged to the repayment of the Loan revenues subject to prepayment or lump-sum payments by a third party, such as special assessments or connection charges from another municipality, the Recipient will notify the Authority immediately upon receipt of any such payment. The Authority, in its sole discretion, may direct the Recipient to use the funds for the payment of eligible construction costs of the Project, or to transmit the funds to the Authority for payment on the Loan, immediately or at a later date. Any such payment received by the Authority may be applied to reduce each unpaid annual principal installment of the Loan in the proportion that such installment bears to the total of all unpaid principal installments, or, in the sole discretion of the Authority, may be applied to one or more future principal payments on the Loan in a manner determined by the Authority.

**Section 1.6 Optional Prepayments.** (a) The Recipient may not prepay the Loan except upon written consent of the Authority. If the Authority has consented, then upon 45 days' prior written notice to the Authority (or such lesser period as the Authority may accept), the Recipient may prepay the Loan and the Note, in whole or in part, on any February 20 or August 20 at a redemption price equal to the principal amount to be prepaid, together with accrued interest and servicing fees thereon to the redemption date

and a premium equal to all fees and expenses of the Authority, if any, in connection with the prepayment, including any fees, expenses or other costs relating to the payment and redemption of the Bonds as determined by the Authority.

(b) The Authority may require that the Recipient, at its sole cost and expense, deliver to the Authority an opinion from a law firm, selected by the Authority, having a national reputation in the field of municipal finance law whose legal opinions are generally accepted by purchasers of municipal bonds ("Bond Counsel") to the effect that such prepayment will not cause the interest on the Note to be included in the gross income of the recipient thereof for federal income tax purposes.

(c) The Authority will apply any amount paid by the Recipient to prepay all or a portion of the Note as follows: first, to the payment of fees, expenses and other costs of the Authority as provided in Subsection (a); second, to the payment of interest and servicing fees on the principal amount of the Note to be prepaid; and, third, to the principal of the Note. The principal amount of a partial prepayment will, in the sole discretion of the Authority, (i) be applied to one or more future principal payments of the Loan in a manner determined by the Authority, or (ii) be applied to reduce each unpaid annual principal installment of the Loan in the proportion that such installment bears to the total of all unpaid principal installments (i.e., the remaining principal payment schedule shall be re-amortized to provide proportionately reduced principal payments in each year).

## ARTICLE 2 – RECIPIENT RESPONSIBILITIES AND PROJECT COMPLIANCE

**Section 2.1 Recipient Responsibilities with Respect to the Project.** (a) The Recipient must meet all requirements in the project application submitted to the Authority as to compliance with federal and state laws, rules and regulations and include in any contract or subcontract related to the Project provisions requiring contractor and subcontractor compliance with applicable state and federal laws. The requirements in that application are hereby incorporated by reference.

(b) The Recipient agrees to commence construction and complete the Project with reasonable diligence, regardless of the sufficiency of loans or grants therefor from the Authority to pay eligible project costs.

(c) The Recipient will not enter into a sale, lease, transfer or other use agreement of any part of the Project, or change the use of the Project, without the prior written approval of the Authority if that sale, lease, transfer, agreement or change in use would (i) violate the covenants set forth in Article 3 or Article 4, or (ii) violate the conditions under which any capitalization grants were furnished by the United States Environmental Protection Agency (the "EPA"), or (iii) otherwise violate any terms or conditions of this Agreement.

(d) The Recipient must maintain adequate property insurance coverage for the Project in those amounts and with those limits as it determines in good faith to be reasonable or in those amounts and with those limits as the Authority may require from time to time. The Recipient may substitute adequate, actuarially sound self-insurance or risk retention program(s) for property insurance coverage, so long as such program(s) are consistent with applicable laws and state and federal regulations.

(e) The Recipient must complete the Project in accordance with all applicable federal, state and local statutes, rules, regulations, ordinances, reporting requirements, approvals, and state agency certifications governing the design and construction of the Project, and operate the Project's system in compliance with all applicable federal and state laws and regulations and permit requirements.

(f) The Recipient agrees to exert all reasonable efforts to investigate claims that the Recipient may have against third parties with respect to the construction of the Project and, in appropriate circumstances, take whatever action, including legal action, the Recipient reasonably determines to be appropriate.

(g) Clean Water Legacy logo: The Recipient must display a sign with the Clean Water Legacy logo at the project site or other public location identifying that the project was built with assistance from the Clean Water, Land & Legacy Amendment.

**Section 2.2 Construction Compliance.** (a) State prevailing wages: The Recipient must comply with the provisions of prevailing wage requirements set forth in Minnesota Statutes, Sections 177.41 to 177.44, as then in effect.

(b) Federal prevailing wages: In addition to the prevailing wage requirements under Subsection (a), the Recipient must comply with, and require that all laborers and mechanics employed by contractors and subcontractors on the Project be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with, the Davis-Bacon Act (40 U.S.C., sec. 276a through 276a-5), as amended.

(c) Federal American Iron and Steel: The Recipient will comply with the American Iron and Steel requirements of Section 608 of the Federal Water Pollution Control Act, unless the Project is granted a waiver from the EPA.

### ARTICLE 3 – TAX COMPLIANCE COVENANTS

The Recipient acknowledges that the Note is intended to bear interest that is excluded from gross income of the owner thereof for federal and State of Minnesota income tax purposes (a "Tax-exempt Note") and may be funded by the Authority from the proceeds of the Authority's Bonds that are intended to bear interest that is excluded from gross income of the owner thereof for federal and State of Minnesota income tax purposes ("Tax-exempt Bonds"). The Recipient also acknowledges that, regardless of the source of funding, the Authority may pledge the Loan and the related Note as security for, and as a source of, the payment of debt service on any or all of its Tax-exempt Bonds. In consideration of these facts, the Recipient covenants and agrees with the Authority, whether or not strict compliance with those agreements is required to maintain the Note as a Tax-exempt Note or the Authority's Bonds as Tax-exempt Bonds, as follows:

(a) The Recipient will not take, or, to the extent under its control, permit to be taken, any action that would cause the Note not to be a Tax-exempt Note or any Authority Bonds not to be Tax-exempt Bonds and will not omit from taking, or cause to be taken, any action required to maintain the Note as a Tax-exempt Note or the Authority's Bonds as Tax-exempt Bonds.

(b) The Recipient will take all actions with respect to the Note necessary to comply with all instructions and requests of the Authority relating to maintaining the Authority's Bonds as Tax-exempt Bonds and the Note as a Tax-exempt Note or compliance with the agreements set forth in this Section or in any Tax Compliance Certificate (hereinafter defined).

(c) The Recipient will comply with all requirements of any certificate or agreement ("Tax Compliance Certificate") executed and delivered by it in connection with the issuance of the Note.

(d) The Recipient will promptly notify the Executive Director of the Authority in writing of any action or event which adversely affects the status of the Note as a Tax-exempt Note or any of the Authority's Bonds as Tax-exempt Bonds.

(e) The Recipient will not use any of the proceeds of the Loan to pay the costs of any facility used or to be used during the term of the Loan for any private business use or to make a private loan within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code").

(f) The Recipient will not repay the Loan from, or secure repayment of the Loan by, property used or to be used for a private business use or payments in respect of such property within the meaning of Section 141 of the Code, except as specifically permitted in writing by the Authority.

(g) The Recipient will not establish any fund or account, other than a bona fide debt service fund, securing the payment of the Tax-exempt Note or Tax-exempt Bonds or from which the Recipient reasonably expects to pay debt service on the Loan, or in any other respect create "gross proceeds," within the meaning of the Code, of the Tax-exempt Note or Tax-exempt Bonds, except as specifically permitted in writing by the Authority. In addition, the Recipient will not invest any gross proceeds in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that investment would cause the Tax-Exempt Note or Tax-exempt Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(h) The Recipient will not invest any moneys constituting "gross proceeds" of the Tax-exempt Note or Tax-exempt Bonds other than in a fair market, arms' length transaction and at a yield, within the meaning of the Code, in excess of the lesser of the yield on the Tax-exempt Note or the Tax-exempt Bonds applicable to the Loan and will apply all Loan proceeds within five days of the receipt thereof by the Recipient consistent with the terms of the Recipient's disbursement request.

(i) Except as permitted under Treasury Regulations, Section 1.150-2, and Section 1.4(d) hereof, the Recipient will not use Loan proceeds to reimburse itself for any payments of project costs that the Recipient made from other funds, if the original payment was made prior to the earlier of the issuance of the Authority Bonds used to fund the Loan or the execution and delivery of this Agreement or if the original payment was made from the proceeds of other debt of the Recipient.

(j) Other than as provided in Section 4.1 hereof, the allocation by the Authority of funds it uses to purchase the Loan, including different series of Tax-exempt Bonds, is at the sole discretion of the Authority and that allocation is binding on the Recipient.

(k) With respect to any gross proceeds of the Tax-exempt Bonds created by the Recipient, the Recipient will be liable to the Authority for any amount the Authority is required to rebate to the United States as excess investment earnings pursuant to Section 148 of the Code.

The Authority may, in its sole discretion and only upon receipt of an opinion of counsel to the Authority, waive any of the agreements set forth in this Article 3.

## ARTICLE 4 – COMPLIANCE WITH STATE BOND REQUIREMENTS

**Section 4.1 State Bond Financed Property.** The Recipient and the Authority acknowledge and agree that the Recipient's ownership interest in the Project, consisting of real property, and, if applicable, all facilities located, or that will be constructed and located, on that real property, and all equipment that is a part thereof, that was purchased with the proceeds of state general obligation bond proceeds constitutes "State Bond Financed Property", as that term is used in Minnesota Statutes, Section 16A.695 and the "Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" dated July 30, 2012 (the "Order"), as such may be amended, modified, supplemented, or replaced from time to time, and therefore the provisions contained in that statute and order apply to the Recipient's ownership interest in the Project and any Use contracts relating thereto. The Recipient agrees that the proceeds of the Agreement must be used, and the Project must be operated, in a manner that complies with Minnesota Statutes, Section 16A.695 and the Order. The Recipient must file the required state bond financed property declaration as provided in the Order and provide a copy of the filed declaration to the Authority, unless the filing requirement is waived in writing by the Commissioner of Minnesota Management and Budget.

**Section 4.2 Lease or Management Contract.** The Recipient agrees that any lease or management or similar contract (each a "Use Agreement") it enters into with respect to property constituting all or a part of the State Bond Financed Property must comply with the following requirements:

- (a) It must be for the express purpose of carrying out a governmental program established or authorized by law and established by official action of the Recipient.
- (b) It must be approved, in writing, by the Commissioner of Minnesota Management and Budget.
- (c) It must be for a term, including any renewals that are solely at the option of the lessee or manager, that is substantially less than the useful life of the property subject to that lease or management contract, but may allow renewal beyond that term upon determination by the Recipient that the use continues to carry out the governmental program.
- (d) It must be terminable by the Recipient if the other contracting party defaults under the contract, or if the governmental program is terminated or changed.
- (e) It must provide for oversight by the Recipient of the operation of the property that is the subject of the Use Agreement.
- (f) It must specifically identify the statute that provides the Recipient authority to enter into the Use Agreement.
- (g) It must contain a provision stating that the Use Agreement is being entered into in order to carry out a governmental program and must specifically identify the governmental program.

**Section 4.3 Sale.** The Recipient must not sell any property constituting all or a part of the State Bond Financed Property unless the sale complies with the following requirements:

- (a) The Recipient determines by official action that the property is no longer usable or needed by the Recipient to carry out the governmental program for which it was acquired or constructed.

- (b) The sale must be made as authorized by law.
- (c) The sale must be for fair market value as defined in Minnesota Statutes, Section 16A.695 as then in effect.
- (d) The Recipient obtains the prior written consent of the Commissioner of Minnesota Management and Budget.

**Section 4.4 Changes to Minnesota Statute 16A.695 or the Order.** In the event that Minnesota Statutes Section 16A.695 or the Order is amended in a manner that reduces any requirement imposed upon the Recipient, or if the Recipient's interest in the State Bond Financed Property is exempt from Minnesota Statutes, Section 16A.695 or the Order, then upon written request by the Recipient, the Authority will enter into and execute an amendment to this Agreement to implement that amendment to, or exempt the interest in the Project from, Minnesota Statutes, Section 16A.695 and the Order.

**Section 4.5 Waiver.** The Authority may waive the requirements of Article 4 at any time upon determination by the Authority, and after notifying the Commissioner of Minnesota Management and Budget, that the Project has not been and will not be funded from the proceeds of state general obligation bonds.

## ARTICLE 5 – DISCLOSURE

**Section 5.1 Information for Disclosure Documents.** (a) The Recipient agrees to provide to the Authority such information with respect to the Recipient, its duties, operations and functions as may be reasonably requested by the Authority, and hereby consents to its inclusion in the Authority's official statement(s) used in connection with issuance and sale or the re-marketing of its Bonds or continuing disclosure with respect to its Bonds (collectively, the "Disclosure Documents"), whether or not all or a portion of the proceeds of Bonds were or will be loaned to the Recipient.

(b) At the request of the Authority, the Recipient will certify and represent that the information with respect to the Recipient in any Disclosure Document does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; provided, however, that in no event will the Authority require the Recipient to make any representation about any other information in the Disclosure Documents or as to any Disclosure Document in its entirety. If for any reason the Recipient determines that it is not able to make that certification and representation, it will provide to the Authority the information for inclusion in the Disclosure Documents necessary for the Recipient to make the certification and representation.

(c) If at any time during the period ending 90 days after the date the Recipient provides information to Authority for inclusion in a Disclosure Document any event occurs that the Recipient believes would cause the information with respect to the Recipient in the Disclosure Document to omit a material fact or make the statements therein misleading, the Recipient agrees to promptly notify the Authority in writing of that event and provide information for inclusion in the Disclosure Document or an amendment thereof or a supplement thereto. At the request of the Authority, the Recipient will also provide the certification and representation required in (b) above with respect to that information.

(d) The Recipient agrees to provide such information as may be reasonably requested by any rating agency in connection with rating the Bonds of the Authority.

**Section 5.2 Continuing Disclosure.** If the Authority, in its sole discretion, determines, at any time prior to payment of the Loan in full, (i) that the Recipient is a material "obligated person," as the term "obligated person" is defined in Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended or supplemented, including any successor regulation or statute thereto ("Rule 15c2-12") or (ii) that an event has occurred with respect to the Recipient or the Loan that must be disclosed under Rule 15c2-12, or (iii) that any other action of the Recipient has occurred which the Authority determines in its sole discretion is material to an investor in the Bonds, the Recipient covenants that it will authorize and provide to the Authority, for inclusion in a Disclosure Document, all statements and information relating to the Recipient deemed material by the Authority for the purpose of satisfying Rule 15c2-12 as well as Rule 10b-5 promulgated pursuant to the Securities Exchange Act of 1934, as amended or supplemented, including any successor regulation or statute thereto ("Rule 10b-5"), including certificates and written representations of the Recipient evidencing satisfaction of the requirements of Rule 15c2-12 and Rule 10b-5. The Authority, in its sole discretion and as set forth in a resolution or official statement of the Authority, will determine materiality under each of clause (i) and clause (iii) pursuant to criteria established from time to time. The Recipient further covenants that, if determined to be such a material obligated person, it will execute and deliver a continuing disclosure agreement, in that form as the Authority determines to be necessary, desirable or convenient, in its sole discretion, for the purpose of meeting the requirements of Rule 15c2-12. Pursuant to the terms and provisions of that continuing disclosure agreement, the Recipient will thereafter provide ongoing disclosure with respect to all annual and event information and financial statements relating to the Recipient required by a continuing disclosure undertaking under Rule 15c-12. The Recipient further agrees that the Authority will have the right to disclose any information about the Recipient or the Loan, whether or not received from the Recipient, determined by the Authority in its sole discretion, to be material with respect to any of its Bonds.

## ARTICLE 6 – SYSTEM REPLACEMENT FUND

This article is intentionally left blank.

## ARTICLE 7 - FINANCIAL RECORDS, AUDITS, REPORTS AND INSPECTIONS

**Section 7.1 Financial Recordkeeping.** For all expenditures made pursuant to this Agreement, the Recipient must keep financial accounts and records in accordance with generally accepted accounting principles including invoices, contracts, receipts, vouchers and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures and any investments made with proceeds of the Loan or other "gross proceeds" of the Note or the tax-exempt Bonds of the Authority. Such accounts and records must be accessible and available for a minimum of six years from the date of initiation of operation of the Project and for so long as the Note is outstanding for examination by authorized representatives of the Authority, the Office of the Legislative Auditor, the Office of the State Auditor and the EPA Office of Inspector General.

**Section 7.2 Annual Financial Reports.** (a) The Recipient must annually provide to the Authority for the term of the Loan a copy of an independent audit of its financial statements. All audit reports must be submitted within 30 days after the completion of the audit but no later than one year after the end of the fiscal year to be audited. The audits must be conducted in accordance with generally accepted

government auditing standards and in compliance with Subpart F (Audit Requirements) of Title 2 U.S. Code of Federal Regulations Part 200.

(b) The Recipient must describe the Note as general obligation debt of the Recipient in its annual audited financial statements for the term of the Loan.

**Section 7.3 Annual Minority and Women Business Enterprise Report.** If requested, the Recipient will submit to the Authority, within 20 days of the end of the annual reporting period, EPA Form 5700-52A to report on the award of prime contracts or subcontracts to any certified Minority and Women Business Enterprise (MBE/WBE) firms until the Project is complete.

**Section 7.4 General.** The Recipient must submit the project reports required by the Authority on forms prescribed by the Authority.

**Section 7.5 Inspections.** The Recipient, upon reasonable request by the Authority, must allow the Authority and its agents to inspect the Project.

## ARTICLE 8 – GOVERNMENT DATA PRACTICES

The Recipient agrees, with respect to any data that it possesses regarding the Project, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

## ARTICLE 9 - DEFAULT AND REMEDIES

**Section 9.1. Events of Default.** Any of the following is an event of default under this Agreement:

(a) The Recipient does not make a Loan payment when due;

(b) The Recipient does not comply with any other provision of this Agreement or the Note after written notice from the Authority, and for a three-month period the Recipient does not cure that default or provide a written plan acceptable to the Authority providing for that cure or, if the Authority accepts a plan for cure, the Recipient does not cure that default within the time period specified therein.

**Section 9.2 Remedies.** (a) If an event of default described in Section 9.1(a) of this Agreement occurs, the Authority will impose an interest penalty as provided in Minn. Rules Part 7380.0475, Subpart 1. The Authority may also exercise one or more of the following remedies: (1) withhold approval of any disbursement request, (2) reject any pending application by the Recipient for financial assistance, (3) to the extent permitted by law, demand immediate payment of the Loan and the Note in full and, upon such demand, the outstanding principal amount of the Loan and Note will be immediately due and payable, with interest accrued thereon to the date of payment, or (4) exercise any other remedy available to the Authority at law or in equity, including under Minnesota Rules, Chapter 7380, as amended.

(b) If an event of default described in Section 9.1(b) of this Agreement occurs, the Authority will impose an immediate increase in the interest rate on the Loan by eliminating all interest rate discounts that

were applied in determining the interest rate under Minn. Rules Part 7380.0442. The Authority may also exercise one or more of the following remedies: (1) withhold approval of any disbursement request, (2) demand repayment of any grant disbursements under this Agreement, (3) reject any pending application by the Recipient for financial assistance, (4) to the extent permitted by law, demand immediate payment of the Loan and the Note in full and, upon such demand, the outstanding principal amount of the Loan and Note will be immediately due and payable, with interest accrued thereon to the date of payment, or (5) exercise any other remedy available to the Authority at law or in equity, including under Minnesota Rules, Chapter 7380, as amended. If the Authority subsequently determines that the Recipient has cured all events of default, the interest rate on any unpaid Loan principal will then revert back to the original interest rate.

## ARTICLE 10 – ADMINISTRATION

**Section 10.1 Amendments.** Any amendments to this Agreement must be in writing and must be executed by the Recipient by the same officials who signed the Agreement, or their successors.

**Section 10.2 Termination of Loan.** The obligations of the Recipient under this Agreement (except the obligations set forth in Section 2.1 (c), (d) and (e) and Article 4 hereof) will terminate when the Loan is fully paid.

**Section 10.3 Fees.** (a) Pursuant to Minnesota Statutes, section 446A.04, subdivision 5(a), the Authority may charge application fees and loan repayment servicing fees.

(b) Application fee: The application fee is waived by the Authority.

(c) Loan repayment servicing fees: The Recipient acknowledges that the Authority may apply up to 2 percent of any loan repayment as a servicing fee and that such fee will not increase the amount of any repayments or extend the period of repayment.

**Section 10.4 Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing, and will be sufficient if delivered by courier or overnight delivery service or sent by certified mail (return receipt requested), postage prepaid, to the address of the party to whom it is directed. That address must be the address specified below or a different address as may hereafter be specified by either party by written notice to the other:

In the case of the Authority:

Minnesota Public Facilities Authority  
Attention: Executive Director  
1st National Bank Building  
332 Minnesota Street, Suite W820  
Saint Paul, MN 55101-1378

In the case of the Recipient:

City of Austin  
Attention: Mayor  
500 Fourth Avenue NE  
Austin, MN 55912-3773

Non-executable

*This page is intentionally left blank.*

Recipient name: City of Austin  
Project Funding ID(s): MPFA-PSIG-G-031-FY23 MPFA-CWRF-L-031-FY23 MPFA-CWRF-G-031-FY23

The Authority and the Recipient have caused this Agreement to be duly executed by their duly authorized undersigned representatives. Statutory Cities must execute this Agreement as provided in Minnesota Statutes, Section 412.201, as amended. Home Rule Charter Cities must execute this Agreement as provided in Minnesota Statutes, Chapter 410, as amended.

**RECIPIENT:** We have read and we agree to all of the above provisions of this Agreement.

By \_\_\_\_\_  
Title \_\_\_\_\_

Stephen King  
Mayor

Date \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_  
Tom Dankert  
City Recorder

Date \_\_\_\_\_

**MINNESOTA PUBLIC FACILITIES AUTHORITY:**

By \_\_\_\_\_

Title \_\_\_\_\_  
Steve Grove, or delegate  
Chair

Date \_\_\_\_\_

**ENCUMBERED:** Individual signing certifies that funds have been encumbered as required by Minnesota Statute 16A.

By \_\_\_\_\_

PO date 11/16/2022  
PO ID(s) B2401: 3000003769-3772

## Exhibit A

Clean Water State Revolving Fund

## Austin\_CWRF\_01

Rate: 2.638%

Date:

Maturity: 08/20/42

Loan Amortization Schedule  
MPFA-CWRF-L-031-FY23

WW plant expansion and rehabilitation

Tax Exempt

General Obligation Revenue Note

42,216,633.00

final loan amount: 42,216,633.00

| Date      | Effective | Source | Disbursement  | Repayment     | Interest      | Principal     | Loan Balance  | Annl Debt Srv       |
|-----------|-----------|--------|---------------|---------------|---------------|---------------|---------------|---------------------|
| projected | 11/23/22  | Op Res | 42,216,633.00 |               |               |               | 42,216,633.00 |                     |
| projected | 12/28/22  | Op Res |               | 108,273.94    |               |               | 42,216,633.00 |                     |
| projected | 01/25/23  | Op Res |               | 799.55        |               |               | 42,216,633.00 |                     |
| projected | 02/28/23  | Op Res |               | 991,806.40    |               |               | 42,216,633.00 |                     |
| projected | 03/29/23  | Op Res |               | 383,599.09    |               |               | 42,216,633.00 |                     |
| projected | 04/26/23  | Op Res |               | 381,124.70    |               |               | 42,216,633.00 |                     |
| projected | 05/24/23  | Op Res |               | 553,743.85    |               |               | 42,216,633.00 |                     |
| projected | 06/28/23  | Op Res |               |               | 658,924.25    |               | 42,216,633.00 |                     |
|           | 08/20/23  |        |               | 1,628,421.38  | 819,788.38    | 808,633.00    | 41,408,000.00 | 1,628,421.38        |
|           | 02/20/24  |        |               | 546,171.52    | 546,171.52    |               | 41,408,000.00 |                     |
|           | 08/20/24  |        |               | 2,253,171.52  | 546,171.52    | 1,707,000.00  | 39,701,000.00 | 2,799,343.04        |
|           | 02/20/25  |        |               | 523,656.19    | 523,656.19    |               | 39,701,000.00 |                     |
|           | 08/20/25  |        |               | 2,275,656.19  | 523,656.19    | 1,752,000.00  | 37,949,000.00 | 2,799,312.38        |
|           | 02/20/26  |        |               | 500,547.31    | 500,547.31    |               | 37,949,000.00 |                     |
|           | 08/20/26  |        |               | 2,298,547.31  | 500,547.31    | 1,798,000.00  | 36,151,000.00 | 2,799,094.62        |
|           | 02/20/27  |        |               | 476,831.69    | 476,831.69    |               | 36,151,000.00 |                     |
|           | 08/20/27  |        |               | 2,321,831.69  | 476,831.69    | 1,845,000.00  | 34,306,000.00 | 2,798,663.38        |
|           | 02/20/28  |        |               | 452,496.14    | 452,496.14    |               | 34,306,000.00 |                     |
|           | 08/20/28  |        |               | 2,346,496.14  | 452,496.14    | 1,894,000.00  | 32,412,000.00 | 2,798,992.28        |
|           | 02/20/29  |        |               | 427,514.28    | 427,514.28    |               | 32,412,000.00 |                     |
|           | 08/20/29  |        |               | 2,371,514.28  | 427,514.28    | 1,944,000.00  | 30,468,000.00 | 2,799,028.56        |
|           | 02/20/30  |        |               | 401,872.92    | 401,872.92    |               | 30,468,000.00 |                     |
|           | 08/20/30  |        |               | 2,396,872.92  | 401,872.92    | 1,995,000.00  | 28,473,000.00 | 2,798,745.84        |
|           | 02/20/31  |        |               | 375,558.87    | 375,558.87    |               | 28,473,000.00 |                     |
|           | 08/20/31  |        |               | 2,423,558.87  | 375,558.87    | 2,048,000.00  | 26,425,000.00 | 2,799,117.74        |
|           | 02/20/32  |        |               | 348,545.75    | 348,545.75    |               | 26,425,000.00 |                     |
|           | 08/20/32  |        |               | 2,450,545.75  | 348,545.75    | 2,102,000.00  | 24,323,000.00 | 2,799,091.50        |
|           | 02/20/33  |        |               | 320,820.37    | 320,820.37    |               | 24,323,000.00 |                     |
|           | 08/20/33  |        |               | 2,477,820.37  | 320,820.37    | 2,157,000.00  | 22,166,000.00 | <b>2,798,640.74</b> |
|           | 02/20/34  |        |               | 292,369.54    | 292,369.54    |               | 22,166,000.00 |                     |
|           | 08/20/34  |        |               | 2,506,369.54  | 292,369.54    | 2,214,000.00  | 19,952,000.00 | 2,798,739.08        |
|           | 02/20/35  |        |               | 263,166.88    | 263,166.88    |               | 19,952,000.00 |                     |
|           | 08/20/35  |        |               | 2,536,166.88  | 263,166.88    | 2,273,000.00  | 17,679,000.00 | 2,799,333.76        |
|           | 02/20/36  |        |               | 233,186.01    | 233,186.01    |               | 17,679,000.00 |                     |
|           | 08/20/36  |        |               | 2,566,186.01  | 233,186.01    | 2,333,000.00  | 15,346,000.00 | <b>2,799,372.02</b> |
|           | 02/20/37  |        |               | 202,413.74    | 202,413.74    |               | 15,346,000.00 |                     |
|           | 08/20/37  |        |               | 2,596,413.74  | 202,413.74    | 2,394,000.00  | 12,952,000.00 | 2,798,827.48        |
|           | 02/20/38  |        |               | 170,836.88    | 170,836.88    |               | 12,952,000.00 |                     |
|           | 08/20/38  |        |               | 2,627,836.88  | 170,836.88    | 2,457,000.00  | 10,495,000.00 | 2,798,673.76        |
|           | 02/20/39  |        |               | 138,429.05    | 138,429.05    |               | 10,495,000.00 |                     |
|           | 08/20/39  |        |               | 2,660,429.05  | 138,429.05    | 2,522,000.00  | 7,973,000.00  | 2,798,858.10        |
|           | 02/20/40  |        |               | 105,163.87    | 105,163.87    |               | 7,973,000.00  |                     |
|           | 08/20/40  |        |               | 2,694,163.87  | 105,163.87    | 2,589,000.00  | 5,384,000.00  | 2,799,327.74        |
|           | 02/20/41  |        |               | 71,014.96     | 71,014.96     |               | 5,384,000.00  |                     |
|           | 08/20/41  |        |               | 2,728,014.96  | 71,014.96     | 2,657,000.00  | 2,727,000.00  | 2,799,029.92        |
|           | 02/20/42  |        |               | 35,969.13     | 35,969.13     |               | 2,727,000.00  |                     |
|           | 08/20/42  |        |               | 2,762,969.13  | 35,969.13     | 2,727,000.00  | -             | 2,798,938.26        |
| totals    |           |        | 42,216,633.00 | 54,809,551.58 | 12,592,918.58 | 42,216,633.00 |               | 54,809,551.58       |

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



Thomas Dankert  
Director of  
Administrative Services  
507-437-9959  
Fax 507-433-1693  
tdankert@ci.austin.mn.us

TO: Mayor and City Council  
FROM: Tom Dankert *TAD*  
DATE: December 19, 2022  
RE: Deferred Compensation Plan 457  
U:\Word\2022\Miscellaneous\Deferred Comepsation Amendment.doc

The City offers a Deferred Compensation Plan (457 Plan) for all of our employees to contribute pre-tax dollars to an investment account, much like a 401K for private employers. We have a request from a participant (might be a retiree) to roll over their Deferred Compensation balance into a pre-tax Roth IRA, for which evidently our plan does not allow for without an amendment of the plan. This provision is apparently allowed in most plans, but we have not updated our plan in a few years.

This has no cost to the City of Austin, as only employees contribute to the plan.

We would request Council approve the attached Resolution to allow for an amendment of our plan to allow for this Roth IRA conversion.

Please do not hesitate to give me a call if you have any questions.

## CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of City of Austin, MN (the Employer) hereby certifies that the following resolution was duly adopted by Employer on December 14, 2022, and that such resolution has not been modified or rescinded as of the date hereof:

RESOLVED, the Amendment to the City of Austin 457(b) Deferred Compensation Plan Plan for the CARES Act (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Plan Administrator the Amendment and to take any and all actions as it may deem necessary to effectuate this resolution.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

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

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

\_\_\_\_\_ [print name/title]

## AMENDMENT FOR CARES ACT

### ARTICLE 1 PREAMBLE; DEFINITIONS

- 1.1 **Adoption of Amendment.** The Employer adopts this Amendment to implement provisions of the Act which affect the Plan. All references to the Plan include the Plan's loan program, policy, or procedure to the extent applicable.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Construction.** Except as otherwise provided in this Amendment, any Article or Section reference in this Amendment refers only to this Amendment and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment and does not relate to the Plan article, section, or other numbering designations.
- 1.4 **Effect of restatement of Plan.** If the Employer restates the Plan then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these provisions).
- 1.5 **Definitions.** Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment. The following definitions apply specifically to this Amendment:
  - A. The "Act" is the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act. This Amendment shall be interpreted and applied to comply with the Act.
  - B. A "Qualified Individual" means any individual who meets one or more of the criteria described in paragraphs (1), (2), (3), or (4). Participants, alternate payees and beneficiaries of deceased participants can be treated as Qualified Individuals. The Plan Administrator may rely on an individual's certification that the individual satisfies a condition to be a Qualified Individual unless the Plan Administrator has actual knowledge to the contrary. In applying the criteria, "COVID-19" means either the virus SARS-CoV-2 or coronavirus disease 2019; "an approved test" means a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act); and a "member of the individual's household" means someone who shares the individual's principal residence. The criteria are as follows:
    - (1) The individual was diagnosed with COVID-19 by an approved test;
    - (2) The individual's spouse or dependent (as defined in Code §152) was diagnosed with COVID-19 by an approved test;
    - (3) The individual has experienced adverse financial consequences because: (a) the individual or the individual's spouse, or a member of the individual's household was quarantined, furloughed or laid off, or had work hours reduced due to COVID-19; (b) the individual, the individual's spouse, or a member of the individual's household was unable to work due to the lack of childcare due to COVID-19; (c) A business owned or operated by the individual, the individual's spouse, or a member of the individual's household closed or reduced hours due to COVID-19; or (d) the individual, the individual's spouse, or a member of the individual's household had a reduction in pay (or self-employment income) due to COVID-19 or had a job offer rescinded or start date for a job delayed due to COVID-19; or
    - (4) The individual satisfies any other criteria determined by the Treasury or the IRS.

### ARTICLE 2

## IDENTIFYING INFORMATION; EMPLOYER ELECTIONS

### 2.1 Reserved.

### 2.2 Employer identifying information.

A. Name of Employer: City of Austin, MN

B. Name of Plan: City of Austin 457(b) Deferred Compensation Plan

#### C. Type of Plan (check one)

- (1)  401(k) Plan
- (2)  Profit-Sharing Plan (other than a 401(k) plan)
- (3)  Money Purchase Pension Plan
- (4)  Defined Benefit Plan (including a cash balance plan)
- (5)  403(b) Plan
- (6)  457(b) Plan sponsored by a governmental employer

2.3 **Relief for Qualified Individuals.** Will the Plan provide any or all of the following relief for Qualified Individuals: (1) Coronavirus-Related Distributions described in Article 3, (2) increased loan limits described in Section 4.2, (3) the loan repayment extension described in Section 4.3. (Select one of (a), (b), or (c). If (c) is selected, then select one or more of (d), (e), and/or (f))

- (a)  No. The Plan will not provide any of these relief provisions.
- (b)  Yes. The Plan will provide all of these relief provisions. The limitations on distributions described in Sections 2.3(d)(1) – (4) and the limitations on loans in Section 2.3(e)(1) – (3) and 2.3(f)(1) – (3) do not apply.
- (c)  Some. The Plan will provide those relief provisions selected in (d), (e), or (f) below.
- (d)  **The Coronavirus-Related Distribution provisions described in Article 3** (If (d) is selected, the Employer may optionally select one or more of (1), (2), (3), (4), or (5).)
  - (1)  Coronavirus-Related Distributions are not available from an account in which the Participant is not 100% vested.
  - (2)  Coronavirus-Related Distributions may be made only from the following accounts:
    - (3)  The maximum amount of Coronavirus-Related Distributions from the Plan to a Qualified Individual will not exceed: \$ \_\_\_\_\_. (Enter amount less than \$100,000.)
    - (4)  The following additional provisions apply to Coronavirus-Related Distributions:  
*(Enter limitations or restrictions which are nondiscriminatory and not subject to Employer discretion.)*

- (e)  **The increased loan limit described in Section 4.2** (If (e) is selected, the Employer may optionally select any one or more of (1), (2), or (3).)
  - (1)  The maximum dollar amount of loans pursuant to Section 4.2 will not exceed: \$ \_\_\_\_\_. (Enter amount less than \$100,000.)
  - (2)  The maximum percentage of the present value of the nonforfeitable accrued benefit that may be loaned pursuant to Section 4.2 will not exceed: \_\_\_\_%. (Enter percentage less than 100%.)
  - (3)  The following additional provisions apply to the increased loan limit:  
*(Enter limitations or restrictions which are nondiscriminatory.)*

- (f)  **The loan repayment extension described in Section 4.3** (If (f) is selected, the Employer may optionally select and one or more of (1), (2), or (3).)
  - (1)  The Suspension Period will begin \_\_\_\_\_ (Enter date not before March 27, 2020) and end \_\_\_\_\_. (Enter date not later than December 31, 2020.)
  - (2)  The Extension Period will be \_\_\_\_\_. (Enter period, up to one year, the due date of the loan will be extended, such as "six months.")

(3) [ ] The following additional provisions apply to the loan repayment extension:

*(Enter limitations or restrictions which are nondiscriminatory.)*

2.4 **RMD waivers for 2020.** Unless the Employer elects otherwise below, the provisions of Section 5.2 apply and a Participant or Beneficiary who would have been required to receive a 2020 RMD or Extended 2020 RMD will receive the distribution unless the Participant or Beneficiary chooses not to receive the distribution.

(a) [✓] The provisions of Section 5.2 apply and a Participant or Beneficiary who would have been required to receive a 2020 RMD or Extended 2020 RMD will not receive the distribution unless the Participant or Beneficiary chooses to receive the distribution.

(b) [ ] Payment of RMDs or Extended 2020 RMDs will be governed by the terms of the Plan without regard to this Amendment (i.e., no election is available to Participants or Beneficiaries).

(c) [ ] Other: \_\_\_\_\_

For purposes of Section 5.3, the Plan will also treat the following as eligible rollover distributions in 2020: *(Choose one or none of (d), (e), or (f)): If no election is made, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(I):*

(d) [ ] 2020 RMDs.

(e) [ ] 2020 RMDs and Extended 2020 RMDs.

(f) [✓] 2020 RMDs but only if paid with an additional amount that is an eligible rollover distribution without regard to Code §401(a)(9)(I).

The provisions of Article 5, and the election in this Section 2.4, will be effective on the date specified in Section 2.5. unless a different date is entered here: \_\_\_\_\_ *(Optional. Enter a date between March 27, 2020 and December 31, 2020. RMD distributions before the selected effective date should have followed plan terms in effect before this amendment.)*

2.5 **Effective Date.** This Amendment is effective March 27, 2020, or as soon as practical thereafter, or, if later, the following date: \_\_\_\_\_. *(Optional. Enter a date not later than December 31, 2020.)*

### ARTICLE 3 CORONAVIRUS-RELATED DISTRIBUTIONS

3.1 **Application.** This Article 3 will apply if Section 2.3(b) or Section 2.3(d) is selected.

3.2 **Coronavirus-Related Distribution(s).** Subject to the provisions described in Section 2.3(d)(4), if any, a Qualified Individual may take one or more Coronavirus-Related Distributions. The accounts from which the amount may be distributed shall be limited if selected in Sections 2.3(d)(1) and (2). However, if the Plan is a Money Purchase Pension Plan or a Defined Benefit Plan, and the Qualified Individual has not separated from service, the Qualified Individual may not take a Coronavirus-Related Distribution prior to attaining the earlier of Normal Retirement Age or age 59½. The provisions of this Section will apply notwithstanding any limitation in the Plan on partial distributions or any otherwise applicable plan or administrative limits on the number of allowable distributions.

3.3 **Repayment of distribution.** If the Plan permits rollover contributions, then a Participant who receives a Coronavirus-Related Distribution (from this Plan and/or another eligible retirement plan as defined in Code §402(c)(8)(B)), at any time during the 3-year period beginning on the day after receipt of the distribution, may make one or more contributions to the Plan, as rollover contributions, in an aggregate amount not to exceed the amount of such distribution.

3.4 **Definition of Coronavirus-Related Distribution.** A “Coronavirus-Related Distribution” means a distribution to a Qualified Individual during the period beginning January 1, 2020 and ending December 30, 2020. The total amount of Coronavirus-Related Distributions to a Qualified Individual pursuant to this Amendment from all plans maintained by the Employer, or any related employer described in Code §414(b), (c), (m), or (o), shall not exceed \$100,000, (or such lesser amount specified in Section 2.3(d)(3)). The

Coronavirus-Related Distributions from the Plan to a Qualified Individual will not exceed the amount of the individual's vested account balance or the present value of the individual's vested accrued benefit.

## **ARTICLE 4 PARTICIPANT LOAN RELIEF**

4.1 **Application.** This Article 4 will apply only if the Plan permits participant loans. Section 4.2 will apply if Section 2.3(b) or Section 2.3(e) is selected. Section 4.3 will apply if Section 2.3(b) or Section 2.3(f) is selected.

4.2 **Increased loan limit.** Notwithstanding the loan limitation that otherwise would apply, the Plan will determine the loan limit under Code §72(p)(2)(A) for a loan to a Qualified Individual, made during the period beginning March 27, 2020 and ending September 22, 2020, by substituting "\$100,000" (or such lesser amount specified in Section 2.3(e)(1)) for "\$50,000," and by substituting "100% (or such lesser percentage specified in Section 2.3(e)(2)) of the present value of the nonforfeitable accrued benefit of the employee under the Plan" for "one-half of the present value of the nonforfeitable accrued benefit of the employee under the Plan" (or its equivalent). The provisions described in Section 2.3(e)(3), if any, will apply in connection with loans to Qualified Individuals.

4.3 **Extension of certain repayments.** If a Qualified Individual has an outstanding loan from the Plan on or after March 27, 2020, then: (1) if the date for any repayment of such loan occurs during the Suspension Period, the due date is extended for the Extension Period; (2) the due date of the loan will be extended by the Extension Period; (3) the Plan will adjust any subsequent repayments to reflect the extension of the due date and any interest accrued during the Suspension Period; and (4) the Plan will disregard the Extension Period in determining the 5-year period and the loan term under Code §72(p)(2)(B) or (C). The provisions described in Section 2.3(f)(3), if any, will apply in connection with the suspension and extension described in this Section. The Suspension Period, unless otherwise specified in Section 2.3(f)(1), will begin March 27, 2020 and end December 31, 2020. The Extension Period, unless otherwise specified in Section 2.3(f)(2) will be one year. The provisions of this Section 4.3 will be applied in accordance with Section 5.B. of Notice 2050-50, or any subsequent applicable guidance, and the adjustment described in (3) may reflect the "safe harbor" described therein.

## **ARTICLE 5 WAIVER OF 2020 REQUIRED MINIMUM DISTRIBUTIONS (RMDs)**

5.1 **Application.** This Article 5 will apply only to defined contribution plans, including 401(k) Plans, Profit-Sharing Plans, Money Purchase Pension Plans, 403(b) Plans, and 457(b) Plans sponsored by governmental employers. The definitions in Section 5.4 will apply in interpreting Section 2.4.

5.2 **Waiver; default provision.** This Section 5.2 will apply unless the Employer has selected Section 2.4(b) or (c). Notwithstanding the provisions of the Plan relating to RMDs, whether a Participant or Beneficiary who would have been required to receive 2020 RMDs, and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2020 RMDs, or (2) Extended 2020 RMDs will receive those distributions is determined in accordance with the option chosen by the Employer in Section 2.4. Notwithstanding the option chosen by the employer in Section 2.4, a Participant or Beneficiary will be given an opportunity to make an election as to whether or not to receive those distributions. If the Plan permits a Beneficiary of a deceased Participant to make the election to use the 5-year rule or the life expectancy rule, the deadline to make the election shall be extended to reflect the adoption of Code §401(a)(9)(I).

5.3 **Direct rollovers.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2020, as elected by the Employer in Section 2.4, will be treated as eligible rollover distributions. If no election is made by the Employer in Section 2.4, then a direct rollover will be

offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(I).

5.4 **Definitions.** “RMDs” means required minimum distributions described in Code §401(a)(9). “**2020 RMDs**” means required minimum distributions the Plan would have been required to distribute in 2020 (or permitted to pay in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of Code §401(a)(9)(I). “**Extended 2020 RMDs**” means one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years.

5.5 **Installment payments.** A Participant or Beneficiary receiving payment of 2020 RMDs or 2020 Extended RMDs pursuant to this Article 5 may receive them in any method (including installments or partial distributions) which would have been permitted under the terms of the Plan if the amounts would have been RMDs but for the enactment of Code §401(a)(9)(I).

\* \* \* \* \*

This Amendment has been executed this 15<sup>th</sup> day of December, 2022.

Name of Plan: City of Austin 457(b) Deferred Compensation Plan

Name of Employer: City of Austin, MN

By:   
EMPLOYER

**RESOLUTION NO.**

**RESOLUTION AMENDING THE CITY OF AUSTIN'S 457(B)  
DEFERRED COMPENSATION PLAN**

**WHEREAS**, the City of Austin offers a deferred compensation 457(b) plan for employees to contribute pre-tax dollars into an investment account; and

**WHEREAS**, an employee has requested to roll their deferred compensation 457(b) account into a Roth IRA; and

**WHEREAS**, the City's deferred compensation 457(b) plan does not allow for this transfer without an amendment to the plan; and

**WHEREAS**, City staff recommends the amendment to the plan to allow for the transfer of a deferred compensation 457(b) account into a Roth IRA account.

**NOW THEREFORE, BE IT RESOLVED THAT** said City Council authorized the Mayor and City Recorder to sign the amendment to the deferred compensation 457(b) account.

Passed by a vote of Yeas and Nays this 19th day of December, 2022.

YEAS

NAYS

ATTEST:

---

City Recorder

APPROVED:

---

Mayor

RESOLUTION NO.

GRANTING LICENSES FOR SALE OF ON-SALE HARD LIQUOR,  
SUNDAY HARD LIQUOR ON-SALE, SUNDAY WINE ON-SALE LICENSES, BREWER  
TAPROOM WITH SUNDAY  
AND 3.2 BEER ON AND OFF-SALE

WHEREAS, the persons hereinafter named have applied to the City Council at Austin, Minnesota, for licenses to sell Hard Liquor On-Sale, at the respective addresses herein mentioned at Austin, Minnesota; and

WHEREAS, after due investigation it appears said applicants for said licenses for sale of Hard Liquor On-Sale have complied with all the provisions of the law relative thereto and are entitled to have licenses issued to each of them for the above described purposes at the hereinafter named addresses.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Austin does hereby grant licenses for the sale of Hard Liquor On-Sale to the following licensees at the following locations in Austin, Minnesota, which licenses shall commence January 1, 2023, and expire December 31, 2023:

|                                     |   |
|-------------------------------------|---|
| F and F Investments of Austin, LLC  | dba B & J Bar<br>114 4th Avenue NE                                    |
| Bobee Jo's, Inc.                    | dba Bobee Jo's<br>435 10th Street NE                                  |
| Dusty's Bar & Lounge, LLC           | dba Dusty's Bar & Lounge<br>422 North Main Street                     |
| Hoot & Ole's, LLC                   | dba The New Smitty's Tavern<br>105 11th Street SE                     |
| Apple Minnesota LLC                 | dba Applebee's Neighborhood Grill & Bar<br>1404 18th Avenue NW        |
| Bicabut, Inc.                       | dba Bakery II Lounge/the Downtown Grill<br>113 2nd Avenue NE          |
| The Old Mill, Inc                   | dba The Old Mill<br>3504 11th Place NE                                |
| Austins LLC                         | dba Barley's<br>1207 North Main St                                    |
| Bella Victoria Italian Cuisine, LLC | dba Bella Victoria Italian Cuisine<br>1801 14 <sup>th</sup> Street NW |
| Hy-Vee, Inc.                        | dba Wahlburgers<br>1307 18th Avenue NW, Suite A                       |
| El Mariachi, Inc.                   | dba El Mariachi Mexican Restaurant<br>227 North Main Street           |
| ATI Hotel LLC                       | dba Holiday Inn of Austin<br>1701 4th Street NW                       |

|  |   |
|--|---|
| El Patron Mexican Grill of Austin, LLC | dba El Patron Mexican Grill<br>1906 8th Street NW, Suite F        |
| Austin Minnesota Junior Hockey, LLC    | dba Austin Bruins<br>501 2nd Ave NE - Riverside Arena             |
| Austin Hotel Group, LLC                | dba Cobblestone Hotel & Suites<br>1000 16 <sup>th</sup> Avenue NW |
| Cuatro Copas Bar & Lounge, LLC         | dba Cuatro Copas Bar & Lounge<br>324 N. Main Street               |
| El Parral Ballroom, Inc.               | dba El Parral Ballroom<br>210 4 <sup>th</sup> Street NE           |

AND, WHEREAS, persons hereinafter named have applied to the City Council for licenses to sell Sunday Hard Liquor On-Sale at the respective places hereinafter mentioned; and

WHEREAS, after due investigation it appears said applicants for said licenses for sale of Sunday Hard Liquor On-Sale have complied with all the provisions of the law relative thereto and are entitled to have a license issued to each of them for the above described purposes at the hereinafter named addresses.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Austin does hereby grant licenses for the sale of Sunday Hard Liquor On-Sale to the following named licensees at the following locations in Austin, Minnesota, which licenses shall commence January 1, 2023, and expire December 31, 2023:

|                                    |  |
|------------------------------------|--|
| Dusty's Bar & Lounge, LLC          | dba Dusty's Bar & Lounge<br>422 North Main Street                      |
| Bobee Jo's, Inc.                   | dba Bobee Jo's<br>435 10th Street NE<br>300 4th Avenue NE              |
| Veterans of Foreign Wars Post 1216 | 107 11th Street NE & patio on north                                    |
| Fraternal Order of Eagles 703      | 809 12th Street SW   |
| American Legion Post 91            | dba Applebee's Neighborhood Grill & Bar<br>1404 18th Avenue NW         |
| Apple Minnesota LLC                | dba Holiday Inn of Austin<br>1701 4th Street NW<br>1202 28th Street NE |
| ATI Hotel LLC                      | dba Bakery II Lounge/the Downtown Grill<br>113 2nd Avenue NE           |
| Austin Country Club, Inc.          | dba Wahlburgers<br>1307 18th Avenue NW, Suite A                        |
| Bicabut, Inc.                      | dba The New Smitty's Tavern<br>105 11th Street SE                      |
| Hy-Vee, Inc.                       |  |
| Hoot & Ole's, LLC                  |  |

|  |   |
|--|---|
| F and F Investments of Austin, LLC     | dba B & J Bar<br>114 4th Avenue NE                                    |
| El Mariachi, Inc.                      | dba El Mariachi Mexican Restaurant<br>227 North Main Street           |
| The Old Mill, Inc                      | dba The Old Mill<br>3504 11th Place NE                                |
| El Patron Mexican Grill of Austin, LLC | dba El Patron Mexican Grill<br>1906 8th Street NW, Suite F            |
| Hormel Historic Home, Inc.             | 208 4th Avenue NW   |
| Austins LLC                            | dba Barley's<br>1207 North Main St                                    |
| Austin Hotel Group, LLC                | dba Cobblestone Hotel & Suites<br>1000 16 <sup>th</sup> Avenue NW     |
| Bella Victoria Italian Cuisine, LLC    | dba Bella Victoria Italian Cuisine<br>1801 14 <sup>th</sup> Street NW |

AND, WHEREAS, persons hereinafter named have applied to the City Council for licenses to sell Sunday Wine On-Sale at the respective places hereinafter mentioned; and

WHEREAS, after due investigation it appears said applicants for said licenses for sale of Sunday Wine On-Sale have complied with all the provisions of the law relative thereto and are entitled to have a license issued to each of them for the above described purposes at the hereinafter named addresses.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Austin does hereby grant licenses for the sale of Sunday Wine On-Sale to the following named licensees at the following locations in Austin, Minnesota, which licenses shall commence January 1, 2023, and expire December 31, 2023:

|                                  |   |
|----------------------------------|---|
| Tienda Y Taqueria Guerrero, Inc. | dba Tienda Y Taqueria Guerrero<br>301-D 4th Avenue NE     |
| Steve's Pizza LLC                | dba Steve's Pizza<br>421 North Main Street                |
| George's Pizza LLC               | dba George's Pizza LLC<br>209 North Main Street           |
| Everbright, Inc.                 | dba China Star<br>1908 8 <sup>th</sup> Street NW, Suite G |

WHEREAS, the persons hereinafter named have applied to the City Council at Austin, Minnesota, for licenses to sell Brewer Taproom with Sunday, at the respective addresses herein mentioned at Austin, Minnesota; and

WHEREAS, after due investigation it appears said applicants for said licenses for sale of Hard Liquor On-Sale have complied with all the provisions of the law relative thereto and are

entitled to have licenses issued to each of them for the above described purposes at the hereinafter named addresses.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Austin does hereby grant licenses for the sale of Brewer Taproom with Sunday to the following licensees at the following locations in Austin, Minnesota, which licenses shall commence January 1, 2023, and expire December 31, 2023:

|                            |   |
|----------------------------|---|
| K & J Holdings, LLC        | dba Angry Hog Brewery & Taproom<br>500 23 <sup>rd</sup> Avenue NW |
| Gravity Storm Brewery Coop | dba Gravity Storm Brewery Cooperative<br>309 North Main Street    |

AND, WHEREAS, persons hereinafter named have applied to the City Council for licenses to sell 3.2 Beer On-Sale at the respective places hereinafter mentioned; and

WHEREAS, after due investigation it appears said applicants for said licenses for sale of 3.2 Beer On-Sale have complied with all the provisions of the law relative thereto and are entitled to have a license issued to each of them for the above described purposes at the hereinafter named addresses.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the City Council of the City of Austin does hereby grant licenses for the sale of 3.2 Beer On-Sale to the following named licensees at the following locations in Austin, Minnesota, which licenses shall commence January 1, 2023, and expire December 31, 2023:

|                                  |   |
|----------------------------------|---|
| Piggy Blue's Bar-B-Que, Inc      | dba Piggy Blue's Bar-B-Que<br>323 North Main Street   |
| Tienda Y Taqueria Guerrero, Inc. | dba Tienda Y Taqueria Guerrero<br>301-D 4th Avenue NE |
| George's Pizza LLC               | dba George's Pizza LLC<br>209 North Main Street       |
| Steve's Pizza LLC                | dba Steve's Pizza<br>421 North Main Street            |

AND, WHEREAS, persons hereinafter named have applied to the City Council for licenses to sell 3.2 Beer Off-Sale at the respective places hereinafter mentioned; and

WHEREAS, after due investigation it appears said applicants for said licenses for sale of 3.2 Beer Off-Sale have complied with all the provisions of the law relative thereto and are entitled to have a license issued to each of them for the above described purposes at the hereinafter named addresses.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Austin does hereby grant licenses for the sale of 3.2 Beer Off-Sale to the following named licensees at

the following locations in Austin, Minnesota, which licenses shall commence January 1, 2023, and expire December 31, 2023:

|                                    |   |
|------------------------------------|---|
| Austin Country Club, Inc.          | 1202 28th Street NE                                   |
| Hoot & Ole's, LLC                  | dba The New Smitty's Tavern<br>105 11th Street SE     |
| Bobee Jo's, Inc.                   | dba Bobee Jo's<br>435 10th Street NE                  |
| Tienda Y Taqueria Guerrero, Inc.   | dba Tienda Y Taqueria Guerrero<br>301-D 4th Avenue NE |
| ATI Hotel LLC                      | dba Holiday Inn of Austin<br>1701 4th Street NW       |
| Veterans of Foreign Wars Post 1216 | 300 4th Avenue NE                                     |

Passed by a vote of yeas and mays this 19th day of December, 2022

YEAS

NAYS

ATTEST:

APPROVED:

---

City Recorder

---

Mayor

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



Thomas Dankert  
Director of  
Administrative Services  
507-437-9959  
Fax 507-433-1693  
tdankert@ci.austin.mn.us

TO: Mayor and City Council  
FROM: Tom Dankert *TM*  
DATE: January 3, 2023  
RE: 2023 Legal Publications  
U:\Word\2022\Miscellaneous\2023 Legal Publications.doc

Attached is the quote from Crystal Miller at the Austin Daily Herald for our legal publications for 2023. The Austin Daily Herald is the only newspaper that we can designate as the official newspaper by law since there are no other newspapers home based in Austin.

Please note the increase for 2023 is 3.1% (from \$5.47 to \$5.64) and is below the 10% maximum allowed by statute (Minnesota Statute 331A.06 subd. 2). This rate equates to \$0.32 per word (up from \$0.29 per word).

Please do not hesitate to give me a call if you have any questions.

**Austin Newspapers, Inc.**  
**Austin Daily Herald**  
310 2<sup>nd</sup> St. NE  
Austin, MN 55912  
(507) 434-2220 Fax (507)-437-8644  
e-mail: [Crystal.Miller@austindailyherald.com](mailto:Crystal.Miller@austindailyherald.com)

---

December 8, 2022

Office of the Administrator  
City of Austin  
Austin, MN 55912

Dear Administrator,

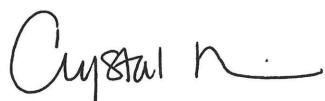
Thank you for the opportunity to bid for the designation of Official Newspaper for 2023. If selected, the Austin Daily Herald will publish City legal notices at a rate of \$5.64 per column inch for display ads and a rate of .32 per word for public notice line ads. At the Austin, Daily Herald we appreciate your continued support and look forward to serving our City for the 2023 notices.

6 Column width = 9 picas and 4.5 points or 1.5625 inches  
8 point type  
1 point of space between lines  
9 lines per vertical inch

abcdefghijklmnopqrstuvwxyz – lower case 8pt.

If you have any questions or concerns please feel free to contact me at  
507-434-2220.

Sincerely,



Crystal Miller  
President and Publisher

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



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

## MEMORANDUM

**TO:** Mayor & City Council

**FROM:** Craig D. Clark  
 City Administrator

**RE:** Outline of terms – 2023 – 2025  
 Austin Employees Association (AEA)

**DATE:** December 19, 2020

Members of the Austin Employees Association (AEA) met recently and approved a contract extension for years 2023-2025. The contract (Exhibit 1) has been signed by the bargaining unit members of the union.

Below is a summary of the agreement which would be pending your consideration and approval. Terms of the labor agreement include but are not limited to the following:

- Establishment of Juneteenth subject to the State of Minnesota requirement as a holiday;
- Adjustment of the bereavement leave for flexibility for those instances where it doesn't work well to utilize it within 30 days;
- General wage increases of 4.3.3 for respectively per year of the agreement;
- Adoption of the increased health care employer contributions each year of a three-year agreement with defined amounts;
- Generalized language obligating the employer to provide continued health care coverage with similar aggregate benefit;
- Elimination of retiree health care provision;
- Elimination of the payment for health care “opt-out;”
- Inclusion of a provision that would restrict seniority rights to grant funded positions and
- Other technical items.

Let me know if you have any questions. Should Council concur we would ask for the following motion to approve:

**Approve Exhibit 1 the contract with AEA for 2023-2025 and authorize the Mayor to sign and recorder to attest the agreement.**

**AGREEMENT BETWEEN**  
**AUSTIN EMPLOYEES ASSOCIATION**  
**AND**  
**THE CITY OF AUSTIN, MINNESOTA**  
**2023 – 2025**

## TABLE OF CONTENTS

| <u>Article #</u> |  | <u>Page #</u> |
|------------------|--|---------------|
| 1.               | INTENT AND PURPOSE                     | 3             |
| 2.               | RECOGNITION                            | 4             |
| 3.               | EMPLOYER AUTHORITY                     | 6             |
| 4.               | WAIVER                                 | 7             |
| 5.               | SAVINGS CLAUSE                         | 8             |
| 6.               | EMPLOYEE RIGHTS – GRIEVANCE PROCEDURES | 9             |
| 7.               | UNIT ACTIVITY                          | 12            |
| 8.               | SICK LEAVE                             | 13            |
| 9.               | JURY DUTY                              | 15            |
| 10.              | HOLIDAYS                               | 16            |
| 11.              | VACATION                               | 17            |
| 12.              | BEREAVEMENT LEAVE                      | 18            |
| 13.              | EMPLOYEES INSURANCE PROGRAM            | 19            |
| 14.              | PREMIUM PAY                            | 22            |
| 15.              | GENERAL                                | 23            |
| 16.              | PAY PLAN                               | 25            |
| 17.              | DISCIPLINE PROCEDURE                   | 26            |
| 18.              | DURATION                               | 27            |
| APPENDIX A       | AUTHORIZATION FOR CHECK-OFF DUES       | 28            |

## **ARTICLE 1**

### **INTENT AND PURPOSE**

- 1.1 This Contract between the City of Austin, hereinafter referred to as the City or Employer, and the Austin Employees Association, hereinafter referred to as the Unit, is intended to set forth the results of collective bargaining negotiations between the City and the Unit. Its purpose is to establish standard conditions of employment for employees in the bargaining unit, and to conform with the Public Employment Labor Relations Act of 1971, as amended, to promote harmonious relationships and economy of city government. It is agreed by the parties that the City will take such steps as are necessary to implement the provisions of this agreement, such as, but not restricted to, passage and changes of new and existing administrative directives, ordinances and resolutions.

## ARTICLE 2

### RECOGNITION

2.1 The Employer recognizes the UNIT as the exclusive representative for collective bargaining purposes and to have a representative of their choosing for all employees defined as follows:

Accounting Technician  
Administration / Clerk Specialist  
Adult Services Librarian  
Building & Ice Custodian  
Building Inspector  
Building Official  
Building & Zoning Inspector  
Clerk/Cashier  
Community Service Officer  
Engineering Technician  
Engineering Technician/Project Coordinator  
Environmental Technician  
Facilities, Energy, and Maintenance Technician  
Fire Administrative Assistant  
Housing Inspector  
Laboratory Technician  
Library Assistant 1  
Library Assistant 2  
Library Assistant 3  
Nature Center Aid  
Nature Center Teacher/Aide  
Park & Recreation Clerk  
Planning/Building Administrative Assistant  
Senior Accountant  
Sign and Traffic Control  
Technical Services Librarian  
Technology Librarian  
Water Quality Specialist/GIS  
Youth Services Librarian  
Zoning Inspector

2.2 In the event that any new job or job title is created after the effective date during the term of this agreement, and such position is filled by the City, the parties agree to meet and discuss whether or not such person should be represented by AEA prior to making a request to the Director of the Bureau of Mediation Services for a unit designation for such position.

## **ARTICLE 2**

### **RECOGNITION (continued)**

2.3 Employees who are hired into positions whether current or newly created, who are funded, in whole or in part, by other outside sources, these employee(s) will not, and do not, earn any type of seniority or any right to bid, bump or otherwise assume any other Unit position, at any time. At the sole discretion of the Employer, anytime funding for this type of employee is exhausted, not extended or reduced, in whole or in part or the position is no longer deemed necessary, by the City Administrator, the Employer is under no obligation to continue to employ any such individual or individuals in outside funded positions.

## **ARTICLE 3**

### **EMPLOYER AUTHORITY**

3.1 The Employer retains the full and unrestricted right to operate and manage all manpower, facilities, and equipment; to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct and determine the number of personnel; to establish work schedules; and to perform any inherent managerial function not specifically limited by this Agreement.

Any term and condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish, or eliminate.

## **ARTICLE 4**

### **WAIVER**

- 4.1 Any and all prior agreements, resolutions, practices, policies, rules and regulations regarding terms and conditions of employment, to the extent inconsistent with the provisions of this Agreement, are hereby superseded.
- 4.2 The parties mutually acknowledge that during the negotiations, which resulted in the Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any terms or conditions of employment not removed by law from bargaining. All agreements and understandings arrived at by the parties are set forth in writing in the Agreement for the stipulated duration of this Agreement.

## **ARTICLE 5**

### **SAVINGS CLAUSE**

- 5.1 This agreement is subject to law. In the event any provisions of this agreement shall be held to be contrary to law by a Court of competent jurisdiction from whose final judgment or decree, no appeal has been taken within the time provided, such provisions shall be voided. All other provisions of this agreement shall continue in full force and effect. The voided provisions may be re-negotiated at the written request of either party.

## ARTICLE 6

### EMPLOYEE RIGHTS – GRIEVANCE PROCEDURES

#### 6.1 DEFINITION OF A GRIEVANCE

A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this AGREEMENT.

#### UNIT REPRESENTATIVES

The EMPLOYER will recognize representatives designated by the UNIT as the grievance representatives of the bargaining UNIT having the duties and responsibilities established by this Article. The UNIT shall notify the EMPLOYER in writing of the names of such UNIT representatives and of their successors when so designated.

#### PROCESSING OF A GRIEVANCE

It is recognized and accepted by the UNIT and the EMPLOYER that the processing of grievances hereinafter provided is limited by the job duties and responsibilities of the EMPLOYEES and shall therefore be accomplished during normal working hours only when consistent with such EMPLOYEE duties and responsibilities. The aggrieved EMPLOYEE and the UNIT REPRESENTATIVE shall be allowed a reasonable amount of time without loss in pay when a grievance is investigated and presented to the EMPLOYER during normal working hours provided the EMPLOYEE and the UNIT REPRESENTATIVE have notified and received the approval of the designated supervisor who has determined that such absence is reasonable and would not be detrimental to the work programs of the EMPLOYER.

#### PROCEDURE

Grievance, as defined by Section 6.1, shall be resolved in conformance with the following procedure:

Step 1. An EMPLOYEE claiming a violation concerning the interpretation or application of this AGREEMENT shall, within twenty-one (21) calendar days after such alleged violation has occurred, present such grievance to the EMPLOYEE'S supervisor as designated by the EMPLOYER. The EMPLOYER-designated representative will discuss and give an answer to such Step 1 grievance within ten (10) calendar days after receipt. A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the

## ARTICLE 6

### EMPLOYEE RIGHTS – GRIEVANCE PROCEDURES (continued)

AGREEMENT allegedly violated, and the remedy requested and shall be appealed to Step 2 within ten (10) calendar days after the EMPLOYER-designated representative's final answer in Step 1. Any grievance not appealed in writing to Step 2 by the UNIT within ten (10) calendar days shall be considered waived.

Step 2. If appealed, the written grievance shall be presented by the UNIT and discussed with the City Administrator or designee. The EMPLOYER- designated representative shall give the UNIT the EMPLOYER'S Step 2 answer in writing within then (10) calendar days after receipt of such Step 2 grievance. A grievance not resolved in Step 2 may be appealed to Step 3 within ten (10) calendar days following the EMPLOYER-designated representative's final Step 2 answer. Any grievance not appealed in writing to Step 3 by the UNIT within ten (10) calendar days shall be considered waived.

Step 3. A grievance unresolved in Step 2 and appealed in Step 3 shall be submitted to arbitration. The EMPLOYER and the UNIT representative shall endeavor to select a mutually acceptable arbitrator to hear and decide the grievance. If the parties cannot agree on an arbitrator, the selection of an arbitrator shall be made in accordance with the Rules established by the Bureau of Mediation Services.

#### ARBITRATOR'S AUTHORITY

- A. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this AGREEMENT. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the EMPLOYER and the UNIT, and shall have no authority to make a decision on any other issue not so submitted.
- B. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules, or regulations having the force and effect of law. The arbitrator's decision shall be submitted in writing within thirty (30) days following the close of the hearing or the submission of briefs by the parties, whichever be later, unless the parties agree to an extension. The decision shall be binding on both the EMPLOYER and the UNIT and shall be based solely on the arbitrator's interpretation or application of the express terms of this AGREEMENT and to the facts of the grievance presented.
- C. The fees and expenses for the arbitrator's services and proceedings shall be borne equally by the EMPLOYER and the UNIT provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing

## **ARTICLE 6**

### **EMPLOYEE RIGHTS – GRIEVANCE PROCEDURES (continued)**

it pays for the record. If both parties desire a verbatim record of the proceedings the cost shall be shared equally.

#### **WAIVER**

If a grievance is not presented within the time limits set forth above, it shall be considered "waived". If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of the EMPLOYER'S last answer. If the EMPLOYER does not answer a grievance or an appeal thereof within the specified time limits, the UNIT may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each step may be extended by mutual agreement of the EMPLOYER and the UNIT.

## **ARTICLE 7**

### **UNIT ACTIVITY**

7.1 The Unit agrees to conduct its business off the job as much as possible. This article shall not operate as to prevent a representative from the proper conduct of any grievance in accordance with the procedures outlined in this agreement and shall not work to prevent certain routine business such as the posting of notices and bulletins.

## ARTICLE 8

### SICK LEAVE

- 8.1 All fulltime City employees receive sick leave at the rate of eight (8) hours for each month of service. Employees earn sick leave from date of hire. Employees are not entitled to use sick leave for the first thirty (30) days of employment.
- 8.2 Sick leave will be accumulative at the rate of eight (8) hours for each month of service up to twelve (12) months of service each year and may be used as it is earned on a monthly basis.
- 8.3 Sick leave shall be accumulative without a limit as to its accumulation.
- 8.4 Sick leave shall be granted only where accident or illness disables the employee from performing their regular duties in their accustomed manner or as provided by state or federal law.

Per Minn. Stat. §181.9413, as amended and updated from time to time, employees may use sick leave for their children, adult children, spouses, siblings, parents, mother-in-law, father-in-law, grandchild, grandparents and stepparents. Sick leave usage for this group of covered individuals is limited to 160 hours per calendar year (combined, not 160 per individual). The 160 hour limit does not apply to the employee's stepchild, biological or foster children either under 18 or under 20 if still attending secondary school.

Up to 240 hours of unused sick leave may be used for employee's spouse or parent's serious illness or accident (as defined by Family and Medical Leave Act). Prior approval must be received from Human Resources Director and City Administrator who will require documentation by a physician of the nature of the serious illness.

- 8.5 Payment of accumulated sick leave will only be made upon involuntary lay off or retirement. Payment of accumulated sick leave with accumulated vacation leave, shall not exceed an amount equivalent to one (1) year present rate of pay at time involuntary lay-off or retirement. Lay off shall include any termination enacted by City which is not a disciplinary action or resignation of employee

For employees hired after 1/1/05, sick leave shall be paid out at fifty percent (50%) of accumulation only upon involuntary lay off or retirement. Payment of accumulated sick leave shall not exceed an amount equivalent to one year of pay.

In order to be qualified to be paid the unpaid sick leave on retirement, the employee must submit a written retirement resignation to their department head at least

## **ARTICLE 8**

### **SICK LEAVE (continued)**

fourteen calendar days before their retirement date, must actually retire, and meet the PERA retirement requirements

The method of using accumulated sick leave hours will be based on the first-in-first-out method.

If death should occur before retirement, the accumulated sick leave will be paid to designated beneficiary, if none designated, then to the widow or widower, and if no widow or widower, then to be paid to the estate.

- 8.6 After the first thirty (30) days referred to in Article 13.6, when an employee is eligible for Workers' Compensation payments, they may supplement these payments with a prorated portion of employee's sick leave so the combination of the two benefits will equal employee's regular salary. If employee should exhaust their accumulated sick leave, employee will receive Workers' Compensation payments only. Working days only will be counted when using sick leave.
- 8.7 Regular part-time employees who have worked as a City employee 1040 hours, shall after completing 1040 hours, be entitled to accrue sick leave of eight hours for each 173.3 hours worked.

## **ARTICLE 9**

### **JURY DUTY**

- 9.1** Employees shall be granted a leave of absence for service on a jury. They shall be compensated by the Employer the difference in their regular pay and that received for such jury duty. If the employee reports for jury duty and is subsequently excused from such duty, they shall return at once to their regular work.
- 9.2** The employee, in order to receive the difference in their regular pay and that received for jury duty, shall present their jury duty check to the City Recorder for verification.

## ARTICLE 10

### HOLIDAYS

10.1 All fulltime employees in each contract year shall be permitted eleven (11) holidays without loss of pay.

If and when the State of Minnesota adopts Juneteenth as a required recognized holiday in Minnesota, employees shall be permitted twelve (12) working days (96 benefit hours) off with pay in lieu of holidays, effective at such time of adoption.

10.2 The following days are established as holidays:

|                            |                |                               |
|----------------------------|----------------|-------------------------------|
| New Year's Day             | Memorial Day   | Thanksgiving Day              |
| Martin Luther King Jr. Day | Fourth of July | Day-After Thanksgiving Day    |
| President's Day            | Labor Day      | Christmas Day                 |
| Good Friday                | Veteran's Day  | Juneteenth (If/when per 10.1) |

10.3 Employees required by their supervisor to work on any of the identified holidays shall be paid time and one-half (1½) for time worked.

10.4 In the event that a holiday falls during an employee's vacation period, he/she shall have one added day of vacation either at the beginning or end of the vacation period.

10.5 If a holiday falls on Sunday, the following Monday shall be observed as a holiday.

10.6 If a holiday falls on Saturday, employees may have Friday off, or Monday off and the above shall be mutually agreed upon.

10.7 If the employee is required to work on a designated holiday, the employee will be entitled to another day off as agreed upon between Employer and employee.

10.8 Part-time employees who have worked as a City employee for 1040 hours and work at least 20 hours per week shall, after completing 1040 hours, be entitled to holiday pay prorated based on a percentage determined by hours worked as compared to hours worked by a fulltime employee (example: part-time employee works 20 hours per week = 20 divided by 40 - ½ holiday pay) and provided holiday falls on part-time employee's normal scheduled work day (except for it being a holiday).

For purposes of this section, a part-time employee is one who is employed on a regular basis and who is employed to work less than a 40-hour workweek, but who works not less than 20 hours per week. A person, who is employed only on a seasonal basis or for a period of time intended not to exceed six months, shall not be entitled to any of the benefits set forth in this section.

## ARTICLE 11

### VACATION

11.1 Each fulltime City employee is initially entitled to vacation on the following basis upon beginning employment with the City:

When the date of hire is between January 1<sup>st</sup> and July 1<sup>st</sup>, on the following January 1<sup>st</sup>, credit for eighty (80) hours will be given. When the date of hire is between July 1<sup>st</sup> and October 1<sup>st</sup>, credit for forty (40) hours will be given on the following January 1<sup>st</sup> with eighty (80) hours given January 1<sup>st</sup>, one year later. When the date of hire is between October 1<sup>st</sup> and January 1<sup>st</sup>, credit for eighty (80) hours will be given on January 1<sup>st</sup>, a year later.

11.2 Employees will earn vacation time as follows based on the following years of service:

|          |           |
|----------|-----------|
| 1 year   | 80 hours  |
| 5 years  | 120 hours |
| 12 years | 160 hours |
| 20 years | 200 hours |
| 24 years | 240 hours |

After employees receive their first paid vacation (per Article 11.1 above); they shall be eligible for subsequent and additional vacation on the anniversary of the employee's hiring date.

11.3 An employee leaving the municipal service after giving not less than two weeks written notice of such termination of employment shall be compensated for vacation leave earned and unused to the date of separation.

11.4 Part-time employees who have worked as a City employee 1040 hours and work at least 20 hours per week shall, after completing 1040 hours, be entitled to receive that part of 80 hours of vacation as hours worked relates to fulltime employee calculated on basis of previous 12 months (example: hours worked = 1040 divided by 2080 = ½ fulltime - employee to then receive 40 hours paid vacation). Can accrue, but cannot use until after the 1040 hours.

11.5 Employees will be allowed to carry over up to one week's vacation each year.

## **ARTICLE 12**

### **BEREAVEMENT LEAVE**

- 12.1 Bereavement leave will be granted employees a maximum of two (2) working days for the purpose of bereaving the death of a member of their immediate family, provided the employee makes arrangement with and gets approval from their department. The leave must be used within 30 calendar days of the death of the family member; leave beyond 30 calendar days may be adjusted at the recommendation and approval of the City Administrator.
- 12.2 For the purposes of the above paragraph, a member of the immediate family means the employee's spouse, child, stepchild, grandchild, mother, father, stepparent, sister, brother, step siblings, mother-in-law, father-in-law, sister-in-law, brother-in-law, employee's and spouse's grandparents and stepparents.

## ARTICLE 13

### EMPLOYEE'S INSURANCE PROGRAM

13.1 The employer agrees to continue to make a base medical insurance program available, similar to the one in effect on the date of this agreement, subject to the limitations, benefits and conditions established by the contract between the employer and the insurance carrier, or a plan with a comparable or increased aggregate value of benefits, as determined by an actuarial value. The employer reserves the right to change from a fully-insured health plan to a self-insured plan provided that the aggregate value, as determined by an actuarial value, is not changed.

In the event the City offers additional health insurance plans, these optional plans are not negotiated plans and changes to these plans may be made at the employer's discretion, including changing from a self-insured health plan to a fully insured health plan. Employees who choose an optional plan must pay any difference if the cost is greater than the cost of the negotiated plan. These optional plans shall not be negotiable nor subject to M.S. 471.6161 and any additional plans may be added at the City's sole discretion.

Beginning January 1, 2023, the City contribution and cap will be One Thousand Four Hundred thirty dollars (\$1,430.00) per month towards the cost of family coverage, Nine Hundred dollars (\$900.00) for employee plus spouse coverage, Eight Hundred dollars (\$800.00) for employee plus child(ren) coverage and Five Hundred Twenty dollars (\$520.00) for single coverage, with the employee picking up the remaining balance of the plan the employee has selected.

For 2024, the City contribution and cap will be One Thousand Six Hundred thirty dollars (\$1,630.00) per month towards the cost of family coverage, One Thousand Twenty-Five dollars (\$1,025.00) for employee plus spouse coverage, Nine Hundred Ten dollars (\$910.00) for employee plus child(ren) coverage and Five Hundred Seventy dollars (\$570.00) for single coverage, with the employee picking up the remaining balance of the plan the employee has selected.

For 2025, the City contribution and cap will be One Thousand Eight Hundred thirty dollars (\$1,830.00) per month towards the cost of family coverage, One Thousand One Hundred Fifty dollars (\$1,150.00) for employee plus spouse coverage, One Thousand Twenty dollars (\$1,020.00) for employee plus child(ren) coverage and Six Hundred Twenty dollars (\$620.00) for single coverage, with the employee picking up the remaining balance of the plan the employee has selected.

City contribution shall not exceed the total monthly premium payment.

## **ARTICLE 13**

### **EMPLOYEE'S INSURANCE PROGRAM**

#### **(continued)**

There will be an enrollment period each year for coverage effective January 1 of the next year. Employees may change plans during this enrollment period with their choice effective January 1<sup>st</sup> through December 31<sup>st</sup>. The coverage for the insured employee and family must be by the same plan each year.

- 13.2 In the event the health insurance provisions of this agreement fail to meet the requirements of the Affordable Care Act, the Bargaining Unit and Employer will meet and confer over alternative provisions so as to comply with the Act.
- 13.3 The Employer will pay the Employer's share of the premium for all employees who are on leave of absence due to sickness or injury for up to six (6) months except employees disabled on a compensable disability (receiving Workers' Compensation). Employer will be under no obligation to pay any health insurance after the six-month period.
- 13.4 The Employer will pay the Employer's share of the premium for up to twelve (12) months for all employees who are disabled with compensable disability (receiving Workers' Compensation). Employer will be under no obligation to pay any health insurance after the twelve-month period.
- 13.5 The Employer shall pay the premium for a \$40,000 term life insurance policy with accidental death and dismemberment.
- 13.6 New employees will sign authorization cards for insurance benefits, excluding health insurance; on the first day of employment. Insurance for new employees will become effective the first day of the month following the employee completing three (3) months of fulltime employment. Health insurance benefits will be effective the first of the month following the second (2<sup>nd</sup>) month of employment.
- 13.7 When an employee is off with a compensable injury, they shall receive the difference between their compensation check and their regular check for the first thirty (30) days.
- 13.8 The Employer will allow for use of up to a maximum of \$750.00 per year from the employee's accumulated sick leave account of equal or greater value, which can be applied each year toward satisfying deductible costs. Payment to be in the form of reimbursement after the deductible cost has been paid by the insured and receipts submitted to the Employer showing payment.

## ARTICLE 13

### EMPLOYEE'S INSURANCE PROGRAM (continued)

- 13.9 Employer will provide a long-term disability insurance program as established by Employer.
- 13.10 Part-time employees who have worked not less than 1040 hours annually shall be eligible to participate in the City health insurance program. The City will contribute toward the employee's premiums that percentage of the premium as the employee's hours regularly worked bears to the total fulltime hours (example: hours worked = 1040 divided by 2080 = ½, City then contributes ½ premium). Coverage to employee is optional and will be provided only if employee completes proper insurance application forms and meets all insurers' requirements.
- 13.11 All employees will participate in a Post-Employment Health Care Savings Plan through the Minnesota State Retirement System (MSRS). Per Minn. Stat. §352.98, the Employer will setup and administer the program as defined and determined by MSRS. Employees will contribute to their Post-Employment Health Care Savings Plan: (i) one percent (1%) of their salary; and (ii) 100% of any accrued unused sick leave distribute to the employee as specified in 8.5 of this Agreement.

## **ARTICLE 14**

### **PREMIUM PAY**

- 14.1 All hours worked up to forty (40) in a week shall be paid at the negotiated hourly rate. As required under FLSA, employees who work over 40 hours per week will receive time and one half, with time accumulated used as compensatory time with one half to be paid. Upon approval from the department head, the entire time and one half overtime hours (over 40 hours in a week) may be credited to accumulated time. For purposes of calculating above, holiday and sick hours will be considered hours actually worked. At the discretion of the supervisor, vacation may be considered hours actually worked.
- 14.2 Sunday differential of twenty-five cents (.25¢) per hour shall be paid to employees required to work on Sundays.
- 14.3 Night differential of forty cents (.40¢) per hour shall be paid to employees required to work between the hours of 5:00 PM to 5:00 AM.
- 14.4 Community Service Officers who are required to appear in court during their scheduled off-duty time shall receive a minimum of two (2) hours pay at time and one-half (1½). An extension or early report to a regularly scheduled shift for court appearance does not qualify the employee for the two (2) hour minimum.

Employees who are called in for an emergency by their department head outside the employee's regularly scheduled work hours will receive a minimum of two (2) hours pay at time and one-half (1½).

## ARTICLE 15

### GENERAL

- 15.1 The Employer agrees to allow the employees to participate in a deferred compensation plan, which is agreed to between the AEA and the Employer, subject to Internal Revenue Service approval.
- 15.2 Parenting leave will be granted as and to the extent and as required by MSA §181.940 and Family and Medical Leave Act as administered by adopted City policy.
- 15.3 Upon presentation of an authorized check-off for dues card to the City Payroll Department, necessary deductions will be made and remitted to AEA Treasurer. This deduction shall be from the employees' payroll. The conditions outlined on the authorized check-off card shall be made a part of this contract and a copy of the same shall be attached. (APPENDIX A)
- 15.4 The Employer reserves the right to discipline, up to and including discharge any employee without cause during the first six (6) months of employment with the City.
- 15.5 All lunch or dinner breaks shall be on unpaid time, except for Community Service Officers on an eight or ten hour shift whose meal time shall be paid as a part of their eight or ten paid hours and who shall be required to respond to emergency calls that may occur during their meal time.
- 15.6 The Employer will provide necessary uniform for Community Service Officers. Community Service Officers who are employed for a minimum of six months shall be reimbursed up to \$100.00 annually toward the purchase of boots. The Employer will reimburse the employee upon submission of a paid receipt from the vendor. The Human Resource Department will administer the account.
- 15.7 Fulltime employees in the positions of Sign Shop/Traffic Control, Engineering Technician and Engineering Technician/Project Coordinator shall be reimbursed up to \$200.00 during each 24-month period toward the purchase of an ANSI approved safety jacket and/or ANSI approved safety T-shirts. Employer will reimburse the employee upon submission of a paid receipt from the vendor. The Human Resource Department will administer the account.
- 15.8 Fulltime employees in the positions of WWTP laboratory technician, Sign Shop/Traffic Control, Engineering Technician and Engineering Technician/Project Coordinator will be provided up to \$100.00 toward the purchase of prescription safety glasses according to the following rules:

## **ARTICLE 15**

### **GENERAL (continued)**

- A. Glasses must meet OSHA regulations.
- B. Glasses must include side clamps.
- C. A plastic lens will be used and it shall be coated with a scratch-proofing compound.
- D. Employer contribution shall be available on an annual basis.
- E. The payment paid to vendor by Employer or reimbursed to employee from appropriately detailed receipt.

15.9 Fulltime employees in the position of Wastewater Treatment Plant laboratory technician shall be reimbursed up to \$125.00 during each 24-month period toward the purchase of work clothing items. Employer will reimburse the employee upon submission of a paid receipt from the vendor that has been paid for an approved item. Balance may be carried forward from year to year. The Human Resource Department will administer the account.

15.10 An employee terminating employment will reimburse the City up to the amount they received under Sections 15.6, 15.7, and/or 15.9 of this Agreement in the calendar year that they terminated employment on a pro-rata basis for any month in which they have not worked.

## ARTICLE 16

### PAY PLAN

16.1 In calendar years 2023, 2024 and 2025, respectively, employees will be paid the base pay at the following pay grades as provided in employer's base pay schedule for the respective calendar year, which are attached hereto as reference:

| Job Title                                      | Pay Grade |
|--|-----------|
| Accounting Technician                          | 15        |
| Administration /Clerk Specialist               | 3         |
| Adult Services Librarian                       | 15        |
| Building & Ice Custodian                       | 6         |
| Building Inspector                             | 12        |
| Building Official                              | 20        |
| Building & Zoning Inspector                    | 12        |
| Clerk/Cashier                                  | 3         |
| Community Service Officer                      | 4         |
| Engineering Technician                         | 11        |
| Engineering Technician/Project Coordinator     | 15        |
| Environmental Technician                       | 13        |
| Facilities, Energy, and Maintenance Technician | 11        |
| Fire Administrative Assistant                  | 3         |
| Housing Inspector                              | 12        |
| Laboratory Technician                          | 11        |
| Library Assistant 1                            | 5         |
| Library Assistant 2                            | 6         |
| Library Assistant 3                            | 11        |
| Nature Center Aid                              | 7         |
| Nature Center Teacher/Aide                     | 7         |
| Park & Recreation Clerk                        | 2         |
| Planning/Building Administrative Assistant     | 3         |
| Senior Accountant                              | 15        |
| Sign and Traffic Control                       | 5         |
| Technical Services Librarian                   | 15        |
| Technology Librarian                           | 15        |
| Water Quality Specialist/GIS                   | 15        |
| Youth Services Librarian                       | 15        |
| Zoning Inspector                               | 12        |

## **ARTICLE 17**

### **DISCIPLINE PROCEDURE**

- 17.1 City employees shall be subject to disciplinary action for failing to fulfill their duties and responsibilities, including observances of work rules adopted by the City Council.
- 17.2 Except for severe infractions, disciplinary action against any employee shall be progressive and may include one or more of the following steps listed below:
  1. Oral reprimand
  2. Written reprimand
  3. Withholding of a salary increase
  4. Suspension without pay
  5. Demotion
  6. Dismissal

Any employee desiring unit representation during or after Steps 2-5 will be allowed to have a unit representative present during meetings with the employee, supervisor and/or department head and Human Resources Director.

- 17.3 Every disciplinary action shall be for just cause and the employee may demand a hearing or use the grievance procedure of Article 6 with respect to any disciplinary action, which he/she believes is either unjust or disproportionate to the offense committed.

## ARTICLE 18

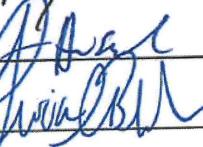
### DURATION

18.1 This Contract shall remain in full force and effect from January 1, 2023, to December 31, 2025.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the latest date affixed to the signatures below.

SIGNATURE OF UNIT  
REPRESENTATIVES  
AUSTIN EMPLOYEES ASSOCIATION  
BARGAINING COMMITTEE

President

 12/12/22  
 12.12.22  
 12.12.22  
Date: \_\_\_\_\_

SIGNATURE OF CITY  
REPRESENTATIVE  
CITY OF AUSTIN, MINNESOTA

Mayor

ATTEST:

City Recorder

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

## **APPENDIX A**

### **AUTHORIZATION FOR CHECK-OFF DUES**

I hereby assign to Austin Employees Association (AEA) from any wages earned or to be earned by me as your employee (in my present or in any future employment by you), such sums as the financial officer of said AEA may certify as due and owing from me as membership dues in such sum as may be established from time to time by said AEA. I authorize and direct you to deduct such amounts from my pay to remit the same to the Association at such times and in such manner as may be agreed upon between you and the Association at any time while this authorization is in effect.

This assignment, authorization and direction shall be irrevocable for the period of one (1) year from the date of delivery hereof to you, or until the termination of the collective agreement between the company and the Association, which is in force at the time of delivery of this authorization, whichever occurs sooner. I also agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year and or for the period of each succeeding applicable collective agreement between the company and the Association, whichever shall be shorter, unless written notice is given by me to the company and the Association not more than twenty (20) days and not less than the (10) days prior to the expiration of each period of one (1) year, or of each applicable collective agreement between the company and the Association, whichever occurs sooner.

This authorization is made pursuant to the provisions of Section 302(c) or the Labor Management Relations Act of 1947 and otherwise.

## 2023 BPS - Step System

| Job Evaluation Point Range |      | Grade | Pay Range |         |         |         |         |         |          |
|----------------------------|------|-------|-----------|---------|---------|---------|---------|---------|----------|
|                            |      |       | Step 1    | Step 2  | Step 3  | Step 4  | Step 5  | Step 6  | Step 7   |
|                            |      |       | Start     | 6 mos.  | 12 mos. | 24 mos. | 36 mos. | 48 mos. | 60 mos.  |
| Min                        | Max  | 1-36  | 70.00%    | 75.00%  | 80.00%  | 85.00%  | 90.00%  | 95.00%  | 100.00%  |
| 150                        | 163  | 1     | \$20.50   | \$21.97 | \$23.43 | \$24.90 | \$26.36 | \$27.83 | \$ 29.29 |
| 164                        | 178  | 2     | \$21.11   | \$22.62 | \$24.13 | \$25.64 | \$27.14 | \$28.65 | \$ 30.16 |
| 179                        | 193  | 3     | \$21.75   | \$23.30 | \$24.86 | \$26.41 | \$27.96 | \$29.52 | \$ 31.07 |
| 194                        | 209  | 4     | \$22.40   | \$24.00 | \$25.60 | \$27.20 | \$28.80 | \$30.40 | \$ 32.00 |
| 210                        | 225  | 5     | \$23.07   | \$24.72 | \$26.37 | \$28.02 | \$29.66 | \$31.31 | \$ 32.96 |
| 226                        | 241  | 6     | \$23.77   | \$25.46 | \$27.16 | \$28.86 | \$30.56 | \$32.25 | \$ 33.95 |
| 242                        | 258  | 7     | \$24.48   | \$26.23 | \$27.98 | \$29.73 | \$31.47 | \$33.22 | \$ 34.97 |
| 259                        | 276  | 8     | \$25.21   | \$27.02 | \$28.82 | \$30.62 | \$32.42 | \$34.22 | \$ 36.02 |
| 277                        | 294  | 9     | \$25.97   | \$27.83 | \$29.68 | \$31.54 | \$33.39 | \$35.25 | \$ 37.10 |
| 295                        | 313  | 10    | \$26.75   | \$28.66 | \$30.57 | \$32.48 | \$34.39 | \$36.30 | \$ 38.21 |
| 314                        | 332  | 11    | \$27.55   | \$29.52 | \$31.49 | \$33.46 | \$35.42 | \$37.39 | \$ 39.36 |
| 333                        | 352  | 12    | \$28.38   | \$30.41 | \$32.43 | \$34.46 | \$36.49 | \$38.51 | \$ 40.54 |
| 353                        | 372  | 13    | \$29.23   | \$31.31 | \$33.40 | \$35.49 | \$37.58 | \$39.66 | \$ 41.75 |
| 373                        | 393  | 14    | \$30.11   | \$32.26 | \$34.41 | \$36.56 | \$38.71 | \$40.86 | \$ 43.01 |
| 394                        | 415  | 15    | \$31.01   | \$33.23 | \$35.44 | \$37.66 | \$39.87 | \$42.09 | \$ 44.30 |
| 416                        | 437  | 16    | \$31.94   | \$34.22 | \$36.50 | \$38.79 | \$41.07 | \$43.35 | \$ 45.63 |
| 438                        | 460  | 17    | \$32.89   | \$35.24 | \$37.59 | \$39.94 | \$42.29 | \$44.64 | \$ 46.99 |
| 461                        | 484  | 18    | \$33.88   | \$36.30 | \$38.72 | \$41.14 | \$43.56 | \$45.98 | \$ 48.40 |
| 485                        | 508  | 19    | \$34.90   | \$37.40 | \$39.89 | \$42.38 | \$44.87 | \$47.37 | \$ 49.86 |
| 509                        | 533  | 20    | \$35.95   | \$38.51 | \$41.08 | \$43.65 | \$46.22 | \$48.78 | \$ 51.35 |
| 534                        | 559  | 21    | \$37.02   | \$39.67 | \$42.31 | \$44.96 | \$47.60 | \$50.25 | \$ 52.89 |
| 560                        | 585  | 22    | \$38.14   | \$40.86 | \$43.58 | \$46.31 | \$49.03 | \$51.76 | \$ 54.48 |
| 586                        | 613  | 23    | \$39.28   | \$42.08 | \$44.89 | \$47.69 | \$50.50 | \$53.30 | \$ 56.11 |
| 614                        | 641  | 24    | \$40.46   | \$43.35 | \$46.24 | \$49.13 | \$52.02 | \$54.91 | \$ 57.80 |
| 642                        | 670  | 25    | \$41.67   | \$44.65 | \$47.62 | \$50.60 | \$53.58 | \$56.55 | \$ 59.53 |
| 671                        | 700  | 26    | \$42.92   | \$45.99 | \$49.06 | \$52.12 | \$55.19 | \$58.25 | \$ 61.32 |
| 701                        | 731  | 27    | \$44.21   | \$47.37 | \$50.53 | \$53.69 | \$56.84 | \$60.00 | \$ 63.16 |
| 732                        | 763  | 28    | \$45.54   | \$48.79 | \$52.04 | \$55.29 | \$58.55 | \$61.80 | \$ 65.05 |
| 764                        | 795  | 29    | \$46.90   | \$50.25 | \$53.60 | \$56.95 | \$60.30 | \$63.65 | \$ 67.00 |
| 796                        | 829  | 30    | \$48.31   | \$51.76 | \$55.21 | \$58.66 | \$62.11 | \$65.56 | \$ 69.01 |
| 830                        | 864  | 31    | \$49.76   | \$53.31 | \$56.86 | \$60.42 | \$63.97 | \$67.53 | \$ 71.08 |
| 865                        | 899  | 32    | \$51.25   | \$54.91 | \$58.57 | \$62.23 | \$65.89 | \$69.55 | \$ 73.21 |
| 900                        | 936  | 33    | \$52.79   | \$56.56 | \$60.33 | \$64.10 | \$67.87 | \$71.64 | \$ 75.41 |
| 937                        | 974  | 34    | \$54.37   | \$58.25 | \$62.14 | \$66.02 | \$69.90 | \$73.79 | \$ 77.67 |
| 975                        | 1013 | 35    | \$56.00   | \$60.00 | \$64.00 | \$68.00 | \$72.00 | \$76.00 | \$ 80.00 |
| 1014                       | 1054 | 36    | \$57.68   | \$61.80 | \$65.92 | \$70.04 | \$74.16 | \$78.28 | \$ 82.40 |

**Notes:**

- 2023 represents 4% base increase over 2022.
- Employees starting in a position may be placed on any step at the discretion of the City Administrator.
- Employees promoted to a position that is in a higher pay grade, will be placed on a step that is at least equivalent to, but not less than, their base wage before they were promoted.
- No step increases will be awarded under this structure after December 31, 2023.

## 2024 BPS - Step System

| Job Evaluation Point Range |      | Grade | Pay Range |         |         |         |         |         |         |
|----------------------------|------|-------|-----------|---------|---------|---------|---------|---------|---------|
|                            |      |       | Step 1    | Step 2  | Step 3  | Step 4  | Step 5  | Step 6  | Step 7  |
| Min                        | Max  | 1-36  | 70.00%    | 75.00%  | 80.00%  | 85.00%  | 90.00%  | 95.00%  | 100.00% |
| 150                        | 163  | 1     | \$21.12   | \$22.63 | \$24.14 | \$25.64 | \$27.15 | \$28.66 | \$30.17 |
| 164                        | 178  | 2     | \$21.75   | \$23.30 | \$24.86 | \$26.41 | \$27.96 | \$29.52 | \$31.07 |
| 179                        | 193  | 3     | \$22.40   | \$24.00 | \$25.60 | \$27.20 | \$28.80 | \$30.40 | \$32.00 |
| 194                        | 209  | 4     | \$23.07   | \$24.72 | \$26.37 | \$28.02 | \$29.66 | \$31.31 | \$32.96 |
| 210                        | 225  | 5     | \$23.76   | \$25.46 | \$27.16 | \$28.86 | \$30.55 | \$32.25 | \$33.95 |
| 226                        | 241  | 6     | \$24.48   | \$26.23 | \$27.98 | \$29.72 | \$31.47 | \$33.22 | \$34.97 |
| 242                        | 258  | 7     | \$25.21   | \$27.01 | \$28.82 | \$29.73 | \$32.42 | \$34.22 | \$36.02 |
| 259                        | 276  | 8     | \$25.97   | \$27.83 | \$29.68 | \$31.54 | \$33.39 | \$35.25 | \$37.10 |
| 277                        | 294  | 9     | \$26.75   | \$28.66 | \$30.57 | \$32.48 | \$34.39 | \$36.30 | \$38.21 |
| 295                        | 313  | 10    | \$27.55   | \$29.52 | \$31.49 | \$33.45 | \$35.42 | \$37.39 | \$39.36 |
| 314                        | 332  | 11    | \$28.38   | \$30.41 | \$32.43 | \$34.46 | \$36.49 | \$38.51 | \$40.54 |
| 333                        | 352  | 12    | \$29.23   | \$31.32 | \$33.41 | \$35.49 | \$37.58 | \$39.67 | \$41.76 |
| 353                        | 372  | 13    | \$30.10   | \$32.25 | \$34.40 | \$36.55 | \$38.70 | \$40.85 | \$43.00 |
| 373                        | 393  | 14    | \$31.01   | \$33.23 | \$35.44 | \$37.66 | \$39.87 | \$42.09 | \$44.30 |
| 394                        | 415  | 15    | \$31.94   | \$34.22 | \$36.50 | \$38.79 | \$41.07 | \$43.35 | \$45.63 |
| 416                        | 437  | 16    | \$32.90   | \$35.25 | \$37.60 | \$39.95 | \$42.30 | \$44.65 | \$47.00 |
| 438                        | 460  | 17    | \$33.88   | \$36.30 | \$38.72 | \$41.14 | \$43.56 | \$45.98 | \$48.40 |
| 461                        | 484  | 18    | \$34.90   | \$37.39 | \$39.88 | \$42.37 | \$44.87 | \$47.36 | \$49.85 |
| 485                        | 508  | 19    | \$35.95   | \$38.52 | \$41.09 | \$43.65 | \$46.22 | \$48.79 | \$51.36 |
| 509                        | 533  | 20    | \$37.02   | \$39.67 | \$42.31 | \$44.96 | \$47.60 | \$50.25 | \$52.89 |
| 534                        | 559  | 21    | \$38.13   | \$40.86 | \$43.58 | \$46.31 | \$49.03 | \$51.75 | \$54.48 |
| 560                        | 585  | 22    | \$39.28   | \$42.09 | \$44.89 | \$47.70 | \$50.50 | \$53.31 | \$56.11 |
| 586                        | 613  | 23    | \$40.46   | \$43.35 | \$46.24 | \$49.12 | \$52.01 | \$54.90 | \$57.79 |
| 614                        | 641  | 24    | \$41.67   | \$44.65 | \$47.63 | \$50.60 | \$53.58 | \$56.56 | \$59.53 |
| 642                        | 670  | 25    | \$42.92   | \$45.99 | \$49.05 | \$52.12 | \$55.18 | \$58.25 | \$61.32 |
| 671                        | 700  | 26    | \$44.21   | \$47.37 | \$50.53 | \$53.69 | \$56.84 | \$60.00 | \$63.16 |
| 701                        | 731  | 27    | \$45.54   | \$48.80 | \$52.05 | \$55.30 | \$58.55 | \$61.81 | \$65.06 |
| 732                        | 763  | 28    | \$46.90   | \$50.25 | \$53.60 | \$56.95 | \$60.30 | \$63.65 | \$67.00 |
| 764                        | 795  | 29    | \$48.31   | \$51.76 | \$55.21 | \$58.66 | \$62.11 | \$65.56 | \$69.01 |
| 796                        | 829  | 30    | \$49.76   | \$53.31 | \$56.86 | \$60.42 | \$63.97 | \$67.53 | \$71.08 |
| 830                        | 864  | 31    | \$51.25   | \$54.91 | \$58.57 | \$62.23 | \$65.89 | \$69.55 | \$73.21 |
| 865                        | 899  | 32    | \$52.78   | \$56.56 | \$60.33 | \$64.10 | \$67.87 | \$71.64 | \$75.41 |
| 900                        | 936  | 33    | \$54.37   | \$58.25 | \$62.14 | \$66.02 | \$69.91 | \$73.79 | \$77.67 |
| 937                        | 974  | 34    | \$56.00   | \$60.00 | \$64.00 | \$68.00 | \$72.00 | \$76.00 | \$80.00 |
| 975                        | 1013 | 35    | \$57.68   | \$61.80 | \$65.92 | \$70.04 | \$74.16 | \$78.28 | \$82.40 |
| 1014                       | 1054 | 36    | \$59.41   | \$63.65 | \$67.90 | \$72.14 | \$76.39 | \$80.63 | \$84.87 |

Notes:

- 2024 represents 3% base increase over 2023.
- Employees starting in a position may be placed on any step at the discretion of the City Administrator.
- Employees promoted to a position that is in a higher pay grade, will be placed on a step that is at least equivalent to, but not less than, their base wage before they were promoted.
- No step increases will be awarded under this structure after December 31, 2024.

## 2025 BPS - Step System

| Job Evaluation Point Range |      | Grade | Pay Range |         |         |         |         |         |         |
|----------------------------|------|-------|-----------|---------|---------|---------|---------|---------|---------|
|                            |      |       | Step 1    | Step 2  | Step 3  | Step 4  | Step 5  | Step 6  | Step 7  |
| Min                        | Max  | 1-36  | 70.00%    | 75.00%  | 80.00%  | 85.00%  | 90.00%  | 95.00%  | 100.00% |
| 150                        | 163  | 1     | \$21.76   | \$23.31 | \$24.14 | \$26.42 | \$27.97 | \$29.53 | \$31.08 |
| 164                        | 178  | 2     | \$22.40   | \$24.00 | \$25.60 | \$27.20 | \$28.80 | \$30.40 | \$32.00 |
| 179                        | 193  | 3     | \$23.07   | \$24.72 | \$26.37 | \$28.02 | \$29.67 | \$31.31 | \$32.96 |
| 194                        | 209  | 4     | \$23.76   | \$25.46 | \$27.16 | \$28.86 | \$30.55 | \$32.25 | \$33.95 |
| 210                        | 225  | 5     | \$24.48   | \$26.23 | \$27.97 | \$29.72 | \$31.47 | \$33.22 | \$34.97 |
| 226                        | 241  | 6     | \$25.21   | \$27.01 | \$27.98 | \$30.62 | \$32.42 | \$34.22 | \$36.02 |
| 242                        | 258  | 7     | \$25.97   | \$27.83 | \$29.68 | \$29.73 | \$33.39 | \$35.24 | \$37.10 |
| 259                        | 276  | 8     | \$26.75   | \$28.66 | \$30.57 | \$32.48 | \$34.39 | \$36.30 | \$38.21 |
| 277                        | 294  | 9     | \$27.55   | \$29.52 | \$31.49 | \$33.46 | \$35.42 | \$37.39 | \$39.36 |
| 295                        | 313  | 10    | \$28.38   | \$30.40 | \$32.43 | \$34.46 | \$36.48 | \$38.51 | \$40.54 |
| 314                        | 332  | 11    | \$29.23   | \$31.32 | \$33.41 | \$35.49 | \$37.58 | \$39.67 | \$41.76 |
| 333                        | 352  | 12    | \$30.11   | \$32.26 | \$33.41 | \$36.56 | \$38.71 | \$40.86 | \$43.01 |
| 353                        | 372  | 13    | \$31.01   | \$33.22 | \$35.43 | \$37.65 | \$39.86 | \$42.08 | \$44.29 |
| 373                        | 393  | 14    | \$31.94   | \$34.22 | \$36.50 | \$38.78 | \$41.07 | \$43.35 | \$45.63 |
| 394                        | 415  | 15    | \$32.90   | \$35.25 | \$37.60 | \$38.79 | \$42.30 | \$44.65 | \$47.00 |
| 416                        | 437  | 16    | \$33.89   | \$36.31 | \$38.73 | \$41.15 | \$43.57 | \$45.99 | \$48.41 |
| 438                        | 460  | 17    | \$34.90   | \$37.39 | \$39.88 | \$42.37 | \$44.87 | \$47.36 | \$49.85 |
| 461                        | 484  | 18    | \$35.94   | \$38.51 | \$41.08 | \$43.65 | \$46.21 | \$48.78 | \$51.35 |
| 485                        | 508  | 19    | \$37.03   | \$39.67 | \$41.09 | \$44.96 | \$47.61 | \$50.25 | \$52.90 |
| 509                        | 533  | 20    | \$38.13   | \$40.86 | \$43.58 | \$46.31 | \$49.03 | \$51.75 | \$54.48 |
| 534                        | 559  | 21    | \$39.28   | \$42.08 | \$44.89 | \$47.69 | \$50.50 | \$53.31 | \$56.11 |
| 560                        | 585  | 22    | \$40.46   | \$43.35 | \$46.24 | \$49.13 | \$52.02 | \$54.91 | \$57.80 |
| 586                        | 613  | 23    | \$41.67   | \$43.35 | \$46.24 | \$50.60 | \$53.57 | \$56.55 | \$59.53 |
| 614                        | 641  | 24    | \$42.92   | \$45.99 | \$49.06 | \$52.12 | \$55.19 | \$58.25 | \$61.32 |
| 642                        | 670  | 25    | \$44.21   | \$47.37 | \$50.52 | \$53.68 | \$56.84 | \$60.00 | \$63.16 |
| 671                        | 700  | 26    | \$45.54   | \$48.79 | \$52.04 | \$55.30 | \$58.55 | \$61.80 | \$65.05 |
| 701                        | 731  | 27    | \$46.91   | \$50.26 | \$53.61 | \$56.96 | \$60.31 | \$63.66 | \$67.01 |
| 732                        | 763  | 28    | \$48.31   | \$51.76 | \$55.21 | \$58.66 | \$62.11 | \$65.56 | \$69.01 |
| 764                        | 795  | 29    | \$49.76   | \$53.31 | \$56.86 | \$60.42 | \$63.97 | \$67.53 | \$71.08 |
| 796                        | 829  | 30    | \$51.25   | \$54.91 | \$58.57 | \$62.23 | \$65.89 | \$69.55 | \$73.21 |
| 830                        | 864  | 31    | \$52.79   | \$56.56 | \$60.33 | \$64.10 | \$67.87 | \$71.64 | \$75.41 |
| 865                        | 899  | 32    | \$54.37   | \$56.56 | \$62.13 | \$66.02 | \$69.90 | \$73.79 | \$77.67 |
| 900                        | 936  | 33    | \$56.00   | \$60.00 | \$64.00 | \$68.00 | \$72.00 | \$76.00 | \$80.00 |
| 937                        | 974  | 34    | \$57.68   | \$61.80 | \$65.92 | \$70.04 | \$74.16 | \$78.28 | \$82.40 |
| 975                        | 1013 | 35    | \$59.41   | \$63.65 | \$67.90 | \$72.14 | \$76.38 | \$80.63 | \$84.87 |
| 1014                       | 1054 | 36    | \$61.19   | \$65.56 | \$69.93 | \$74.31 | \$76.39 | \$83.05 | \$87.42 |

**Notes:**

- 2025 represents 3% base increase over 2024.
- Employees starting in a position may be placed on any step at the discretion of the City Administrator.
- Employees promoted to a position that is in a higher pay grade, will be placed on a step that is at least equivalent to, but not less than, their base wage before they were promoted.
- No step increases will be awarded under this structure after December 31, 2025.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE MAYOR TO SIGN AGREEMENT BETWEEN AUSTIN  
EMPLOYEES ASSOCIATION (AEA) AND THE  
CITY OF AUSTIN, MINNESOTA**

WHEREAS, AEA is the exclusive representative for certain City of Austin employees; and

WHEREAS, the current labor agreement between the City of Austin and AEA will expire on December 31, 2022;

WHEREAS, the City of Austin and AEA met and negotiated over the terms of the new labor agreement between the parties;

WHEREAS, the City of Austin and AEA have reached an agreement for a contract between the parties for the calendar years 2023 – 2025; and

WHEREAS, the contract sets forth items for calendar years 2023 – 2025, which sets standard conditions of employment for employees covered under the AEA labor agreement.

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

1. The Labor Agreement between the City of Austin and AEA for January 1, 2023 through December 31, 2025 is approved.
2. The City of Austin's Mayor and City Recorder be authorized to sign the labor agreement between the City of Austin and AEA for calendar years 2023 – 2025.
3. The Labor Agreement referred to in this resolution will be effective January 1, 2023 through December 31, 2025.
4. The City of Austin shall implement the agreement.

Approved by the Austin City Council this 19<sup>th</sup> day of December 2022

YEAS

NAYS

ATTEST:

---

City Recorder

APPROVED:

---

Mayor

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



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

## MEMORANDUM

**TO:** Mayor & City Council

**FROM:** Craig D. Clark  
 City Administrator

**RE:** Outline of terms – 2023 – 2025  
 Law Enforcement Labor Services (LELS)

**DATE:** December 19, 2022

Members of the Law Enforcement Labor Services (LELS) met recently and approved a contract extension for years 2023-2025. This is our Austin Police Department patrol union. The contract has been signed by the stewards of the bargaining unit members of the union and is included as Exhibit 1.

Below is a summary of the agreement which would be pending your consideration and approval. Terms of the labor agreement are as follows:

- Provide for clothing allowance to be disbursed semi-annually for taxable clothing maintenance purposes;
- Establishment of Juneteenth subject to the State of Minnesota requirement as a holiday;
- Add Independence Day to the list of time and one half for those scheduled to work;
- Generalized language obligating the employer to provide continued health care coverage with similar aggregate benefit;
- General wage increases of 4%, 3%, 3% for respectively per year of the agreement;
- Adoption of the increased health care employer contributions each year of a three-year agreement with defined amounts;
- Elimination of retiree health care provision;
- Elimination of the payment for health care “opt-out;” and
- Other technical changes.

Let me know if you have any questions. Should Council concur we would ask for the following motions to approve:

**Approve Exhibit 1 LELS contract for 2023-2025 and authorize the Mayor to sign and recorder to attest the agreement.**

**AGREEMENT BETWEEN**  
**LAW ENFORCEMENT LABOR SERVICES, INC.**  
**(LOCAL #73)**

**AND**

**THE CITY OF AUSTIN, MINNESOTA**

**2023 – 2025**

## TABLE OF CONTENTS

| <u>Article #</u> |  | <u>Page #</u> |
|------------------|--|---------------|
| 1.               | INTENT AND PURPOSE                     | 3             |
| 2.               | RECOGNITION                            | 3             |
| 3.               | EMPLOYER AUTHORITY                     | 3             |
| 4.               | WAIVER                                 | 4             |
| 5.               | EMPLOYEE RIGHTS – GRIEVANCE PROCEDURES | 4             |
| 6.               | UNION ACTIVITY                         | 6             |
| 7.               | HOURS OF WORK                          | 7             |
| 8.               | CLOTHING ALLOWANCE                     | 7             |
| 9.               | SICK LEAVE                             | 8             |
| 10.              | JURY DUTY                              | 10            |
| 11.              | MILITARY LEAVE                         | 11            |
| 12.              | HOLIDAYS                               | 11            |
| 13.              | VACATIONS                              | 13            |
| 14.              | BEREAVEMENT LEAVE                      | 14            |
| 15.              | EMPLOYEE'S INSURANCE COVERAGE          | 14            |
| 16.              | PREMIUM PAY                            | 16            |
| 17.              | DISCIPLINE                             | 18            |
| 18.              | GENERAL                                | 18            |
| 19.              | PAY PLAN                               | 19            |
| 20.              | POST IN-SERVICE TRAINING POLICY        | 19            |
| 21.              | DURATION                               | 20            |

## **ARTICLE 1**

### **INTENT AND PURPOSE**

- 1.1 This agreement, entered into this, between the City of Austin, hereinafter referred to as the Employer, and the Law Enforcement Labor Services, hereinafter referred to as the Union, is intended to set forth the results of collective bargaining negotiations between the City and the Union. Its purpose is to establish standard conditions of employment for employees in the bargaining unit, and to conform to the Public Employment Labor Relations Act of 1971, as amended, to promote harmonious relationships and economy of City Government.
- 1.2 This agreement is subject to the Laws of the United States, the State of Minnesota, and the Charter, ordinances and resolutions of the City of Austin. In the event any provisions of this agreement shall be held to be contrary to such laws by a court of competent jurisdiction from whose final judgment or decree no appeal has been taken within the time provided, such provisions shall be voided. All other provisions shall continue in full force and effect. The voided provision shall be renegotiated at the request of either party.

## **ARTICLE 2**

### **RECOGNITION**

- 2.1 The Employer recognizes the Union as the exclusive representative for collective bargaining purposes of all essential employees of the Austin Police Department, Austin, Minnesota, employed in the job classification of Police Officer.
- 2.2 Nothing in this agreement shall interfere with the efficiency of operation or discipline of the whole department.
- 2.3 Nothing in this agreement shall be construed as limiting the statutory powers of the Police Civil Service Commission as set forth in M.S.A. Chapter 419, regarding employment, promotion, discharge and suspension.

## **ARTICLE 3**

### **EMPLOYER AUTHORITY**

- 3.1 The Employer retains the full and unrestricted right to operate and manage all manpower, facilities, and equipment; to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and

modify the organizational structure; to select, direct and determine the number of personnel; to establish work schedules; and to perform any inherent managerial function not specifically limited by this Agreement.

Any term and condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish, or eliminate.

## ARTICLE 4

### WAIVER

- 4.1 Any and all prior agreements, resolutions, practices, policies, rules and regulations regarding terms and conditions of employment, to the extent inconsistent with the provisions of this Agreement, are hereby superseded.
- 4.2 The parties mutually acknowledge that during the negotiations, which resulted in the Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any terms or conditions of employment not removed by law from bargaining. All agreements and understandings arrived at by the parties are set forth in writing in the Agreement for the stipulated duration of this Agreement.

## ARTICLE 5

### EMPLOYEE RIGHTS – GRIEVANCE PROCEDURES

#### 5.1 DEFINITION OF A GRIEVANCE

A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this AGREEMENT.

#### UNION REPRESENTATIVES

The EMPLOYER will recognize representatives designated by the UNION as the grievance representatives of the bargaining unit having the duties and responsibilities established by this Article. The UNION shall notify the EMPLOYER in writing of the names of such UNION representatives and of their successors when so designated.

#### PROCESSING OF A GRIEVANCE

It is recognized and accepted by the UNION and the EMPLOYER that the processing of grievances hereinafter provided is limited by the job duties and responsibilities of the EMPLOYEES and shall therefore be accomplished during normal working hours only when consistent with such EMPLOYEE duties and responsibilities. The aggrieved EMPLOYEE and the UNION REPRESENTATIVE

shall be allowed a reasonable amount of time without loss in pay when a grievance is investigated and presented to the EMPLOYER during normal working hours provided the EMPLOYEE and the UNION REPRESENTATIVE have notified and received the approval of the designated supervisor who has determined that such absence is reasonable and would not be detrimental to the work programs of the EMPLOYER.

### PROCEDURE

Grievance, as defined by Section 5.1, shall be resolved in conformance with the following procedure:

Step 1. An EMPLOYEE claiming a violation concerning the interpretation or application of this AGREEMENT shall, within twenty-one (21) calendar days after such alleged violation has occurred, present such grievance to the EMPLOYEE'S supervisor as designated by the EMPLOYER. The EMPLOYER-designated representative will discuss and give an answer to such Step 1 grievance within ten (10) calendar days after receipt. A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the AGREEMENT allegedly violated, and the remedy requested and shall be appealed to Step 2 within ten (10) calendar days after the EMPLOYER-designated representative's final answer in Step 1. Any grievance not appealed in writing to Step 2 by the UNION within ten (10) calendar days shall be considered waived.

Step 2. If appealed, the written grievance shall be presented by the UNION and discussed with the City Administrator or designee. The City Administrator or designee shall give the UNION the EMPLOYER'S Step 2 answer in writing within ten (10) calendar days after receipt of such Step 2 grievance. A grievance not resolved in Step 2 may be appealed to Step 3 within ten (10) calendar days following the City Administrator or designee final Step 2 answer. Any grievance not appealed in writing to Step 3 by the UNION within ten (10) calendar days shall be considered waived.

Step 3. A grievance unresolved in Step 2 and appealed in Step 3 shall be submitted to arbitration. The EMPLOYER and the Union representative shall endeavor to select a mutually acceptable arbitrator to hear and decide the grievance. If the parties cannot agree on an arbitrator, the selection of an arbitrator shall be made in accordance with the Rules established by the Bureau of Mediation Services.

### ARBITRATOR'S AUTHORITY

A. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this AGREEMENT. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the

EMPLOYER and the UNION, and shall have no authority to make a decision on any other issue not so submitted.

- B. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules, or regulations having the force and effect of law. The arbitrator's decision shall be submitted in writing within thirty (30) days following the close of the hearing or the submission of briefs by the parties, whichever be later, unless the parties agree to an extension. The decision shall be binding on both the EMPLOYER and the UNION and shall be based solely on the arbitrator's interpretation or application of the express terms of this AGREEMENT and to the facts of the grievance presented.
- C. The fees and expenses for the arbitrator's services and proceedings shall be borne equally by the EMPLOYER and the UNION provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings the cost shall be shared equally.

#### WAIVER

If a grievance is not presented within the time limits set forth above, it shall be considered "waived". If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of the EMPLOYER'S last answer. If the EMPLOYER does not answer a grievance or an appeal thereof within the specified time limits, the UNION may elect to treat the grievance as denied at that step and immediately

appeal the grievance to the next step. The time limit in each step may be extended by mutual agreement of the EMPLOYER and the UNION.

## ARTICLE 6

### UNION ACTIVITY

- 6.1 The Union agrees to conduct its business off the job as much as possible. This article shall not operate as to prevent a representative from the proper conduct of any grievance in accordance with the procedures outlined in this agreement and shall not work to prevent certain routine business such as the posting of notices and bulletins or meetings subject to the authorization of the Chief of Police which will not interfere with the normal operations of the department.
- 6.2 The Employer hereby agrees not to deduct such reasonable time from the pay of such officer, member, or representative and agrees also that time spent in the conduct of grievance and in bargaining shall not be deducted from the pay of

delegated employee representatives. Spokespersons for the bargaining committee and grievance committee for the purpose dealing with the Employer shall be limited to no more than three (3) members of the department. The Employer will allow up to two employees off from the on-duty shift, subject to the work requirements of the Employer. The Union agrees to provide the Employer and Chief with the names of said persons.

## **ARTICLE 7**

### **HOURS OF WORK**

7.1 The Union recognizes the necessity of providing service twenty-four (24) hours per day, seven (7) days per week and, therefore, a reasonable condition of employment is a requirement that employees work a regular schedule of hours as established by the Employer. The normal workday may be eight (8) or ten (10) consecutive hours and the employees are required to work 2,080 hours a year under the present scheduling method.

## **ARTICLE 8**

### **CLOTHING ALLOWANCE**

8.1 Employees who have completed 18 consecutive months of service with the Employer will receive reimbursement for clothing at the rate of up to seven hundred fifty dollars (\$750) per calendar year. Upon completion of 18 consecutive months of service, an employee's reimbursement amount will be pro-rated based on the number of months remaining within the calendar year that such amount of service is completed.

Of this amount, up to two hundred dollars (\$200) may be disbursed semi-annually for a taxable clothing maintenance, with an annual maximum of four hundred dollars (\$400), which will be offered for pay outs by June 30 and December 15 each calendar year.

Any unused balance will be carried over into the following year for that employee.

An employee terminating employment during the year will reimburse the Employer up to the current annual allowance on a pro-rata basis for any month in which they have not worked.

Employer will provide newly hired employees uniforms as established by Employer. Employees who terminate employment with the Employer during their probationary period must return to the Employer all items provided to the employee by the Employer.

8.2 City shall provide full cost of protective vest less state contribution as per manufacturer's warranty requirements.

## ARTICLE 9

### SICK LEAVE

9.1 Sick leave will be accumulative at the rate of eight (8) hours for each month of service up to twelve (12) months of service each year and may be used as it is earned on a monthly basis.

9.2 Sick leave may be accumulated without a limit.

9.3 Sick leave shall be granted only where accident or illness disables the employee from performing their regular duties in their accustomed manner or as otherwise set forth in the Sick Leave Policy.

9.4 Payment of accumulated sick leave will only be made upon involuntary lay off or retirement. Payment of accumulated sick leave, shall not exceed an amount equivalent to one year of pay.

For employees hired after 1/1/04, sick leave shall be paid out at fifty percent (50%) of accumulation only upon involuntary lay off or retirement. Payment of accumulated sick leave shall not exceed an amount equivalent to one year of pay.

In order to be qualified to be paid the unpaid sick leave on retirement, the employee must submit a written retirement resignation to their department head at least fourteen calendar days before their retirement date, must actually retire and meet the PERA retirement requirements

The method of using accumulated sick leave hours will be based on the first in – first out method.

If death should occur before retirement, the accumulated sick leave will be paid to designated beneficiary, if none designated, then to spouse, and if no spouse, then to be paid to estate.

9.5 OCCASIONS

Sick leave shall be taken on account of sickness or injury of an employee or for family members as identified in the City of Austin's sick leave policy in accordance with Minn. Stat. § 181.9413.

It may be taken to meet dental appointments and to take physical examinations or other sickness prevention measures.

9.6 SICK LEAVE AND WORKERS' COMPENSATION

Sick leave with pay will not be granted for time loss from work, which is compensated for by the City Workers' compensation policy. An employee receiving Workers' Compensation Insurance payment may take sufficient sick leave to make up the difference between their normal earnings and their Workers' Compensation.

9.7. ENTITLEMENT

Sick leave with pay shall be granted to all probationary and permanent police of this department.

9.8. LIMITS OF ACCUMULATION

In the event that an employee does not take the full amount of sick leave allowed, there may be accumulated to their credit with no limit of accumulation, not to exceed one-year annual wage.

9.9. REPORT MAY BE REQUIRED TO WORK AGAIN

Employees will be required to furnish a doctor's statement certifying their illness if they are off over five (5) working days provided said individual notifies the officer in charge at least two (2) hours before the start of their shift that they will not be able to report to work unless circumstances make it impossible to notify the officer in charge within the required amount of time. This section does not give anyone the right to be off on sick leave for any other reason except illness or injury as set forth in this article.

9.10. CHANGING OF LEAVE STATUS

An employee on vacation becomes ill or injured may upon the proper notification change their leave status to sick leave. This action will require doctor's certificate to verify the reason for the requested change for the entire period of time that sick leave is claimed.

9.11. PENALTY

Claiming sick leave when physically fit except as permitted under this policy may be cause for disciplinary action including transfer, suspension without pay, demotion or dismissal. The minimum penalty for violation of this policy will be: (a) one day suspension without pay for each day improperly claimed; (b) one day dock for each day that sick leave is improperly claimed; and (c) the time used improperly as sick leave will be credited back to the employee's sick leave account.

**9.12 INTENT**

Sick leave is intended to be used for the purpose set forth in this article and shall not be used for any other purpose.

**9.13. CERTIFICATION OF CLAIM**

The Police Department will employ such procedures and methods for checking the validity of sick leave claims as stated below:

- A. The supervisor shall spot check sick leave claims by telephone and during this check must have conversation with the employee claiming sick leave.
- B. If for some reason this cannot be accomplished, they are required to then go to the home of the employee and personally check with the employee to verify the sick leave claim is legitimate and that they are complying with this policy.
- C. If the officer who is being checked, fails to respond to this investigation concerning their sick leave claim, the supervisor shall file a complaint for violation of this policy with the Chief of Police and the Chief of Police must automatically file a complaint with the Civil Service Commission unless the officer in question shall furnish proof or an acceptable reason why this action should not be taken.

**ARTICLE 10**

**JURY DUTY**

- 10.1 All fulltime employees shall be granted a leave of absence for service on a jury. The employee shall be compensated the difference for their regular pay and that received for such jury duty by the Employer. If the employee reports for jury duty and is subsequently excused from such duty, they shall return at once to their regular work.
- 10.2 The employee, in order to receive the difference in their regular pay and that received for jury duty, shall present their jury duty check, less mileage to the City Recorder for verification.

## **ARTICLE 11**

### **MILITARY LEAVE**

- 11.1 Any regular employee who is a member of a reserve force of the United States or of this state, and who is ordered by the appropriate authorities to attend a training program or perform other duties under the supervision of the United States or this state which would prevent them from performing their regular work, shall be granted a leave with pay upon request not to exceed fifteen (15) calendar days, provided however, that no employee shall be granted paid leave for training purposes beyond that required by the current selective service draft program at the time of the request.
- 11.2 Notice shall be given the Employer at least five working days after receipt of said orders and no less than twenty-four hours prior to date of leave, except that when said orders are received at a time which would make compliance with this provision impossible, the employee shall give notice at the earliest practical time.
- 11.3 Any employee who enters into active service shall be granted a leave without pay for the period of military service, pursuant to Minnesota Statutes and Federal law.
- 11.4 Paid leave for purposes of this section is the difference between an employee's regular pay and their military pay.

## **ARTICLE 12**

### **HOLIDAYS**

- 12.1 All employees in each agreement year shall be permitted eleven (11) working days (88 benefit hours) off with pay in lieu of holidays.

If and when the State of Minnesota adopts Juneteenth as a required recognized holiday in Minnesota, employees shall be permitted twelve (12) working days (96 benefit hours) off with pay in lieu of holidays, effective at such time of adoption.

- 12.2 88 hours of holidays will be provided each calendar year. Employees may use these hours as approved by the Police Chief.

If and when the State of Minnesota adopts Juneteenth, as a required recognized holiday in Minnesota, 96 hours of holiday will be provided each calendar year, effective January 1; such increase effective upon adoption.

An employee who separates employment must repay a pro-rated portion through payroll of the hours they used based on the quotient of the number of holidays that

have occurred as of the date of separation from employment and the number of holidays that will occur in the remainder of the year.

- 12.3 Employees requesting a day or days off shall make a request for such day or days off at least seven (7) days prior to the desired time off, unless otherwise agreed between the individual and the officer in charge. Such day or days will not be granted if it will cause overtime to be paid.
- 12.4 Employees shall be notified at least seven (7) days in advance of being required to take a day or days off, unless otherwise agreed between the individual and the officer in charge.
- 12.5 The following eleven (11) days are established as holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving Day, and Christmas Day.  
If and when the State of Minnesota adopts Juneteenth as a required recognized holiday in Minnesota, Juneteenth will become an established holiday, effective at such time as adoption.
- 12.6 Employees scheduled to work on New Year's Day, Martin Luther King, Jr. Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving Day, and Christmas Day will be paid time and one half (1½) for hours worked on those days.
- 12.7 The officer in charge of the Department will grant as many employees off at one time, per shift, on vacation, holiday, or accumulated holiday, providing the shift does not go below minimum manpower or the City's work suffer by letting more than one employee off per shift, on either vacation, holiday or accumulated holiday.
- 12.8 The Chief of Police must give seven (7) days notice before the cancellation of vacation or holidays granted prior to the notice. Vacation or holidays may be canceled by the order of the Chief of Police and personnel called back from vacation or holidays in extreme emergencies, such as but not limited to natural disasters, floods, tornadoes, explosions, and other emergency incidents which will cause the need for most of the available manpower.
- 12.9 Holidays taken for pay will be claimed by the deadline set by the finance department and paid on the first regular payroll period of December with normal taxes taken out. Pay will be at the base rate of pay plus any shift differentials the employee is earning at the date of the holiday.
- 12.10 Up to forty (40) hours of holiday time will be allowed to be carried over from one year to the next for employees who earn four (4) weeks (160 hours) or less

vacation annually (19 or less years of service). Employees are required to take this time off prior to the end of the calendar year.

12.11 Employees will be responsible for tracking their own holidays.

## ARTICLE 13

### VACATIONS

13.1 Vacations will be computed on the basis of the anniversary of the employee's hiring date.

13.2 Vacation schedule:

|          |   |                   |
|----------|---|-------------------|
| 1 Year   | = | 2 Weeks/80 Hours  |
| 5 Years  | = | 3 Weeks/120 Hours |
| 12 Years | = | 4 Weeks/160 Hours |
| 20 Years | = | 5 Weeks/200 Hours |
| 25 Years | = | 6 Weeks/240 Hours |

13.3 Vacations may be taken a day at a time if it does not compromise the proper functioning of the department. Employees must give at least seven (7) days notice to the officer in charge of the department when requesting said vacation, and the officer in charge of the department must give at least a seven (7) day notice when requiring the employee to take vacation unless otherwise mutually agreed between the individual involved and the officer in charge of the department.

13.4 The time of taking vacations will be arranged between the officer in charge of the department and the employees. Where one or more employees ask for the same vacation date, and in the opinion of the officer in charge, the City's work would suffer by letting them go at the same time, then the seniority would prevail and the employee with the longest record of employment with the City would be given preference.

13.5 The officer in charge of the department shall prepare a vacation list by the first of February and arrange the vacations according to seniority for a calendar year running from March 1<sup>st</sup> to March 1<sup>st</sup>, vacation granted during this calendar year will be on a first-come basis.

13.6 The officer in charge of the department will grant as many employees off at one time, per shift, on vacation, holiday or accumulated holiday, providing the shift does not go below minimum manpower or the City's work suffer by letting more than one employee off per shift, on either vacation, holiday or accumulated holiday.

13.7 The Chief of Police must be given seven (7) days notice before the cancellation of vacation or holidays granted prior to the notice. Vacation or holidays may be canceled by the order of the Chief of Police and personnel called back from vacation or holidays in extreme emergencies, such as but not limited to natural

disasters, floods, tornadoes, explosions, and other emergency incidents which will cause the need for most of the available manpower.

13.8 In order to receive payment of accumulated vacation upon termination, an employee must submit a written resignation to his or her department head at least fourteen (14) calendar days before leaving.

## **ARTICLE 14**

### **BEREAVEMENT LEAVE**

14.1 Bereavement leave will be granted employees a maximum of two (2) scheduled work days for the purpose of bereaving the death of a member of the employee's immediate family, provided the employee makes the arrangement with and it is approved by the officer in charge of his/her department. This leave must be used within 30 calendar days of the death of the family member.

14.2 For the purposes of the above paragraph, a member of the immediate family means the employee's spouse, child, stepchild, grandchild, mother, father, stepparent, sister, brother, step sibling, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandmother, grandfather, and spouse's grandmother, grandfather, and stepparent.

## **ARTICLE 15**

### **EMPLOYEE'S INSURANCE COVERAGE**

15.1 The employer agrees to continue to make a base medical insurance program available, similar to the one in effect on the date of this agreement, subject to the limitations, benefits and conditions established by the contract between the employer and the insurance carrier, or a plan with a comparable or increased aggregate value of benefits, as determined by an actuarial value. The employer reserves the right to change from a fully-insured health plan to a self-insured plan provided that the aggregate value, as determined by an actuarial value, is not changed.

In the event the City offers additional health insurance plans, these optional plans are not negotiated plans and changes to these plans may be made at the employer's discretion, including changing from a self-insured health plan to a fully insured health plan. Employees who choose an optional plan must pay any difference if the cost is greater than the cost of the negotiated plan. These optional plans shall not be negotiable nor subject to M.S. 471.6161 and any additional plans may be added at the City's sole discretion.

For 2023, the City contribution and cap will be One Thousand Four Hundred thirty dollars (\$1,430.00) per month towards the cost of family coverage, Nine Hundred

dollars (\$900.00) for employee plus spouse coverage, Eight Hundred dollars (\$800.00) for employee plus child(ren) coverage and Five Hundred Twenty dollars (\$520.00) for single coverage, with the employee picking up the remaining balance of the plan the employee has selected.

For 2024, the City contribution and cap will be One Thousand Six Hundred thirty dollars (\$1,630.00) per month towards the cost of family coverage, One Thousand Twenty-Five dollars (\$1,025.00) for employee plus spouse coverage, Nine Hundred Ten dollars (\$910.00) for employee plus child(ren) coverage and Five Hundred Seventy dollars (\$570.00) for single coverage, with the employee picking up the remaining balance of the plan the employee has selected.

For 2025, the City contribution and cap will be One Thousand Eight Hundred thirty dollars (\$1,830.00) per month towards the cost of family coverage, One Thousand One Hundred Fifty dollars (\$1,150.00) for employee plus spouse coverage, One Thousand Twenty dollars (\$1,020.00) for employee plus child(ren) coverage and Six Hundred Twenty dollars (\$620.00) for single coverage, with the employee picking up the remaining balance of the plan the employee has selected.

City contribution shall not exceed the total monthly premium payment.

There will be an enrollment period each year for coverage effective January 1 of the next year. Employees may change plans during this enrollment period with their choice effective January 1<sup>st</sup> through December 31<sup>st</sup>. The coverage for the insured employee and family must be by the same plan each year.

- 15.2 In the event the health insurance provisions of this agreement fail to meet the requirements of the Affordable Care Act, the Bargaining Unit and Employer will meet and confer over alternative provisions so as to comply with the Act.
- 15.3 The Employer shall pay the Employer's share of the premium for six months for all employees who are on leave of absence because of sickness. Leaves of absence for military service or other reasons will not be covered.
- 15.4 The Employer shall pay the Employer's share of the premium for twelve months for all employees who are disabled with a compensable disability.
- 15.5 The Employer shall pay the premium for a \$30,000 term life insurance policy for employee. Employees may purchase additional term life coverage as is available from the insurance carrier with payment for the additional coverage by payroll deduction.
- 15.6 New employees will sign authorization cards for all insurance on the first day of employment, and the insurance will be in effect on the first of the month following one (1) month.

- 15.7 When an employee is off work with a compensable injury, they shall receive the difference between the employee's compensation check and their regular check for the first thirty (30) days, the employee may use sick leave in an amount sufficient so that with their compensation check, the employee will receive their regular salary.
- 15.8 Employer will provide a long term disability insurance program as established by Employer.
- 15.9 All employees will participate in a Post Employment Health Care Savings Plan through the Minnesota State Retirement System (MSRS). Per Minn. Stat. §352.98, the Employer will setup and administer the program as defined and determined by MSRS. Employees will contribute three percent (3%) of their salary to the Post Employment Health Care Savings Plan.

The Employer agrees to allow the current agreement to be reopened for the purpose of adding an addendum allowing retiring employees covered under this agreement to make modifications to the contributions allowed under the Post Employment Health Care Savings Plan.

- 15.10 The Employer will allow for use of up to a maximum of \$750.00 per year from the employee's accumulated sick leave account of equal or greater value, which can be applied each year toward satisfying deductible costs. Payment to be in the form of reimbursement after the deductible cost has been paid by the insured and receipts submitted to the Employer showing payment.

## **ARTICLE 16**

### **PREMIUM PAY**

- 16.1 Time and one-half (1½) will be paid after eight hours of work and over forty hours of work for officers scheduled eight (8) hour shifts. Time and one-half (1½) will be paid after ten (10) hours of work and over forty hours of work for officers working scheduled ten (10) hour shifts. Premium pay can be taken in comp time at time and one-half (1½). Differentials will also be paid at time and one-half (1½).
- 16.2 An off-duty employee will be paid time and one-half while attending mandatory training sessions scheduled by the Chief of Police. Travel time will be paid at the same rate as training when travel is outside of Mower County.
- 16.3 A night shift differential of eighty cents (.80¢) per hour shall be paid employees for all regularly scheduled hours worked between 5:00 PM and 7:00 AM.
- 16.4 A Sunday differential of thirty-five cents (.35¢) per hour shall be paid employees on duty from midnight Saturday to midnight Sunday.

- 16.5 When employee works as a Sergeant for a one (1) hour period or longer, employee will receive the rate of base pay as scheduled for a sergeant during the period of replacement.
- 16.6 An employee who is required to appear in court during his/her scheduled off-duty time shall receive a minimum of two (2) hours' pay at one and one-half (1½) times the employee's base pay rate. An extension or early report to a regularly scheduled shift for court appearance does not qualify the employee for the two (2) hour minimum.
- 16.7 An off-duty employee who receives less than a twenty-four hour advance notice of cancellation of a scheduled court appearance shall receive two (2) hours of pay at a time and one-half (1½). Court cancellation the same day as court earns two hours of pay at time and one-half (1½).
- 16.8 Employee has the right to work a minimum of four (4) hours on non-connecting overtime call-ins.
- 16.9 All overtime including court time may be taken as compensation time with the approval of the supervisor in accordance with present policy.
- 16.10 Overtime pay as earned shall be paid in accordance with the regular payroll schedule as accrued, when the officer has indicated that they prefer pay instead of compensatory time.
- 16.11 Officers will receive a minimum of two hours of overtime pay for callbacks.
- 16.12 Officers who perform the duties of K-9 Handler, shall receive an amount equivalent to three and one-half hours of pay at the employee's base hourly pay rate per week and no compensatory time, in addition to their hourly wage while performing these duties.
- 16.12 When an employee is called for court preparation on police business, the employee will be paid time and one-half (1½) of the employee's base pay rate.
- 16.13 Employees, who perform field training officer (FTO) duties, shall receive one-half hour (½) of compensatory time for every eight hours of FTO duties performed.
- 16.14 For the purpose of computing premium pay in this article, premium pay shall not be pyramided, compounded or paid twice for the same hours worked.

## **ARTICLE 17**

### **DISCIPLINE**

17.1 The EMPLOYER will discipline employees for just cause only. Discipline will be in one of the following forms:

- A. Oral reprimand;
- B. Written reprimand;
- C. Suspension;
- D. Demotion; or
- E. Discharge

17.2 Suspensions, demotions, and discharges will be in written form.

17.3 Written, reprimands, notices of suspension, notices of demotion and notices of discharge, which are to become part of an Employee's personnel file shall be read and acknowledged by signature of the Employee. Employees and the UNION will receive a copy of such reprimands and/or notices.

17.4 Employees will not be questioned concerning an investigation of disciplinary action unless the employee has been given an opportunity to have a Union representative present at such questioning.

17.5 Grievances relating to this ARTICLE originating at 17.1 C., D. and E., shall be initiated by the UNION at Step #3 of the grievance procedure under Article 5 of this AGREEMENT.

## **ARTICLE 18**

### **GENERAL**

18.1 Upon presentation of an authorized check-off for dues card to the City Recorder's Office, the City Recorder's Office shall make the necessary deduction and remit same to the Law Enforcement Labor Services, Inc.

18.2 This deduction shall be from the employee's regular payroll.

18.3 Established minimum manpower requirements are three (3) officers for shift number one (1), four (4) officers for shift numbers two (2) and three (3). The Police Chief shall have the right to reduce personnel on shift three (3) to three (3) officers between 3:00 AM to 7:00 AM, seven days per week. If the Department should use a scheduling method involving the use of ten (10) hour regularly scheduled workdays for the majority of its patrol officers, the Union would agree to the following minimum manpower requirements. Three (3) officers between the hours

of 2:00 AM to 4:00 PM, with four (4) officers between the hours of 4:00 PM to 2:00 AM.

- 18.4 Both the Employer and the Union agree to maintain safe and sanitary working conditions and equipment.
- 18.5 The City presently maintains public liability insurance with respect to the police officers. The City agrees to continue maintaining such coverage or the equivalent during the term of this agreement.
- 18.6 The City recognizes the principal of seniority, which shall not be construed so as to give anyone a claim to duties of which he/she is unable to perform.
- 18.7 The City will reimburse employees for the cost of books and tuition for police-related subjects at public institutions if pre-approved by the Police Chief and City Administrator and the course schedule is compatible with department scheduling requirements. The employee must receive a "C" or above or a "Pass" for a pass/fail class in order to qualify for reimbursement. A written grade report as well as receipts for tuition and books must be submitted to the Chief of Police with request for reimbursement.

## **ARTICLE 19**

### **PAY PLAN**

- 19.1 In calendar years 2023, 2024 and 2025, respectively, employees will be paid the base pay as provided in employer's base pay schedule for the respective calendar year, which are attached hereto as reference.

| <b>Job Title</b> | <b>Pay Grade</b> |
|------------------|------------------|
| Police Officer   | 16               |

- 19.2 An employee that begins employment as an employee in this bargaining unit on or after January 1, 2020, may be paid, at the beginning of employment, or, moved upon completion of a one-year probationary period, to a higher base pay amount than provided in the employer's base pay schedule, as determined by the employer, based on years of law enforcement experience.

## **ARTICLE 20**

### **POST IN – SERVICE TRAINING POLICY**

- 20.1 The City agrees to compensate the Austin Police Officers for the in-service training requirements of the Police Officers Standards and Training Board. This will be done at the straight-time rate and will be accredited to the officers compensatory time account and will be payable subject to the Compensation Time Policy. In

order for officers of this department to receive compensatory time, the following conditions must be met:

1. Management will require the attendance of individual officers on specific times and dates.
2. Management will select the courses that will be eligible for this credit. This will be based upon the individual officer's position, responsibility, level of accomplishment and the need for additional training.
3. This policy will not eliminate the individual officers attending outside training programs, however, these programs will not be given credit for compensatory time unless the course in question and the hours involved are approved prior to the taking of the course. This control would be in effect even if the Police Officers Training Board has established the course in question as accredited.
4. All officers must maintain the mandated hours of in-service training each year as required by the Minnesota POST Board.
5. Management agrees to make an effort to permit on-duty officers to participate in the program without compensatory time while on duty. This, however, will be limited by the Minimum Manpower Rule and the amount of personnel available and the policing problems that exist. In summary, the City's policing needs will take precedent over the on-duty training.
6. Management's decision as it pertains to limitations stated in section 2, of this policy are final and are not subject to grievance procedures.

## **ARTICLE 21**

### **DURATION**

21.1 This Agreement shall remain in full force and effect from January 1, 2023, to December 31, 2025.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the latest date affixed to the signatures below.

**SIGNATURE OF UNION  
REPRESENTATIVE**

---

President, Local #73  
Law Enforcement Labor Services, Inc.

**SIGNATURE OF CITY  
REPRESENTATIVE**

---

Mayor  
City of Austin, Minnesota

**Jay Maher**

Digitally signed by Jay Maher  
Date: 2022.12.13 08:06:35  
-06'00'

Business Agent  
Law Enforcement Labor Services, Inc.

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

ATTEST:

**City Recorder**

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

## 2023 BPS - Step System

| Job Evaluation Point Range |      | Grade | Pay Range |         |         |         |         |         |          |
|----------------------------|------|-------|-----------|---------|---------|---------|---------|---------|----------|
|                            |      |       | Step 1    | Step 2  | Step 3  | Step 4  | Step 5  | Step 6  | Step 7   |
| Min                        | Max  | 1-36  | 70.00%    | 75.00%  | 80.00%  | 85.00%  | 90.00%  | 95.00%  | 100.00%  |
| 150                        | 163  | 1     | \$20.50   | \$21.97 | \$23.43 | \$24.90 | \$26.36 | \$27.83 | \$ 29.29 |
| 164                        | 178  | 2     | \$21.11   | \$22.62 | \$24.13 | \$25.64 | \$27.14 | \$28.65 | \$ 30.16 |
| 179                        | 193  | 3     | \$21.75   | \$23.30 | \$24.86 | \$26.41 | \$27.96 | \$29.52 | \$ 31.07 |
| 194                        | 209  | 4     | \$22.40   | \$24.00 | \$25.60 | \$27.20 | \$28.80 | \$30.40 | \$ 32.00 |
| 210                        | 225  | 5     | \$23.07   | \$24.72 | \$26.37 | \$28.02 | \$29.66 | \$31.31 | \$ 32.96 |
| 226                        | 241  | 6     | \$23.77   | \$25.46 | \$27.16 | \$28.86 | \$30.56 | \$32.25 | \$ 33.95 |
| 242                        | 258  | 7     | \$24.48   | \$26.23 | \$27.98 | \$29.73 | \$31.47 | \$33.22 | \$ 34.97 |
| 259                        | 276  | 8     | \$25.21   | \$27.02 | \$28.82 | \$30.62 | \$32.42 | \$34.22 | \$ 36.02 |
| 277                        | 294  | 9     | \$25.97   | \$27.83 | \$29.68 | \$31.54 | \$33.39 | \$35.25 | \$ 37.10 |
| 295                        | 313  | 10    | \$26.75   | \$28.66 | \$30.57 | \$32.48 | \$34.39 | \$36.30 | \$ 38.21 |
| 314                        | 332  | 11    | \$27.55   | \$29.52 | \$31.49 | \$33.46 | \$35.42 | \$37.39 | \$ 39.36 |
| 333                        | 352  | 12    | \$28.38   | \$30.41 | \$32.43 | \$34.46 | \$36.49 | \$38.51 | \$ 40.54 |
| 353                        | 372  | 13    | \$29.23   | \$31.31 | \$33.40 | \$35.49 | \$37.58 | \$39.66 | \$ 41.75 |
| 373                        | 393  | 14    | \$30.11   | \$32.26 | \$34.41 | \$36.56 | \$38.71 | \$40.86 | \$ 43.01 |
| 394                        | 415  | 15    | \$31.01   | \$33.23 | \$35.44 | \$37.66 | \$39.87 | \$42.09 | \$ 44.30 |
| 416                        | 437  | 16    | \$31.94   | \$34.22 | \$36.50 | \$38.79 | \$41.07 | \$43.35 | \$ 45.63 |
| 438                        | 460  | 17    | \$32.89   | \$35.24 | \$37.59 | \$39.94 | \$42.29 | \$44.64 | \$ 46.99 |
| 461                        | 484  | 18    | \$33.88   | \$36.30 | \$38.72 | \$41.14 | \$43.56 | \$45.98 | \$ 48.40 |
| 485                        | 508  | 19    | \$34.90   | \$37.40 | \$39.89 | \$42.38 | \$44.87 | \$47.37 | \$ 49.86 |
| 509                        | 533  | 20    | \$35.95   | \$38.51 | \$41.08 | \$43.65 | \$46.22 | \$48.78 | \$ 51.35 |
| 534                        | 559  | 21    | \$37.02   | \$39.67 | \$42.31 | \$44.96 | \$47.60 | \$50.25 | \$ 52.89 |
| 560                        | 585  | 22    | \$38.14   | \$40.86 | \$43.58 | \$46.31 | \$49.03 | \$51.76 | \$ 54.48 |
| 586                        | 613  | 23    | \$39.28   | \$42.08 | \$44.89 | \$47.69 | \$50.50 | \$53.30 | \$ 56.11 |
| 614                        | 641  | 24    | \$40.46   | \$43.35 | \$46.24 | \$49.13 | \$52.02 | \$54.91 | \$ 57.80 |
| 642                        | 670  | 25    | \$41.67   | \$44.65 | \$47.62 | \$50.60 | \$53.58 | \$56.55 | \$ 59.53 |
| 671                        | 700  | 26    | \$42.92   | \$45.99 | \$49.06 | \$52.12 | \$55.19 | \$58.25 | \$ 61.32 |
| 701                        | 731  | 27    | \$44.21   | \$47.37 | \$50.53 | \$53.69 | \$56.84 | \$60.00 | \$ 63.16 |
| 732                        | 763  | 28    | \$45.54   | \$48.79 | \$52.04 | \$55.29 | \$58.55 | \$61.80 | \$ 65.05 |
| 764                        | 795  | 29    | \$46.90   | \$50.25 | \$53.60 | \$56.95 | \$60.30 | \$63.65 | \$ 67.00 |
| 796                        | 829  | 30    | \$48.31   | \$51.76 | \$55.21 | \$58.66 | \$62.11 | \$65.56 | \$ 69.01 |
| 830                        | 864  | 31    | \$49.76   | \$53.31 | \$56.86 | \$60.42 | \$63.97 | \$67.53 | \$ 71.08 |
| 865                        | 899  | 32    | \$51.25   | \$54.91 | \$58.57 | \$62.23 | \$65.89 | \$69.55 | \$ 73.21 |
| 900                        | 936  | 33    | \$52.79   | \$56.56 | \$60.33 | \$64.10 | \$67.87 | \$71.64 | \$ 75.41 |
| 937                        | 974  | 34    | \$54.37   | \$58.25 | \$62.14 | \$66.02 | \$69.90 | \$73.79 | \$ 77.67 |
| 975                        | 1013 | 35    | \$56.00   | \$60.00 | \$64.00 | \$68.00 | \$72.00 | \$76.00 | \$ 80.00 |
| 1014                       | 1054 | 36    | \$57.68   | \$61.80 | \$65.92 | \$70.04 | \$74.16 | \$78.28 | \$ 82.40 |

**Notes:**

- 2023 represents 4% base increase over 2022.
- Employees starting in a position may be placed on any step at the discretion of the City Administrator.
- Employees promoted to a position that is in a higher pay grade, will be placed on a step that is at least equivalent to, but not less than, their base wage before they were promoted.
- No step increases will be awarded under this structure after December 31, 2023.

## 2024 BPS - Step System

| Job Evaluation Point Range |      | Grade | Pay Range       |                  |                   |                   |                   |                   |                   |
|----------------------------|------|-------|-----------------|------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
|                            |      |       | Step 1<br>Start | Step 2<br>6 mos. | Step 3<br>12 mos. | Step 4<br>24 mos. | Step 5<br>36 mos. | Step 6<br>48 mos. | Step 7<br>60 mos. |
| Min                        | Max  | 1-36  | 70.00%          | 75.00%           | 80.00%            | 85.00%            | 90.00%            | 95.00%            | 100.00%           |
| 150                        | 163  | 1     | \$21.12         | \$22.63          | \$24.14           | \$25.64           | \$27.15           | \$28.66           | \$30.17           |
| 164                        | 178  | 2     | \$21.75         | \$23.30          | \$24.86           | \$26.41           | \$27.96           | \$29.52           | \$31.07           |
| 179                        | 193  | 3     | \$22.40         | \$24.00          | \$25.60           | \$27.20           | \$28.80           | \$30.40           | \$32.00           |
| 194                        | 209  | 4     | \$23.07         | \$24.72          | \$26.37           | \$28.02           | \$29.66           | \$31.31           | \$32.96           |
| 210                        | 225  | 5     | \$23.76         | \$25.46          | \$27.16           | \$28.86           | \$30.55           | \$32.25           | \$33.95           |
| 226                        | 241  | 6     | \$24.48         | \$26.23          | \$27.98           | \$29.72           | \$31.47           | \$33.22           | \$34.97           |
| 242                        | 258  | 7     | \$25.21         | \$27.01          | \$28.82           | \$29.73           | \$32.42           | \$34.22           | \$36.02           |
| 259                        | 276  | 8     | \$25.97         | \$27.83          | \$29.68           | \$31.54           | \$33.39           | \$35.25           | \$37.10           |
| 277                        | 294  | 9     | \$26.75         | \$28.66          | \$30.57           | \$32.48           | \$34.39           | \$36.30           | \$38.21           |
| 295                        | 313  | 10    | \$27.55         | \$29.52          | \$31.49           | \$33.45           | \$35.42           | \$37.39           | \$39.36           |
| 314                        | 332  | 11    | \$28.38         | \$30.41          | \$32.43           | \$34.46           | \$36.49           | \$38.51           | \$40.54           |
| 333                        | 352  | 12    | \$29.23         | \$31.32          | \$33.41           | \$35.49           | \$37.58           | \$39.67           | \$41.76           |
| 353                        | 372  | 13    | \$30.10         | \$32.25          | \$34.40           | \$36.55           | \$38.70           | \$40.85           | \$43.00           |
| 373                        | 393  | 14    | \$31.01         | \$33.23          | \$35.44           | \$37.66           | \$39.87           | \$42.09           | \$44.30           |
| 394                        | 415  | 15    | \$31.94         | \$34.22          | \$36.50           | \$38.79           | \$41.07           | \$43.35           | \$45.63           |
| 416                        | 437  | 16    | \$32.90         | \$35.25          | \$37.60           | \$39.95           | \$42.30           | \$44.65           | \$47.00           |
| 438                        | 460  | 17    | \$33.88         | \$36.30          | \$38.72           | \$41.14           | \$43.56           | \$45.98           | \$48.40           |
| 461                        | 484  | 18    | \$34.90         | \$37.39          | \$39.88           | \$42.37           | \$44.87           | \$47.36           | \$49.85           |
| 485                        | 508  | 19    | \$35.95         | \$38.52          | \$41.09           | \$43.65           | \$46.22           | \$48.79           | \$51.36           |
| 509                        | 533  | 20    | \$37.02         | \$39.67          | \$42.31           | \$44.96           | \$47.60           | \$50.25           | \$52.89           |
| 534                        | 559  | 21    | \$38.13         | \$40.86          | \$43.58           | \$46.31           | \$49.03           | \$51.75           | \$54.48           |
| 560                        | 585  | 22    | \$39.28         | \$42.09          | \$44.89           | \$47.70           | \$50.50           | \$53.31           | \$56.11           |
| 586                        | 613  | 23    | \$40.46         | \$43.35          | \$46.24           | \$49.12           | \$52.01           | \$54.90           | \$57.79           |
| 614                        | 641  | 24    | \$41.67         | \$44.65          | \$47.63           | \$50.60           | \$53.58           | \$56.56           | \$59.53           |
| 642                        | 670  | 25    | \$42.92         | \$45.99          | \$49.05           | \$52.12           | \$55.18           | \$58.25           | \$61.32           |
| 671                        | 700  | 26    | \$44.21         | \$47.37          | \$50.53           | \$53.69           | \$56.84           | \$60.00           | \$63.16           |
| 701                        | 731  | 27    | \$45.54         | \$48.80          | \$52.05           | \$55.30           | \$58.55           | \$61.81           | \$65.06           |
| 732                        | 763  | 28    | \$46.90         | \$50.25          | \$53.60           | \$56.95           | \$60.30           | \$63.65           | \$67.00           |
| 764                        | 795  | 29    | \$48.31         | \$51.76          | \$55.21           | \$58.66           | \$62.11           | \$65.56           | \$69.01           |
| 796                        | 829  | 30    | \$49.76         | \$53.31          | \$56.86           | \$60.42           | \$63.97           | \$67.53           | \$71.08           |
| 830                        | 864  | 31    | \$51.25         | \$54.91          | \$58.57           | \$62.23           | \$65.89           | \$69.55           | \$73.21           |
| 865                        | 899  | 32    | \$52.78         | \$56.56          | \$60.33           | \$64.10           | \$67.87           | \$71.64           | \$75.41           |
| 900                        | 936  | 33    | \$54.37         | \$58.25          | \$62.14           | \$66.02           | \$69.91           | \$73.79           | \$77.67           |
| 937                        | 974  | 34    | \$56.00         | \$60.00          | \$64.00           | \$68.00           | \$72.00           | \$76.00           | \$80.00           |
| 975                        | 1013 | 35    | \$57.68         | \$61.80          | \$65.92           | \$70.04           | \$74.16           | \$78.28           | \$82.40           |
| 1014                       | 1054 | 36    | \$59.41         | \$63.65          | \$67.90           | \$72.14           | \$76.39           | \$80.63           | \$84.87           |

**Notes:**

- 2024 represents 3% base increase over 2023.
- Employees starting in a position may be placed on any step at the discretion of the City Administrator.
- Employees promoted to a position that is in a higher pay grade, will be placed on a step that is at least equivalent to, but not less than, their base wage before they were promoted.
- No step increases will be awarded under this structure after December 31, 2024.

## 2025 BPS - Step System

| Job Evaluation Point Range |      | Grade | Pay Range |         |         |         |         |         |         |
|----------------------------|------|-------|-----------|---------|---------|---------|---------|---------|---------|
|                            |      |       | Step 1    | Step 2  | Step 3  | Step 4  | Step 5  | Step 6  | Step 7  |
|                            |      |       | Start     | 6 mos.  | 12 mos. | 24 mos. | 36 mos. | 48 mos. | 60 mos. |
| Min                        | Max  | 1-36  | 70.00%    | 75.00%  | 80.00%  | 85.00%  | 90.00%  | 95.00%  | 100.00% |
| 150                        | 163  | 1     | \$21.76   | \$23.31 | \$24.14 | \$26.42 | \$27.97 | \$29.53 | \$31.08 |
| 164                        | 178  | 2     | \$22.40   | \$24.00 | \$25.60 | \$27.20 | \$28.80 | \$30.40 | \$32.00 |
| 179                        | 193  | 3     | \$23.07   | \$24.72 | \$26.37 | \$28.02 | \$29.67 | \$31.31 | \$32.96 |
| 194                        | 209  | 4     | \$23.76   | \$25.46 | \$27.16 | \$28.86 | \$30.55 | \$32.25 | \$33.95 |
| 210                        | 225  | 5     | \$24.48   | \$26.23 | \$27.97 | \$29.72 | \$31.47 | \$33.22 | \$34.97 |
| 226                        | 241  | 6     | \$25.21   | \$27.01 | \$27.98 | \$30.62 | \$32.42 | \$34.22 | \$36.02 |
| 242                        | 258  | 7     | \$25.97   | \$27.83 | \$29.68 | \$29.73 | \$33.39 | \$35.24 | \$37.10 |
| 259                        | 276  | 8     | \$26.75   | \$28.66 | \$30.57 | \$32.48 | \$34.39 | \$36.30 | \$38.21 |
| 277                        | 294  | 9     | \$27.55   | \$29.52 | \$31.49 | \$33.46 | \$35.42 | \$37.39 | \$39.36 |
| 295                        | 313  | 10    | \$28.38   | \$30.40 | \$32.43 | \$34.46 | \$36.48 | \$38.51 | \$40.54 |
| 314                        | 332  | 11    | \$29.23   | \$31.32 | \$33.41 | \$35.49 | \$37.58 | \$39.67 | \$41.76 |
| 333                        | 352  | 12    | \$30.11   | \$32.26 | \$33.41 | \$36.56 | \$38.71 | \$40.86 | \$43.01 |
| 353                        | 372  | 13    | \$31.01   | \$33.22 | \$35.43 | \$37.65 | \$39.86 | \$42.08 | \$44.29 |
| 373                        | 393  | 14    | \$31.94   | \$34.22 | \$36.50 | \$38.78 | \$41.07 | \$43.35 | \$45.63 |
| 394                        | 415  | 15    | \$32.90   | \$35.25 | \$37.60 | \$38.79 | \$42.30 | \$44.65 | \$47.00 |
| 416                        | 437  | 16    | \$33.89   | \$36.31 | \$38.73 | \$41.15 | \$43.57 | \$45.99 | \$48.41 |
| 438                        | 460  | 17    | \$34.90   | \$37.39 | \$39.88 | \$42.37 | \$44.87 | \$47.36 | \$49.85 |
| 461                        | 484  | 18    | \$35.94   | \$38.51 | \$41.08 | \$43.65 | \$46.21 | \$48.78 | \$51.35 |
| 485                        | 508  | 19    | \$37.03   | \$39.67 | \$41.09 | \$44.96 | \$47.61 | \$50.25 | \$52.90 |
| 509                        | 533  | 20    | \$38.13   | \$40.86 | \$43.58 | \$46.31 | \$49.03 | \$51.75 | \$54.48 |
| 534                        | 559  | 21    | \$39.28   | \$42.08 | \$44.89 | \$47.69 | \$50.50 | \$53.31 | \$56.11 |
| 560                        | 585  | 22    | \$40.46   | \$43.35 | \$46.24 | \$49.13 | \$52.02 | \$54.91 | \$57.80 |
| 586                        | 613  | 23    | \$41.67   | \$43.35 | \$46.24 | \$50.60 | \$53.57 | \$56.55 | \$59.53 |
| 614                        | 641  | 24    | \$42.92   | \$45.99 | \$49.06 | \$52.12 | \$55.19 | \$58.25 | \$61.32 |
| 642                        | 670  | 25    | \$44.21   | \$47.37 | \$50.52 | \$53.68 | \$56.84 | \$60.00 | \$63.16 |
| 671                        | 700  | 26    | \$45.54   | \$48.79 | \$52.04 | \$55.30 | \$58.55 | \$61.80 | \$65.05 |
| 701                        | 731  | 27    | \$46.91   | \$50.26 | \$53.61 | \$56.96 | \$60.31 | \$63.66 | \$67.01 |
| 732                        | 763  | 28    | \$48.31   | \$51.76 | \$55.21 | \$58.66 | \$62.11 | \$65.56 | \$69.01 |
| 764                        | 795  | 29    | \$49.76   | \$53.31 | \$56.86 | \$60.42 | \$63.97 | \$67.53 | \$71.08 |
| 796                        | 829  | 30    | \$51.25   | \$54.91 | \$58.57 | \$62.23 | \$65.89 | \$69.55 | \$73.21 |
| 830                        | 864  | 31    | \$52.79   | \$56.56 | \$60.33 | \$64.10 | \$67.87 | \$71.64 | \$75.41 |
| 865                        | 899  | 32    | \$54.37   | \$56.56 | \$62.13 | \$66.02 | \$69.90 | \$73.79 | \$77.67 |
| 900                        | 936  | 33    | \$56.00   | \$60.00 | \$64.00 | \$68.00 | \$72.00 | \$76.00 | \$80.00 |
| 937                        | 974  | 34    | \$57.68   | \$61.80 | \$65.92 | \$70.04 | \$74.16 | \$78.28 | \$82.40 |
| 975                        | 1013 | 35    | \$59.41   | \$63.65 | \$67.90 | \$72.14 | \$76.38 | \$80.63 | \$84.87 |
| 1014                       | 1054 | 36    | \$61.19   | \$65.56 | \$69.93 | \$74.31 | \$76.39 | \$83.05 | \$87.42 |

Notes:

- 2025 represents 3% base increase over 2024.
- Employees starting in a position may be placed on any step at the discretion of the City Administrator.
- Employees promoted to a position that is in a higher pay grade, will be placed on a step that is at least equivalent to, but not less than, their base wage before they were promoted.
- No step increases will be awarded under this structure after December 31, 2025.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE MAYOR TO SIGN AGREEMENT BETWEEN LAW  
ENFORCEMENT LABOR SERVICES (LELS), LOCAL #73 AND THE  
CITY OF AUSTIN, MINNESOTA

WHEREAS, LELS is the exclusive representative for certain City of Austin employees; and

WHEREAS, the current labor agreement between the City of Austin and LELS will expire on December 31, 2022;

WHEREAS, the City of Austin and LELS met and negotiated over the terms of the new labor agreement between the parties;

WHEREAS, the City of Austin and LELS have reached an agreement for a contract between the parties for the calendar years 2023 – 2025; and

WHEREAS, the contract sets forth items for calendar years 2023 – 2025, which sets standard conditions of employment for employees covered under the LELS labor agreement.

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

1. The Labor Agreement between the City of Austin and LELS for January 1, 2023 through December 31, 2025 is approved.
2. The City of Austin's Mayor and City Recorder be authorized to sign the labor agreement between the City of Austin and LELS for calendar years 2023 – 2025.
3. The Labor Agreement referred to in this resolution will be effective January 1, 2023 through December 31, 2025.
4. The City of Austin shall implement the agreement.

Approved by the Austin City Council this 19<sup>th</sup> day of December 2022

YEAS

NAYS

ATTEST:

---

City Recorder

APPROVED:

---

Mayor

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



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

## Memorandum

**To:** Mayor & Council  
**From:** Steven J. Lang, P.E.  
**Date:** December 13, 2022  
**Subject:** Individual Control Mechanism  
 Hormel Foods Corporation

---

Hormel discharges sanitary sewer from their Austin Plant to the WWTP. The discharge from the facility is regulated by an Individual Control Mechanism (ICM). The ICM sets forth limitations, conditions and requirements for sanitary sewer discharges. Those items include:

- Flow (quantity of water discharged)
- CBOD (strength of the discharged water)
- TSS (suspended solids)
- TKN (nitrogen)
- pH

The WWTP is split into two facilities, a Domestic Plant and an Industrial Plant. Attached are two ICM agreements regulating flow and strength to both the Domestic and Industrial Plants. We work very closely with management and staff at the Hormel Plant to monitor flow and strength the stay within the parameters of the ICM agreement.

New to the agreements is language as to how they will transition with the new WWTP. The Domestic ICM agreement will expire and is not intended to be renewed once the new WWTP is up and running. The Industrial ICM limits will be modified to correspond with the Industrial design limits of the new WWTP.

We would recommend approving these 3-year agreements with Hormel Foods Corporation for both the Domestic and Industrial ICM discharge agreements. If you have any questions, please feel free to contact me.

**INDIVIDUAL CONTROL MECHANISM  
BETWEEN  
THE CITY OF AUSTIN  
AND HORMEL FOODS CORPORATION  
DOMESTIC PLANT**

The City of Austin operates wastewater treatment facilities serving the City. The facilities that are operated by the city are the Industrial and Domestic plants. By agreement between the City of Austin and Hormel Foods Corporation, only wastewater from Hormel Foods can be treated at the Industrial Plant. The Domestic Plant accepts wastewater from all residents, businesses, and industries including Hormel Foods Corporation. Hormel Foods Corporation operates a facility which discharges approximately 2.1 million gallons per day on a monthly average. The purpose of this agreement is to allow the discharge of wastewater from Hormel Foods to the Domestic wastewater treatment facility operated by the City; to set forth limitations, conditions, and requirements for the discharge; and to specify the rights and obligations of the parties to this agreement. This agreement is made under the provisions of the City of Austin's Ordinance Sec. 3.30 RULES AND REGULATIONS RELATING TO SEWER USE AND SERVICE CHARGE.

**Hormel Foods Corporation:** Hormel Foods, a pork processor, has a pretreatment system located at their facility. They have three DAF units followed by lime thickening and a plate filter press. The monitoring point for Hormel is Hope Street lift station just south of Hormel's property. A composite sampler is located at the Hope Street lift station along with a flow meter which is monitored and maintained by the City of Austin.

- 1) Under the authority of the City's ordinance and consistent with the conditions of the ordinance, the City agrees to accept and treat the wastewater discharged by Hormel Foods within the limits and in accordance with the conditions set forth in this agreement at the Domestic WVTP.
- 2) Hormel Foods is allowed to discharge wastewater to the City's wastewater Domestic treatment facilities. Hormel Foods shall comply with all discharge prohibitions contained in the ordinance and shall limit its discharge to within the following limits:

|          | <u>Maximum<br/>Monthly Average</u> | <u>Units</u>        |
|----------|------------------------------------|---------------------|
| Flow:    | 0.3                                | million gallons/day |
| CBOD:    | 3,500 lbs.                         | Pounds/day          |
| Ammonia: | 400 lbs.                           | Pounds/day          |
| TSS      | 2,000 lbs.                         | Pounds/day          |
| pH       | 6.0 – 10.5                         |                     |

- 3) The City shall monitor the wastewater discharge from Hormel Foods by representative sampling as follows:

Flow: Daily – Read flow meter total at wastewater treatment facilities

CBOD: Five times per week – 24-hour composite samples

TKN: Five times per week – 24 composite samples

TSS: Five times per week – 24-hour composite samples

pH: Once per day / grab sample

Analyses of all parameters shall be performed by the City of Austin or another laboratory mutually agreed to by Hormel Foods and the City.

- 4) Hormel Foods shall notify the City immediately by phone, and within seven (7) days in writing, of any spill or slug discharge which may result in a violation of the limits stated above. Hormel Foods shall notify the City of any changes in discharge which will require amendment of this agreement at least 180 days prior to the planned change. Until superseded, the limitations contained in this agreement shall be controlling.
- 5) This agreement is enforceable under the provisions of the ordinance. A violation of this agreement shall be a violation of the ordinance and subject to the enforcement provisions contained in the ordinance.
- 6) Hormel Foods shall pay for all costs when diverted to the Domestic Section of the facility. Hormel Foods shall pay for the diverted quantity at the current recovery rate minus any related cost for the collection system. Diversion of wastewater from the Industrial plant to the Domestic plant shall be at the discretion of the city.
- 7) For all reporting purposes and compliance conformance the City of Austin will combine the Industrial Control Mechanisms limits as identified in Section 2 of both the Industrial and Domestic WWTP agreements.
- 8) As provided for in Section 3.30 Subd. 7, of the ordinance, duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter the Hormel Foods facility for the purposes of inspection, observation, measurement, sampling, and testing pertinent to discharge to any public sewer or natural outlet in accordance with the provisions of the ordinance.
- 9) The City shall provide opportunity for Hormel Foods to obtain a split of any samples of the wastewater the City collects. Hormel Foods shall be allowed to review the records maintained by the City regarding their discharge.
- 10) Any record or other information obtained by the City of Austin or furnished to by the owner or operator of one or more SIU's as it applies to wastewater, which are certified by said owner or operator, and said certification, as it applies to wastewater is approved in writing by the city to relate to (a) sales figures, (b) processes or methods of production unique to the owner or operator, or (c) information which would tend to affect adversely the competitive position of said owner operator, shall be only for the confidential use of the City of Austin in discharging its statutory obligations, unless otherwise specifically authorized by said owner or operator. Provided, however that all such information may be used by the City of Austin in compiling or publishing analysis, reports, or summaries relating to the general condition of the wastewater and how it effects the city's Wastewater Treatment Facility so as long as such analyses or summaries do not identify any owner or operator who has so certified. Notwithstanding the foregoing, the City of Austin may disclose any information, whether or not otherwise considered confidential which it is obligated to disclose in order to

comply with city state federal laws and regulations, to the extent and for the purpose of such governmentally required disclosure.

- 11) This agreement may be renewed or modified by mutual consent of the City and Hormel Foods. This agreement is not transferable except with the prior written permission of the City and prior agreement in writing to the transfer and all conditions in the agreement by the parties involved.
- 12) The City of Austin commenced a WWTP Expansion and Phosphorus Reduction project, which has the following schedule:
  - Notice to Proceed: August 31, 2022
  - Substantial Completion: September 24<sup>th</sup>, 2025.
  - Final Completion: June 1<sup>st</sup>, 2026

It is expected that new treatment processes will eliminate the need for Hormel Foods to discharge wastewater to the Domestic treatment facilities. Therefore, this Agreement shall become effective upon the date it is signed by the City of Austin and Hormel Foods Corporation representatives and shall terminate on September 24, 2025, or upon substantial completion of the new treatment processes.

Agreed to:

CITY OF AUSTIN, MINNESOTA

HORMEL FOODS CORPORATION

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

Steve King  
Mayor

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

Kari Pollak  
Austin Plant Manager

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

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

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

Tom Dankert  
City Recorder

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

## **RESOLUTION NO.**

### **RESOLUTION AUTHORIZING INDIVIDUAL CONTROL MECHANISM AGREEMENT BETWEEN THE CITY OF AUSTIN AND HORMEL FOODS CORPORATION – DOMESTIC PLANT**

**WHEREAS**, an agreement with Hormel Foods Corporation outlining the terms and conditions for their wastewater discharge is required as part of the city's National Pollution Discharge Elimination System (NPDES) Permit to operate the Wastewater Treatment Plant; and

**WHEREAS**, in June 2004, the Austin City Council authorized by agreement the discharge of wastewater by Hormel Foods Corporation at the Wastewater Treatment Plant; and

**WHEREAS**, the the current ICM is set to expire on December 31, 2022.

**NOW THEREFORE, BE IT RESOLVED** that the City Council approves the agreement as attached in Exhibit A and that such agreement will be effective immediately upon adoption of this resolution and will expire on September 24, 2025.

Passed by a vote of yeas and nays this 19th day of December, 2022.

YEAS

NAYS

ATTEST:

---

City Recorder

APPROVED:

---

Mayor

**INDIVIDUAL CONTROL MECHANISM  
BETWEEN  
THE CITY OF AUSTIN  
AND HORMEL FOODS CORPORATION  
INDUSTRIAL PLANT**

The City of Austin operates wastewater treatment facilities serving the City. The facilities that are operated by the city are the Industrial and Domestic plants. By agreement between the City of Austin and Hormel Foods Corporation, only wastewater from Hormel Foods can be treated at the Industrial Plant. The Domestic Plant accepts wastewater from all residents, businesses, and industries including Hormel Foods Corporation. Hormel Foods Corporation operates a facility which discharges approximately 2.1 million gallons per day on a monthly average. The purpose of this agreement is to allow the discharge of wastewater from Hormel Foods to the Industrial wastewater treatment facility operated by the City; to set forth limitations, conditions, and requirements for the discharge; and to specify the rights and obligations of the parties to this agreement. This agreement is made under the provisions of the City of Austin's Ordinance Sec. 3.30 RULES AND REGULATIONS RELATING TO SEWER USE AND SERVICE CHARGE.

**Hormel Foods Corporation:** Hormel Foods, a pork processor, has a pretreatment system located at their facility. They have three DAF units followed by lime thickening and a plate filter press. The monitoring point for Hormel is Hope Street lift station just south of Hormel's property. A composite sampler is located at the Hope Street lift station along with a flow meter which is monitored and maintained by the City of Austin.

- 1) Under the authority of the City's ordinance and consistent with the conditions of the ordinance, the City agrees to accept and treat the wastewater discharged by Hormel Foods within the limits and in accordance with the conditions set forth in this agreement at the Industrial WWTP.
- 2) Hormel Foods is allowed to discharge wastewater to the City's wastewater Industrial treatment facilities. Hormel Foods shall comply with all discharge prohibitions contained in the ordinance and shall limit its discharge to within the following limits:

|          | Maximum<br>Monthly Average | Units               |
|----------|----------------------------|---------------------|
| Flow:    | 2.1                        | million gallons/day |
| CBOD:    | 22,000 lbs.                | Pounds/day          |
| Ammonia: | 1,500 lbs.                 | Pounds/day          |
| TSS      | 11,000 lbs.                | Pounds/day          |
| pH       | 6.0 – 10.5                 |                     |

- 3) The City shall monitor the wastewater discharge from Hormel Foods by representative sampling as follows:

Flow: Daily – Read flow meter total at wastewater treatment facilities  
CBOD: Five times per week – 24-hour composite samples  
TKN: Five times per week – 24 composite samples  
TSS: Five times per week – 24-hour composite samples  
pH: Once per day / grab sample

Analyses of all parameters shall be performed by the City of Austin or another laboratory mutually agreed to by Hormel Foods and the City.

- 4) Hormel Foods shall notify the City immediately by phone, and within seven (7) days in writing, of any spill or slug discharge which may result in a violation of the limits stated above. Hormel Foods shall notify the City of any changes in discharge which will require amendment of this agreement at least 180 days prior to the planned change. Until superseded, the limitations contained in this agreement shall be controlling.
- 5) This agreement is enforceable under the provisions of the ordinance. A violation of this agreement shall be a violation of the ordinance and subject to the enforcement provisions contained in the ordinance.
- 6) Hormel Foods shall pay for all costs at the Industrial Section of the Wastewater Treatment Facilities. In the event Hormel Foods Industrial Wastewater is required to be diverted to the Domestic Section of the facility, Hormel Foods shall pay for the diverted quantity at the current recovery rate minus any related cost for the collection system. Diversion of wastewater shall be at the discretion of the Wastewater Treatment Superintendent.
- 7) For all reporting purposes and compliance conformance the City of Austin will combine the Industrial Control Mechanisms limits as identified in Section 2 of both the Industrial and Domestic WWTP agreements.
- 8) As provided for in Section 3.30 Subd. 7, of the ordinance, duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter the Hormel Foods facility for the purposes of inspection, observation, measurement, sampling, and testing pertinent to discharge to any public sewer or natural outlet in accordance with the provisions of the ordinance.
- 9) The City shall provide opportunity for Hormel Foods to obtain a split of any samples of the wastewater the City collects. Hormel Foods shall be allowed to review the records maintained by the City regarding their discharge.
- 10) Any record or other information obtained by the City of Austin or furnished to by the owner or operator of one or more SIU's as it applies to wastewater, which are certified by said owner or operator, and said certification, as it applies to wastewater is approved in writing by the city to relate to (a) sales figures, (b) processes or methods of production unique to the owner or operator, or (c) information which would tend to affect adversely the competitive position of said owner operator, shall be only for the confidential use of the City of Austin in discharging its statutory obligations, unless otherwise specifically authorized by said owner or operator. Provided, however that all such information may be used by the City of Austin in compiling or publishing analysis, reports, or summaries relating to the general condition of the wastewater and how it effects the city's Wastewater Treatment Facility so as long as such analyses or summaries do not identify any owner or operator who has so certified. Notwithstanding the foregoing, the City of Austin may disclose any information, whether or not otherwise considered confidential which it is obligated to disclose in order to

comply with city state federal laws and regulations, to the extent and for the purpose of such governmentally required disclosure.

- 11) This agreement may be renewed or modified by mutual consent of the City and Hormel Foods. This agreement is not transferable except with the prior written permission of the City and prior agreement in writing to the transfer and all conditions in the agreement by the parties involved.
- 12) The City of Austin commenced a WWTP Expansion and Phosphorus Reduction project, which has the following schedule:
  - Notice to Proceed: August 31, 2022
  - Substantial Completion: September 24<sup>th</sup>, 2025.
  - Final Completion: June 1<sup>st</sup>, 2026

The following new discharge parameters will be implemented upon substantial completion of the project:

|                    | Maximum Month Average(7-day/wk) <sup>a</sup> | 7-Day Maximum Weekly Average <sup>b</sup> | Maximum Daily Discharge <sup>c</sup> | Units               |
|--------------------|--|---|--------------------------------------|---------------------|
| Flow:              | 3.17   |   | 3.46                                 | million gallons/day |
| <sup>1</sup> CBOD: | 27,300                                       | 38,090                                    |                                      | pounds/day          |
| <sup>2</sup> TSS   | 10,800                                       | 16,181                                    |                                      | pounds/day          |
| <sup>3</sup> TKN:  | 5,250  | 5,923                                     |                                      | pounds/day          |
| <sup>4</sup> P:    | 459  | 565                                       |                                      | pounds/day          |
| pH:                | 6.0 – 10.5                                   |   |                                      |                     |

<sup>1</sup> CBOD: Carbonaceous Biochemical Oxygen Demand

<sup>2</sup> TSS: Total Suspended Solids

<sup>3</sup> TKN: Total Kjeldahl Nitrogen

<sup>4</sup> P: Phosphorus

<sup>a</sup> Loadings are calculated over the course of the month using the average concentration (measured 5 times per week) and the average flow (7 days per week). 7-day week shall be determined as Sunday thru Saturday, in accordance with MPCA.

<sup>b</sup> Loadings are calculated on a 7-day basis using the average concentration (measured 5 times per week) and the average flow (7 days per week). Partial weeks will carry over to the next month.

<sup>c</sup> Determined based upon a single daily total flow measured at Hope Street Lift Station.

The City shall monitor the wastewater discharge from Hormel Foods by representative sampling as follows:

|            |  |
|------------|--|
| Flow:      | Daily – Read flow meter total at Hope Street Lift Station                                |
| CBOD:      | Five times per week, Monday thru Friday – 24-hour composite samples                      |
| TSS:       | Five times per week, Monday thru Friday – 24-hour composite samples                      |
| TKN:       | Five times per week, Monday thru Friday – 24-hour composite samples                      |
| Phosphorus | Five times per week, Monday thru Friday – 24-hour composite samples                      |
| pH:        | Monitored 24 hours per day for range compliance, reported with grab sample once per day. |

Analyses of all parameters shall be performed by the City of Austin or another laboratory mutually agreed to by Hormel Foods and the City.

13) This agreement shall become effective upon the date it is signed by the City of Austin and Hormel Foods Corporation representatives and will expire on December 31<sup>st</sup>, 2025.

Agreed to:

CITY OF AUSTIN, MINNESOTA

HORMEL FOODS CORPORATION

By: \_\_\_\_\_ By: \_\_\_\_\_  
Steve King Kari Pollak  
Mayor Austin Plant Manager

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

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

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

## **RESOLUTION NO.**

### **RESOLUTION AUTHORIZING INDIVIDUAL CONTROL MECHANISM AGREEMENT BETWEEN THE CITY OF AUSTIN AND HORMEL FOODS CORPORATION – INDUSTRIAL PLANT**

**WHEREAS**, an agreement with Hormel Foods Corporation outlining the terms and conditions for their wastewater discharge is required as part of the city's National Pollution Discharge Elimination System (NPDES) Permit to operate the Wastewater Treatment Plant; and

**WHEREAS**, in June 2004, the Austin City Council authorized by agreement the discharge of wastewater by Hormel Foods Corporation at the Wastewater Treatment Plant; and

**WHEREAS**, the ICM was set to expire on December 31, 2022.

**NOW THEREFORE, BE IT RESOLVED** that the City Council approves the agreement as attached in Exhibit A and that such agreement will be effective immediately upon adoption of this resolution and will expire on December 31, 2025.

Passed by a vote of yeas and nays this 19th 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 Engineer/P.W. Director  
507-437-9950  
Fax 507-437-7101  
slang@ci.austin.mn.us

## Memorandum

**To:** Mayor & Council  
**From:** Steven J. Lang, P.E.  
**Date:** December 15<sup>th</sup>, 2022  
**Subject:** Individual Control Mechanism  
 Nu-Tek Biosciences, LLC

---

Nu-Tek Biosciences, LLC is a manufacturer of hydrolyzed plant and yeast proteins used for industrial fermentations. Their facility located in the Creekside Business Park at 1103 27<sup>th</sup> Avenue NW discharges into the City's sanitary sewer collection system, where it passes through 2 lift stations and 4 miles of sewer pipe to reach the WWTP. The discharge from the facility is regulated by an Individual Control Mechanism (ICM). The ICM sets forth limitations, conditions, and requirements for sanitary sewer discharges. Those items include:

- Flow (quantity of water discharged)
- CBOD (strength of the discharged water)
- TSS (suspended solids)
- TKN (nitrogen)
- pH

City staff tests the effluent from the facility to ensure that it is complying with the limits set in the ICM agreement. The facility is then assessed strong waste charges for strengths that are greater than normal household waste, 200 mg/L. We have worked with the owner to develop these limits for a 6-month interim start up period of the plant. To-date, as the facility works through start-up procedures, we have not developed enough data to create a multi-year agreement. Therefore, we are recommending a second 6-month term for this ICM agreement. Following this period we will reevaluate the limits in hopes of developing a multi-year ICM agreement.

We would recommend approving a second 6-month ICM discharge agreement with Nu-Tek Biosciences, LLC. If you have any questions, please feel free to contact me.

**INDIVIDUAL CONTROL MECHANISM (ICM)**  
**BETWEEN**  
**THE CITY OF AUSTIN**  
**AND**  
**Nu-Tek Biosciences, LLC**

The City of Austin (the City) operates a wastewater treatment plant that serves the businesses and citizens located within the City of Austin. The Nu-Tek Bioscience facility located in Austin MN, is a manufacturer of hydrolyzed plant and yeast proteins used for industrial fermentations.

**Nu-Tek Biosciences operations include:** Mechanical separation, filtration, evaporation and spray drying. The plant has a 20,000 gallon wet well and another 30,000 gallon tank for wastewater equalization and flow control. There is an additional 30,000 gallon tank to separate high strength waste water if it is generated by the plant.

The purpose of this agreement is to authorize the discharge of wastewater from the permittee to the wastewater Treatment plant operated by the City; to set forth limitations, conditions and requirements for the discharge; and to specify the rights and obligations of the parties to this agreement. This agreement is made under the provisions of the City Ordinance Sec. 3.30 RULES AND REGULATIONS RELATING TO SEWER USE AND SERVICE CHARGE.

1. Under the authority of the City's ordinance and consistent with the conditions of the ordinance, the City agrees to accept and treat the wastewater discharged from the permittee within the limits and in accordance with the conditions set forth in this ICM.
2. The permittee is allowed to discharge wastewater to the City's wastewater treatment facility. The permittee shall comply with all discharge prohibitions contained in of the City Ordinance Sec. 3.30 RULES AND REGULATIONS RELATING TO SEWER USE AND SERVICE CHARGE, the Minnesota Administrative Rules 7049.0140 pretreatment standards, and shall restrict its discharge to the following limits:

|                    | <u>Maximum Weekly Limit<sup>2</sup></u> |         | <u>Maximum Daily Limit<sup>1</sup></u> | <u>Min. Max.</u> |
|--------------------|---|---------|--|------------------|
| Flow:              |   |         | 30,000 gpd                             |                  |
| CBOD:              | 250                                     | lbs/day |  |                  |
| TSS <sup>4</sup> : | 50                                      | lbs/day |  |                  |
| TKN <sup>5</sup> : | 50                                      | lbs/day |  |                  |
| pH                 |   |         |  | 6.0 – 10.5       |

Note 1: The Maximum daily flow limit is based upon flow meter readings.

Note 2: The Maximum weekly limit is calculated over the course of a week by multiplying the concentration (measured one time per week) by the average daily flow. Average daily flow is calculated by dividing total flow since the last reading by the number of days since the last reading.

Note 3: A week is defined as 7 days starting Sunday at 12:00 a.m. to the following Saturday at 11:59 p.m.

Note 4: Solid or viscous substances that may cause an obstruction or interfere with the operation of the lift station or wastewater treatment plant are prohibited.

Note 5: A rate has not been established for this pollutant. If the council adopts a rate for this it will be incorporated into the monthly billings.

3. The City shall monitor the wastewater discharge from the permittee on a weekly basis, or as deemed necessary. All analysis shall be performed by the City. The City will test the effluent at a predetermined location. Effluent samples are a composite sample, except for pH which is measured via grab sample.
4. The permittee will be billed per the City Ordinance § 3.30 RULES AND REGULATIONS RELATING TO SEWER USE AND SERVICE CHARGE, Subd. 9 Sewer Service Charges.
  - a. All wastewater discharged with a strength at or below normal strength domestic wastewater shall be billed monthly for sewer use by Austin Utilities. Sewer flow will be based on Austin Utilities public water meter readings.
  - b. All users which discharge wastewater above the normal strength of domestic wastewater shall be billed at the rates shown in the unit cost figures established by Council resolution. Industrial users that discharge above normal strength domestic wastewater shall be billed monthly based upon the volume of wastewater, the pounds of BOD and the pounds of suspended solids discharged.
    - i. Flow will be based on Austin Utilities public water meter reading.
5. As provided in the ordinance, duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter Nu-Tek Biosciences for the purposes of inspection, observation, measurement, sampling, and testing pertinent to discharge to any public sewer or natural outlet in accordance with the provisions of the ordinance.
6. The Permittee shall take all reasonable precautions to minimize all accidental discharges including prohibited slugs, spills and bypasses.
7. The permittee shall notify the City immediately by phone and within (7) days in writing, of any spill or slug discharge which may violate the limits specified in this ICM.
8. The City will require the permittee to cease discharging to the sanitary sewer should the lift station or sanitary sewer system experience mechanical or structural failure or if high water flow conditions interfere with the conveyance of sewage or operation of the treatment facility.
9. Any record or other information obtained by the City or furnished to by the permittee as it applies to wastewater, which are certified by said permittee, and said certification, as it applies to wastewater is approved in writing by the city to relate to (a) sales figures, (b) processes or methods of production unique to the permittee, or (c) information which would tend to affect adversely the competitive position of said permittee, shall be only for the confidential use of the City in discharging its statutory obligations, unless otherwise specifically authorized by said owner or operator. Provided, however that all such information may be used by the City in compiling or publishing analysis, reports, or summaries relating to the general condition of the wastewater and how it effects the city's wastewater treatment facility so as long as such analyses or summaries do not identify permittee who has so certified. Notwithstanding the foregoing, the City may disclose any information, whether or not otherwise considered confidential which it is obligated to disclose in

order to comply with city state federal laws and regulations, to the extent and for the purpose of such governmentally required disclosure.

10. This ICM is not exclusive. This ICM shall not release the Permittee from conditions set forth by the Minnesota Pollution Control Agency, Minnesota Department of Health, Minnesota Department of Natural Resources or the community in which the site is located
11. This ICM is enforceable under the provisions of the ordinance. A violation of this ICM shall be a violation of the ordinance and subject to the enforcement provisions of the ordinance.
12. The ICM shall not release the Permittee from any liability, duty or penalty imposed by local, state or federal statutes, regulations or license requirements regarding waste disposal.
13. The Permittee shall pay all fees related to this ICM agreement within 30 days to avoid penalties. Any fees that are over 90 days due by the neglect of the Permittee may result in the termination of this ICM.
14. The ICM may be renewed or modified by mutual consent of the City, and permittee. This ICM is not transferable except with the prior written permission of the City and prior agreement in writing to the transfer and all conditions in the ICM by the parties involved.
15. This agreement expires on June 30th, 2022 and is subject to be re-opened at the request of either party.

Agreed to:

City of Austin, Minnesota

Thomas Yezzi

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

Steve King  
Mayor

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

By: Thomas L. Yezzi

Date: 11/30/2022

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

Tom Dankert  
City Recorder

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

## **RESOLUTION NO.**

### **RESOLUTION AUTHORIZING INDIVIDUAL CONTROL MECHANISM AGREEMENT BETWEEN THE CITY OF AUSTIN AND NU-TEK BIOSCIENCES, LLC**

**WHEREAS**, an agreement with Nu-Tek Biosciences, LLC has been reached outlining the terms and conditions for their wastewater discharges as part of the city's National Pollution Discharge Elimination System (NPDES) Permit to operate the Wastewater Treatment Plant.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council approves the agreement attached in Exhibit A and that such agreement will be effective immediately upon adoption of this resolution and will expire on December 31, 2023.

Passed by a vote of yeas and nays this 19<sup>th</sup> day of December, 2022.

YEAS

NAYS

ATTEST:

---

City Recorder

APPROVED:

---

Mayor

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



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

## Memorandum

**To:** Mayor & Council  
**From:** Steven J. Lang, P.E.  
**Date:** December 15, 2022  
**Subject:** Delegated Contract Process (DCP)

---

When a community is successful in acquiring a Federal grant, the Federal dollars are distributed through MnDOT to the local entity. MnDOT is essentially acting as a pass-through agent for the Federal dollars.

Attached for your consideration is a MnDOT Agency Agreement which authorizes MnDOT to act as the fiscal agent to disburse federal funds to the City of Austin for construction projects. With this generally being a 5-year agreement it was previously passed by Council in December 2017.

Changes between 2018 DCP and 2023 DCP agreements include:

- Updated CFDA to Assistance Listing Number (ALN) and DUNS to Unique Entity Identifier (UEI)
- Addition of section 8.6 Electronic records and signatures
- Addition of section 8.7 Certification
- Addition of section 18.3 Title VI language/section
- Addition of section 18.4 Buy America
- Addition of section 18.1.11 referencing 2 CFR 200.216 Prohibition on certain telecommunications and video surveillance services or equipment
- Addition of section 18.1.12 referencing 2 CFR 200.322 Domestic preference for procurements

I would recommend Council authorize execution of the agreement in order to be eligible for future federal funding disbursements. If you have any questions, please contact me.



**STATE OF MINNESOTA**  
**AGENCY AGREEMENT**  
**for**  
**FEDERAL PARTICIPATION IN CONSTRUCTION**

This Agreement is entered into by and between City of Austin ("Local Government") and the State of Minnesota acting through its Commissioner of Transportation ("MnDOT").

**RECITALS**

1. Pursuant to Minnesota Statutes Section 161.36, the Local Government desires MnDOT to act as the Local Government's agent in accepting federal funds on the Local Government's behalf for the construction, improvement, or enhancement of transportation financed either in whole or in part by Federal Highway Administration ("FHWA") federal funds, hereinafter referred to as the "Project(s)"; and
2. This Agreement is intended to cover all federal aid projects initiated by the Local Government and therefore has no specific State Project number associated with it, and
  - 2.1. The Assistance Listing Number (ALN) is 20.205, 20.224, 20.933 or another Department of Transportation ALN as listed on SAM.gov and
  - 2.2. This project is for construction, not research and development.
  - 2.3. MnDOT requires that the terms and conditions of this agency be set forth in an agreement.

**AGREEMENT TERMS**

1. **Term of Agreement; Prior Agreement**
  - 1.1. **Effective Date.** This Agreement will be effective on the date that MnDOT obtains all required signatures under Minn. Stat. §16C.05, Subd. 2. This Agreement will remain effective until it is superseded or terminated pursuant to section 14.
  - 1.2. **Prior Agreement.** This Agreement supersedes the prior agreement between the parties, MnDOT Contract Number 1029917.
2. **Local Government's Duties**
  - 2.1. **Designation.** The Local Government designates MnDOT to act as its agent in accepting federal funds on its behalf made available for the Project(s). Details on the required processes and procedures are available on the State Aid Website.
  - 2.2. **Staffing.**
    - 2.2.1. The Local Government will furnish and assign a publicly employed and licensed engineer, ("Project Engineer"), to be in responsible charge of the Project(s) and to supervise and direct the work to be performed under any construction contract let for the Project(s). In the alternative, where the Local Government elects to use a private consultant for construction engineering services, the Local Government will provide a qualified, full-time public employee of the Local Government to be in responsible charge of the Project(s). The services of the Local Government to be performed hereunder may not be assigned, sublet, or transferred unless the Local Government is notified in writing by MnDOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This

written consent will in no way relieve the Local Government from its primary responsibility for performance of the work.

2.2.2. During the progress of the work on the Project(s), the Local Government authorizes its Project Engineer to request in writing specific engineering and/or technical services from MnDOT, pursuant to Minnesota Statutes Section 161.39. Such services may be covered by other technical service agreements. If MnDOT furnishes the services requested, and if MnDOT requests reimbursement, then the Local Government will promptly pay MnDOT to reimburse the state trunk highway fund for the full cost and expense of furnishing such services. The costs and expenses will include the current MnDOT labor additives and overhead rates, subject to adjustment based on actual direct costs that have been verified by audit. Provision of such services will not be deemed to make MnDOT a principal or co-principal with respect to the Project(s).

2.3. **Pre-letting.** The Local Government will prepare construction contracts in accordance with Minnesota law and applicable Federal laws and regulations.

2.3.1. The Local Government will solicit bids after obtaining written notification from MnDOT that the FHWA has authorized the Project(s). Any Project(s) advertised prior to authorization **without permission** will not be eligible for federal reimbursement.

2.3.2. The Local Government will prepare the Proposal for Highway Construction for the construction contract, which will include all federal-aid provisions supplied by MnDOT.

2.3.3. The Local Government will prepare and publish the bid solicitation for the Project(s) as required by state and federal laws. The Local Government will include in the solicitation the required language for federal-aid construction contracts as supplied by MnDOT. The solicitation will state where the proposals, plans, and specifications are available for the inspection of prospective bidders and where the Local Government will receive the sealed bids.

2.3.4. The Local Government may not include other work in the construction contract for the authorized Project(s) without obtaining prior notification from MnDOT that such work is allowed by FHWA. Failure to obtain such notification may result in the loss of some or all of the federal funds for the Project(s). All work included in a federal contract is subject to the same federal requirements as the federal project.

2.3.5. The Local Government will prepare and sell the plan and proposal packages and prepare and distribute any addenda, if needed.

2.3.6. The Local Government will receive and open bids.

2.3.7. After the bids are opened, the Local Government will consider the bids and will award the bid to the lowest responsible bidder or reject all bids. If the construction contract contains a goal for Disadvantaged Business Enterprises (DBEs), the Local Government will not award the bid until it has received certification of the Disadvantaged Business Enterprise participation from the MnDOT Office of Civil Rights.

2.3.8. The Local Government must disclose in writing any potential conflict of interest to the Federal awarding agency or MnDOT in accordance with applicable FHWA policy.

#### 2.4. **Contract Administration.**

2.4.1. The Local Government will prepare and execute a construction contract with the lowest responsible bidder, hereinafter referred to as the "Contractor," in accordance with the special provisions and the latest edition of MnDOT's Standard Specifications for Construction when the contract is awarded and all amendments thereto. All contracts between the Local Government and third parties or subcontractors must contain all applicable provisions of this Agreement, including the applicable

federal contract clauses, which are identified in Appendix II of 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and as identified in Section 18 of this Agreement.

- 2.4.2. The Project(s) will be constructed in accordance with the plans, special provisions, and standard specifications of each Project. The standard specifications will be the latest edition of MnDOT Standard Specifications for Highway Construction and all amendments thereto. The plans, special provisions, and standard specifications will be on file at the Local Government Engineer's Office. The plans, special provisions, and specifications are incorporated into this Agreement by reference as though fully set forth herein.
- 2.4.3. The Local Government will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project(s). The services of the Local Government to be performed hereunder may not be assigned, sublet, or transferred unless the Local Government is notified in writing by MnDOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This written consent will in no way relieve the Local Government from its primary responsibility for performance of the work.
- 2.4.4. The Local Government will document quantities in accordance with the guidelines set forth in the Construction Section of the Electronic State Aid Manual that are in effect at the time the work was performed.
- 2.4.5. The Local Government will test materials in accordance with the Schedule of Materials Control in effect at the time each Project was let. The Local Government will notify MnDOT when work is in progress on the Project(s) that requires observation by the Independent Assurance Inspector, as required by the Independent Assurance Schedule.
- 2.4.6. The Local Government may make changes in the plans or the character of the work, as may be necessary to complete the Project(s), and may enter into Change Order(s) with the Contractor. The Local Government will not be reimbursed for any costs of any work performed under a change order unless MnDOT has notified the Local Government that the subject work is eligible for federal funds and sufficient federal funds are available.
- 2.4.7. The Local Government will request approval from MnDOT for all costs in excess of the amount of federal funds previously approved for the Project(s) prior to incurring such costs. Failure to obtain such approval may result in such costs being disallowed for reimbursement.
- 2.4.8. The Local Government will prepare reports, keep records, and perform work so as to meet federal requirements and to enable MnDOT to collect the federal aid sought by the Local Government. Required reports are listed in the MnDOT State Aid Manual, Delegated Contract Process Checklist, available from MnDOT's authorized representative. The Local Government will retain all records and reports and allow MnDOT or the FHWA access to such records and reports for six years.
- 2.4.9. Upon completion of the Project(s), the Project Engineer will determine whether the work will be accepted.

## 2.5. Limitations.

- 2.5.1. The Local Government will comply with all applicable Federal, State, and local laws, ordinances, and regulations.
- 2.5.2. **Nondiscrimination.** It is the policy of the Federal Highway Administration and the State of Minnesota that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (42 U.S.C. 2000d). Through expansion of the mandate

for nondiscrimination in Title VI and through parallel legislation, the proscribed bases of discrimination include race, color, sex, national origin, age, and disability. In addition, the Title VI program has been extended to cover all programs, activities and services of an entity receiving Federal financial assistance, whether such programs and activities are Federally assisted or not. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies is expected to take affirmative action to assure that no person is excluded from participation in, or is denied the benefits of, the program or activity on the grounds of race, color, national origin, sex, age, or disability. It is the responsibility of the Local Government to carry out the above requirements.

**2.5.3. Utilities.** The Local Government will treat all public, private or cooperatively owned utility facilities which directly or indirectly serve the public and which occupy highway rights of way in conformance with 23 CFR 645 "Utilities", which is incorporated herein by reference.

**2.6. Maintenance.** The Local Government assumes full responsibility for the operation and maintenance of any facility constructed or improved under this Agreement.

### **3. MnDOT's Duties**

**3.1. Acceptance.** MnDOT accepts designation as Agent of the Local Government for the receipt and disbursement of federal funds and will act in accordance herewith.

#### **3.2. Project Activities.**

3.2.1. MnDOT will make the necessary requests to the FHWA for authorization to use federal funds for the Project(s) and for reimbursement of eligible costs pursuant to the terms of this Agreement.

3.2.2. MnDOT will provide to the Local Government copies of the required Federal-aid clauses to be included in the bid solicitation and will provide the required Federal-aid provisions to be included in the Proposal for Highway Construction.

3.2.3. MnDOT will review and certify the DBE participation and notify the Local Government when certification is complete. If certification of DBE participation (or good faith efforts to achieve such participation) cannot be obtained, then Local Government must decide whether to proceed with awarding the contract. Failure to obtain such certification will result in the Project becoming ineligible for federal assistance, and the Local Government must make up any shortfall.

3.2.4. MnDOT will provide the required labor postings.

**3.3. Authority.** MnDOT may withhold federal funds, where MnDOT or the FHWA determines that the Project(s) was not completed in compliance with federal requirements.

**3.4. Inspection.** MnDOT, the FHWA, or duly authorized representatives of the state and federal government will have the right to audit, evaluate and monitor the work performed under this Agreement. The Local Government will make all books, records, and documents pertaining to the work hereunder available for a minimum of six years following the closing of the construction contract.

### **4. Time**

4.1. The Local Government must comply with all time requirements described in this Agreement. In the performance of this Agreement, time is of the essence.

4.2. The period of performance is defined as beginning on the date of federal authorization and ending on the date defined in the federal financial system or federal agreement ("end date"). **No work completed after the end date will be eligible for federal funding.** Local Government must submit all contract close out paperwork to MnDOT at least twenty-four months prior to the **end date**.

## 5. Payment

- 5.1. **Cost.** The entire cost of the Project(s) is to be paid from federal funds made available by the FHWA and by other funds provided by the Local Government. The Local Government will pay any part of the cost or expense of the Project(s) that is not paid by federal funds. MnDOT will receive the federal funds to be paid by the FHWA for the Project(s), pursuant to Minnesota Statutes § 161.36, Subdivision 2. MnDOT will reimburse the Local Government, from said federal funds made available to each Project, for each partial payment request, subject to the availability and limits of those funds.
- 5.2. **Indirect Cost Rate Proposal/Cost Allocation Plan.** If the Local Government seeks reimbursement for indirect costs and has submitted to MnDOT an indirect cost rate proposal or a cost allocation plan, the rate proposed will be used on a provisional basis. At any time during the period of performance or the final audit of a Project, MnDOT may audit and adjust the indirect cost rate according to the cost principles in 2 CFR Part 200. MnDOT may adjust associated reimbursements accordingly.
- 5.3. **Reimbursement.** The Local Government will prepare partial estimates in accordance with the terms of the construction contract for the Project(s). The Project Engineer will certify each partial estimate. Following certification of the partial estimate, the Local Government will make partial payments to the Contractor in accordance with the terms of the construction contract for the Project(s).
  - 5.3.1. Following certification of the partial estimate, the Local Government may request reimbursement for costs eligible for federal funds. The Local Government's request will be made to MnDOT and will include a copy of the certified partial estimate.
  - 5.3.2. Upon completion of the Project(s), the Local Government will prepare a final estimate in accordance with the terms of the construction contract for the Project(s). The Project Engineer will certify the final estimate. Following certification of the final estimate, the Local Government will make the final payment to the Contractor in accordance with the terms of the construction contract for the Project(s).
  - 5.3.3. Following certification of the final estimate, the Local Government may request reimbursement for costs eligible for federal funds. The Local Government's request will be made to MnDOT and will include a copy of the certified final estimate along with the required records.
  - 5.3.4. Upon completion of the Project(s), MnDOT will perform a final inspection and verify the federal and state eligibility of all payment requests. If the Project is found to have been completed in accordance with the plans and specifications, MnDOT will promptly release any remaining federal funds due the Local Government for the Project(s). If MnDOT finds that the Local Government has been overpaid, the Local Government must promptly return any excess funds.
  - 5.3.5. In the event MnDOT does not obtain funding from the Minnesota Legislature or other funding source, or funding cannot be continued at a sufficient level to allow for the processing of the federal aid reimbursement requests, the Local Government may continue the work with local funds only, until such time as MnDOT is able to process the federal aid reimbursement requests.
- 5.4. **Matching Funds.** Any cost sharing or matching funds required of the Local Government in this Agreement must comply with 2 CFR 200.306.
- 5.5. **Federal Funds.** Payments under this Agreement will be made from federal funds. The Local Government is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for failure to comply with any federal requirements including, but not limited to, 2 CFR Part 200. If, for any reason, the federal government fails to pay part of the cost or expense incurred by the Local Government, or in the event the total amount of federal funds is not available, the Local Government will be responsible for any and all costs or expenses incurred under this Agreement. The Local Government further

agrees to pay any and all lawful claims arising out of or incidental to the performance of the work covered by this Agreement in the event the federal government does not pay the same.

- 5.6. **Closeout.** The Local Government must liquidate all obligations incurred under this Agreement for each Project and submit all financial, performance, and other reports as required by the terms of this Agreement and the Federal award at least twenty-four months prior to the **end date** of the period of performance for each Project. MnDOT will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed. Monitoring of any capital assets acquired with funds will continue following project closeout.
6. **Conditions of Payment.** All services provided by Local Government under this Agreement must be performed to MnDOT's satisfaction, as determined at the sole discretion of MnDOT's Authorized Representative, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Local Government will not receive payment for work found by MnDOT to be unsatisfactory or performed in violation of federal, state, or local law.

## 7. **Authorized Representatives**

- 7.1. MnDOT's Authorized Representative is:

Name: Kristine Elwood, or her successor.  
 Title: State Aid Engineer  
 Phone: 651-366-4831  
 Email: Kristine.elwood@state.mn.us

MnDOT's Authorized Representative has the responsibility to monitor Local Government's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, MnDOT's Authorized Representative will certify acceptance on each invoice submitted for payment.

- 7.2. The Local Government's Authorized Representative is:

Name: Steven Lang or their successor.  
 Title: Austin City Engineer  
 Phone: 507-437-7674  
 Email: slang@ci.austin.mn.us

If the Local Government's Authorized Representative changes at any time during this Agreement, the Local Government will immediately notify MnDOT.

## 8. **Assignment Amendments, Waiver, and Agreement Complete**

- 8.1. **Assignment.** The Local Government may neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of MnDOT and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 8.2. **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 8.3. **Waiver.** If MnDOT fails to enforce any provision of this Agreement, that failure does not waive the provision or MnDOT's right to subsequently enforce it.
- 8.4. **Agreement Complete.** This Agreement contains all negotiations and agreements between MnDOT and the

Local Government. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

- 8.5. **Severability.** If any provision of this Agreement, or the application thereof, is found to be invalid or unenforceable to any extent, the remainder of the Agreement, including all material provisions and the application of such provisions, will not be affected and will be enforceable to the greatest extent permitted by the law.
- 8.6. **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 8.7. **Certification.** By signing this Agreement, the Local Government certifies that it is not suspended or debarred from receiving federal or state awards.

## 9. Liability and Claims

- 9.1. **Tort Liability.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs MnDOT liability.
- 9.2. **Claims.** The Local Government acknowledges that MnDOT is acting only as the Local Government's agent for acceptance and disbursement of federal funds, and not as a principal or co-principal with respect to the Project. The Local Government will pay any and all lawful claims arising out of or incidental to the Project including, without limitation, claims related to contractor selection (including the solicitation, evaluation, and acceptance or rejection of bids or proposals), acts or omissions in performing the Project work, and any *ultra vires* acts. To the extent permitted by law, the Local Government will indemnify, defend (to the extent permitted by the Minnesota Attorney General), and hold MnDOT harmless from any claims or costs arising out of or incidental to the Project(s), including reasonable attorney fees incurred by MnDOT. The Local Government's indemnification obligation extends to any actions related to the certification of DBE participation, even if such actions are recommended by MnDOT.

## 10. Audits

- 10.1. Under Minn. Stat. § 16C.05, Subd.5, the books, records, documents, and accounting procedures and practices of the Local Government, or any other party relevant to this Agreement or transaction, are subject to examination by MnDOT and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. The Local Government will take timely and appropriate action on all deficiencies identified by an audit.
- 10.2. All requests for reimbursement are subject to audit, at MnDOT's discretion. The cost principles outlined in 2 CFR 200.400-.476 will be used to determine whether costs are eligible for reimbursement under this Agreement.
- 10.3. If Local Government expends \$750,000 or more in Federal Funds during the Local Government's fiscal year, the Local Government must have a single audit or program specific audit conducted in accordance with 2 CFR Part 200.

- 11. **Government Data Practices.** The Local Government and MnDOT must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by MnDOT under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Local Government under this Agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either the Local Government or MnDOT.
- 12. **Workers Compensation.** The Local Government certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Local Government's employees and agents will

not be considered MnDOT employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way MnDOT's obligation or responsibility.

**13. Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**14. Termination; Suspension**

**14.1. Termination by MnDOT.** MnDOT may terminate this Agreement with or without cause, upon 30 days written notice to the Local Government. Upon termination, the Local Government will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

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

**14.3. Termination for Insufficient Funding.** MnDOT may immediately terminate this Agreement if:

14.3.1. It does not obtain funding from the Minnesota Legislature; or

14.3.2. If funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Local Government. MnDOT is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Local Government will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. MnDOT will not be assessed any penalty if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MnDOT will provide the Local Government notice of the lack of funding within a reasonable time of MnDOT's receiving that notice.

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

**15. Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, the Local Government consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to MnDOT, 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 Local Government to file state tax returns and pay delinquent state tax liabilities, if any.

**16. Fund Use Prohibited.** The Local Government will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering into or receiving a State contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier. This restriction does not prevent the Local Government from utilizing these funds to pay any party who might be disqualified or debarred after the Local Government's contract award on this Project.

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

**18. Federal Contract Clauses**

**18.1. Appendix II 2 CFR Part 200.** The Local Government agrees to comply with the following federal requirements as identified in 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and agrees to pass through these requirements to its subcontractors and third-party contractors, as applicable. In addition, the Local Government shall have the same meaning as "Contractor" in the federal requirements listed below.

18.1.1. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

18.1.2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

18.1.3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

18.1.4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision

for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 18.1.5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 18.1.6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- 18.1.7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 18.1.8. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 18.1.9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must

also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- 18.1.10. Local Government will comply with 2 CFR § 200.323.
- 18.1.11. Local Government will comply with 2 CFR § 200.216.
- 18.1.12. Local Government will comply with 2 CFR § 200.322.
- 18.2. **Drug-Free Workplace.** The Local Government will comply with the Drug-Free Workplace requirements under subpart B of 49 C.F.R. Part 32.
- 18.3. **Title VI/Non-discrimination Assurances.** The Local Government hereby agrees that, as a condition of receiving any Federal financial assistance under this Agreement, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d), related nondiscrimination statutes (i.e., 23 U.S.C. § 324, Section 504 of the Rehabilitation Act of 1973 as amended, and the Age Discrimination Act of 1975), and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, disability, or age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Local Government receives Federal financial assistance.

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

- 18.4. **Buy America.** The Local Government must comply with the Buy America domestic preferences contained in the Build America, Buy America Act (Sections 70901-52 of the Infrastructure Investment and Jobs Act, Public Law 117-58) and as implemented by US DOT operating agencies.

#### 18.5. **Federal Funding Accountability and Transparency Act (FFATA)**

- 18.5.1. This Agreement requires the Local Government to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Local Government is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Local Government provides information to the MnDOT as required.
  - a. Reporting of Total Compensation of the Local Government's Executives.
  - b. The Local Government shall report the names and total compensation of each of its five most highly compensated executives for the Local Government's preceding completed fiscal year, if in the Local Government's preceding fiscal year it received:
    - i. 80 percent or more of the Local Government's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <https://www.sec.gov/answers/execomp.htm>).
- Executive means officers, managing partners, or any other employees in management positions.
- c. Total compensation means the cash and noncash dollar value earned by the executive during the Local Government's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
- 18.5.2. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- 18.5.3. The Local Government must report executive total compensation described above to the MnDOT by the end of the month during which this Agreement is awarded.
- 18.5.4. The Local Government will obtain a Unique Entity Identifier number and maintain this number for the term of this Agreement. This number shall be provided to MnDOT on the plan review checklist submitted with the plans for each Project.
- 18.5.5. The Local Government's failure to comply with the above requirements is a material breach of this Agreement for which the MnDOT may terminate this Agreement for cause. The MnDOT will not be obligated to pay any outstanding invoice received from the Local Government unless and until the Local Government is in full compliance with the above requirements.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK.]

**City of Austin**

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

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

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

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

**DEPARTMENT OF TRANSPORTATION**

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

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

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

**COMMISSIONER OF ADMINISTRATION**

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

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

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

**RESOLUTION NO.**

**AUTHORIZATION TO EXECUTE  
MINNESOTA DEPARTMENT OF TRANSPORTATION DELEGATED  
CONTRACT PROCESS AGREEMENT**

**BE IT RESOLVED**, that pursuant to Minnesota Stat. Sec. 161.36, the Commissioner of Transportation be appointed as Agent for the City of Austin to accept as its agent, federal aid funds which may be made available for eligible transportation related projects.

**BE IT FURTHER RESOLVED**, that the Mayor and City Recorder are hereby authorized and directed for and on behalf of the City of Austin to execute and enter into an agreement with the Commissioner of Transportation prescribing the terms and conditions of said federal aid participation as set forth and contained in "Minnesota Department of Transportation Agency Agreement No. 1052234, a copy of said agreement was before the City Council and which is made a part hereof by reference.

Passed by a vote of yeas and nays this 19th day of December, 2022.

YEAS

NAYS

ATTEST:

APPROVED:

---

City Recorder

---

Mayor

**CERTIFICATION**

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Austin at an authorized meeting held on the 19th day of December, 2022, as shown by the minutes of the meeting in my possession.

---

Ann M. Kasel, City Clerk

Subscribed and sworn to before me  
this 20th day of December, 2022.

---

Notary Public

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



Date: December 15, 2022

To: Austin City Council

From: Mark Nibaur, General Manager

Subject: AU Property Sale to Windrift Restaurant

The Windrift Restaurant has had their property for sale for several months, and have recently been negotiating with a potential buyer. Through this process, they reached out to AU as they had determined that part of their external cooling system on the North side of the restaurant was actually encroaching our property by roughly 9 feet.

When we were made aware, staff discussed internally the options of creating an easement or proposing to sell them an area of property. Staff believe the better alternative is to sell a 50 foot strip of property on the South side of our parcel to the Windrift.

AU and the current owner of the Windrift, Larry Qualey, have agreed to a purchase price of \$4,000 for the property which is nearly  $\frac{1}{4}$  acre. AU feels this is a sufficient value, as it is based from the land appraised value. Important to note – Staff do not see a current or future need for this specific section of property.

We have worked with the City Attorney to develop the attached Purchase Agreement. The AU Board of Commissioners authorized execution of the Purchase Agreement through a Resolution approval at their December 14<sup>th</sup> Board meeting. AU is now requesting the City Council approve the sale of the property through Resolution approval.

If you have any questions prior to the board meeting, please contact me at your convenience.

Thank You,  
Mark Nibaur

**AUSTIN UTILITIES  
RESOLUTION NO. 324**

**A RESOLUTION APPROVING SALE OF LAND**

**WHEREAS**, the Austin Utilities Board of Commissioners owns a large parcel of real property located north of a parcel owned by Lawrence A. Qualey and Randall E. Qualey; and

**WHEREAS**, it has been determined that certain existing improvements upon the Qualey parcel encroach upon the Austin Utilities parcel; and

**WHEREAS**, Qualeys have offered to purchase the South 50 feet of the Austin Utilities parcel according to the terms and conditions outlined in the attached Purchase Agreement; and

**WHEREAS**, the Board of Commissioners finds that Austin Utilities does not need the South 50 feet of its parcel, and would benefit from the sale thereof according to the terms and conditions outlined in the attached Purchase Agreement, and that the price offered is market price and therefore a fair and appropriate price to be paid;

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF AUSTIN UTILITIES, AUSTIN, MINNESOTA AS FOLLOWS:**

1. The sale of the following real property to Lawrence A. Qualey and Randall E. Qualey is approved subject to approval by the City Council for Austin, Minnesota:

The South 50 feet of the following described parcel:

All that portion of the SE $\frac{1}{4}$  NW $\frac{1}{4}$  and of the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, Township 103 North, Range 18 West, Mower County, Minnesota, lying east of a line 50 feet east of and parallel with the centerline of the main track of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company as originally established across said Section 26, west of the west line of the public highway as now established along the north and south centerline of said Section 26, and north of a line perpendicular to the centerline of said Railroad Company's main track at a distance of 1,869 feet northerly, measured along said center line from its intersection with the south line of the SW $\frac{1}{4}$  of said Section 26, containing 11.6 acres, more or less. (hereinafter called the "Parcel")

Subject to those Easements, Restrictions and Covenants, with Possibility of Reverter as stated in the Limited Warranty Deed dated December 16, 1985, between Southern Minnesota Municipal Power Agency as "Grantor" and Austin Utilities as "Grantee" recorded April 10, 1986, in Book of Deeds 408, page 45, document 372938. Subject also to any easements and third-party rights of record.

2. The terms and conditions of said sale shall be as described in the attached Purchase Agreement.
3. Such officers and directors as necessary are authorized to cooperate with closing the above-described sale and to execute any documents, including the attached Purchase Agreement, as are reasonably necessary for such purpose.

PASSED by the Austin Utilities Board on this 14<sup>th</sup> day of December, 2022.

YEAS 5

NAYS 1

Signed:

John Stedden  
Blondi Grunow  
Jack Lutz

Attest: Mark W. Olsen  
Secretary

John D. Johnson

PURCHASE AGREEMENT

Austin, Minnesota  
Date: Dec. 14, 2022

The undersigned, **Austin Utilities**, a municipal corporation established under the charter of the City of Austin, Minnesota, located at 2601 11<sup>th</sup> Street NE, Austin, Minnesota 55912, hereinafter referred to as "Seller" hereby acknowledge receipt from **Lawrence A. Qualey**, a single person, and **Randall E. Qualey**, a single person, located at 2511 11<sup>th</sup> Street NE, Austin, Minnesota 55912, hereinafter referred to as "Purchaser," the sum of One Thousand Dollars, as earnest money for the purchase of property located within Block 29, Original Village (now City) of Austin, Mower County, Minnesota and legally described as follows, to-wit:

The South 50 feet of the following described parcel:

All that portion of the SE $\frac{1}{4}$  NW $\frac{1}{4}$  and of the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, Township 103 North, Range 18 West, Mower County, Minnesota, lying east of a line 50 feet east of and parallel with the centerline of the main track of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company as originally established across said Section 26, west of the west line of the public highway as now established along the north and south centerline of said Section 26, and north of a line perpendicular to the centerline of said Railroad Company's main track at a distance of 1,869 feet northerly, measured along said center line from its intersection with the south line of the SW $\frac{1}{4}$  of said Section 26, containing 11.6 acres, more or less. (hereinafter called the "Parcel")

Subject to those Easements, Restrictions and Covenants, with Possibility of Reverter as stated in the Limited Warranty Deed dated December 16, 1985, between Southern Minnesota Municipal Power Agency as "Grantor" and Austin Utilities as "Grantee" recorded April 10, 1986, in Book of Deeds 408, page 45, document 372938. Subject also to any easements and third-party rights of record.

all of which property the undersigned has this day sold to Purchaser for the sum of Four Thousand Dollars (\$4,000.00), which Purchaser agrees to pay in the following manner: Earnest money herein paid \$1,000; the balance of \$3,000.00 to be paid to Seller on the date of closing.

Subject to performance by Purchaser, Seller agrees to execute and deliver a Quit Claim Deed in substantially the form attached hereto as **Exhibit A**.

Payment of real estate taxes, if any, attributable to the premises, due and payable in 2022, shall be prorated to the date of closing. Any taxes due and payable for prior years will be paid by Seller. Presently, the parcel is exempt from taxes. However, the parcel will be reclassified following its conveyance hereunder and Seller makes no representation of the rate of tax that will be applied.

Purchaser shall be allowed 30 days after the date hereof for examination of said title and the making of any objections thereto, said objections to be made in writing or deemed to be waived. If any objections are so made, Seller shall be allowed 120 days to make such title marketable. Pending correction of title the payments hereunder required shall be postponed, but upon correction of title and within 10 days after written notice to Purchaser, the parties shall perform this agreement according to its terms.

If said title is not marketable and is not made so within 120 days from the date of written objections thereto as above provided, this agreement shall be null and void, at option of Purchaser, and neither party shall be liable for damages hereunder to the other party. In the alternative, at option of Purchaser, Purchaser may proceed accepting title "as is." If Purchaser elects to terminate this agreement under this paragraph, all money heretofore paid by Purchaser shall be refunded. If the title to said property be found marketable or be so made within said time, and said Purchaser shall default in any of the agreements, then, and in that case, Seller may terminate this contract and on such termination all the payments made upon this contract shall be retained by said Seller, as liquidated damages, time being of the essence herein. This provision shall not deprive either party of the right of enforcing the specific performance of this contract provided such contract shall not be terminated as aforesaid, and provided action to enforce such specific performance shall be commenced within six months after such right of action shall arise.

Purchaser will pay all costs of closing and recording not otherwise covered elsewhere in this agreement. Without limiting the foregoing, this would include title examination, document preparation, closing services, deed taxes, and recording costs for both the deed and easement described above.

This contract contains the entire agreement between the parties, and neither party has relied upon any verbal or written representations, agreements, or understandings not set forth herein, whether made by any agent or party hereto.

The delivery of all papers and monies shall be made at the office of:

HOVERSTEN, JOHNSON, BECKMANN & HOVEY, LLP  
807 West Oakland Avenue  
Austin, MN 55912  
(507)-433-3483

Purchaser accepts the property as-is.

I, the undersigned, owner of the above land, do hereby approve the above agreement and the sale thereby made.

SELLER:  
Austin Utilities

December 14, 2022

December 14, 2022

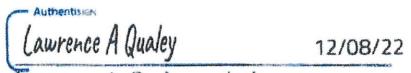
  
Jeannie Sheehan, Board Chair

  
Mark Nibaur, General Manager

Purchaser hereby agrees to purchase the said property for the price and upon the terms above mentioned, and subject to all conditions herein expressed.

PURCHASER:

December \_\_\_, 2022

  
Lawrence A. Qualey 12/08/22  
Lawrence A. Qualey, a single person

December \_\_\_, 2022

  
Randall E. Qualey 12/08/22  
Randall E. Qualey, a single person

Exhibit A  
Quit Claim Deed

**QUIT CLAIM DEED**

eCRV number: \_\_\_\_\_

DEED TAX DUE: \$ \_\_\_\_\_

DATE: Dec. 14, 2022

FOR VALUABLE CONSIDERATION, Austin Utilities, a municipal corporation established under the charter of Austin, Minnesota, ("Grantor"), hereby conveys and quitclaims to Lawrence A. Qualey, a single person and Randall E. Qualley, a single person ("Grantee"), as tenants in common, real property in Mower County, Minnesota, legally described as follows:

The South 50 feet of the following described parcel:

All that portion of the SE $\frac{1}{4}$  NW $\frac{1}{4}$  and of the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, Township 103 North, Range 18 West, Mower County, Minnesota, lying east of a line 50 feet east of and parallel with the centerline of the main track of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company as originally established across said Section 26, west of the west line of the public highway as now established along the north and south centerline of said Section 26, and north of a line perpendicular to the centerline of said Railroad Company's main track at a distance of 1,869 feet northerly, measured along said center line from its intersection with the south line of the SW $\frac{1}{4}$  of said Section 26, containing 11.6 acres, more or less. (hereinafter called the "Parcel")

Subject to those Easements, Restrictions and Covenants, with Possibility of Reverter as stated in the Limited Warranty Deed dated December 16, 1985, between Southern Minnesota Municipal Power Agency as "Grantor" and Austin Utilities as "Grantee" recorded April 10, 1986, in Book of Deeds 408, page 45, document 372938. Subject also to any easements and third-party rights of record.

*Check here if all or part of the described real property is Registered (Torrens)*   
together with all hereditaments and appurtenances belonging thereto.

*Check applicable box:*

The Seller certifies that the Seller does not know of any wells on the described real property.

A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)

I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

**Austin Utilities**

By: Jeannie Sheehan Its: Board Chair

By: Mark Nibaur  
Mark Nibaur Its: General Manager

State of Minnesota, County of **Mower**

This instrument was acknowledged before me on Dec. 14, 2022, by Jeanne Sheehan as  
**Board Chair** and by **Mark Nibaur** as **General Manager** of Austin Utilities.



THIS INSTRUMENT WAS DRAFTED BY:

**Craig M. Byram**  
Hoversten, Johnson, Beckmann & Hovey, LLP  
807 West Oakland Avenue  
Austin, MN 55912  
(507) 433-3483



Sarah J. Douty  
Notary Public

TAX STATEMENTS FOR THE REAL PROPERTY  
DESCRIBED IN THIS INSTRUMENT SHOULD BE  
SENT TO:

**Lawrence A. Qualey**  
2511 11<sup>th</sup> Street NE  
Austin, Minnesota 55912

**RESOLUTION NO.**

**RESOLUTION APPROVING THE SALE OF CERTAIN  
REAL PROPERTY FROM AUSTIN UTILITIES  
TO LAWRENCE A. QUALEY AND RANDALL E. QUALEY**

WHEREAS, Austin Utilities owns a large parcel of land immediately north of the Windrift Lounge property; and

WHEREAS, Austin Utilities has discovered that the owner of the Windrift Lounge has encroached on Austin Utilities land; and

WHEREAS, the owners of the Windrift Lounge Parcel, Lawrence E Qualey and Randall E Qualey, desire to purchase a portion of the Austin Utility property according to the attached purchase agreement; and

WHEREAS, Austin Utilities has determined that this portion of the Austin Utility parcel is not necessary for their operations and the Austin Utilities Board of Commissioners have approved the sale according to the attached purchase agreement via resolution no. 324; and

WHEREAS, the City Council has determined that this sale benefits the people of Austin as there is no perceived public use of the parcel to be sold and the terms and conditions of the sale represent market value for the parcel to be sold.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Austin, Minnesota, that the sale and conveyance of the aforescribed Property from Austin Utilities to Lawrence A. Qualey and Randall E. Qualey is hereby approved.

Passed by a vote of Yeas and Nays this 19th day of December, 2022.

YEAS:

NAYS:

APPROVED:

---

Mayor

ATTEST:

---

City Recorder

RESOLUTION NO.

## ACCEPTING DONATIONS TO THE CITY OF AUSTIN

WHEREAS, the City has received gift as follows:

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 19th day of December, 2022.

ATTEST:

APPROVED:

---

## City Recorder