

A G E N D A
CITY COUNCIL MEETING
MONDAY, JUNE 17, 2024
5:30 P.M.
COUNCIL CHAMBERS

Call to Order.

Pledge of Allegiance.

Roll Call.

(mot) 1. Adoption of Agenda.

(mot) 2. Approving Minutes from June 3, 2024.

3. Recognitions and Awards.
Kim Lenz – Service to the City of Austin

(mot) 4. *Consent Agenda

Licenses:

Exempt Gambling (bingo): United Way of Mower County on August 16, 2024
Mobile Business: Recreational Rentals of New Mexico, Wichita, KS
Right of Way: North Star Concrete LLC, 57369 227th Street

Claims:

- a. Pre-list of Bills
- b. Investment Report
- c. Financial Report
- d. Settlement and Release Agreement

Event Applications:

Pro Horseshoe Tour on June 22 & 23, 2024
Kids Fishing Contest on July 6, 2024
Darren Dash Freedom Fest 5k Run on July 6, 2024
Employee Recognition Event on July 18, 2024

PUBLIC HEARINGS:

(res) 5. Nu-Tek MIF/MN DEED Grant Extension Request

PETITIONS AND REQUESTS:

(mot) 6. Approving Authorization to Sign State Grant Amendment to Airport Fuel System Upgrade

(mot) 7. Calling for a Public Hearing for the Amendment of Tax Increment Financing District #16
YMCA Redevelopment – Stencil Development

(res) 8. Approving Change Order Number Four for the Waste Water Treatment Plant Project

- 9. Reviewing a Natural Gas Prepay Ordinance with Minnesota Municipal Gas Agency
 - (mot) a. For preparation of the ordinance
 - (ord) b. For adoption of the ordinance
 - (res) c. For summary publication of the ordinance
- (res) 10. Approving the Comprehensive Plan and Downtown Master Plan MOA
- (res) 11. Expanding Hoot & Ole's Liquor License to the Patio Area
- (res) 12. Accepting Donations to the City of Austin
- (res) 13. Declaring the structure at 1008 7th Avenue NE as hazardous.
- 14. Granting the Planning and Zoning Department the Power to Contract for the Removal of Junk and/or Illegally Stored Vehicles at the Following Locations:
 - (mot) a. 503 8th Avenue SE, Wakefield Property
 - (mot) b. 506 11th Avenue SW, Wendroth Property

CITIZENS ADDRESSING THE COUNCIL

HONORARY COUNCIL MEMBER COMMENTS

REPORTS AND RECOMMENDATIONS:

City Administrator

City Council

- (mot) Adjourn to **Monday, July 1, 2024** at 5:30 pm in the Council Chambers

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

M I N U T E S
CITY COUNCIL MEETING
June 3, 2024
5:30 PM
Council Chambers

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

MEMBERS ABSENT:

STAFF PRESENT: City Administrator Craig Clark, Director of Administrative Services Tom Dankert, Police Chief David McKichan, Fire Chief Jim McCoy, Public Works Director Steven Lang, Assistant City Engineer Mitch Wenum, Planning and Zoning Administrator Holly Wallace, Park and Rec Director Jason Sehon, City Attorney Craig Byram, Human Resources Director Tricia Wiechmann, and City Clerk Brianne Wolf

APPEARING IN PERSON: Austin Daily Herald, Will Harmon from Thompson Sanitation Inc.

Mayor Steve King called the meeting to order at 5:30 p.m. He then introduced Honorary Council Member Isaac Oboya.

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

Moved by Council Member Baskin, seconded by Council Member Fisher, approving Council minutes from May 20, 2024. Carried.

CONSENT AGENDA

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

Licenses:

Exempt Gambling: Mower County Veterans Council on July 3 & 4, 2024
Mobile Business: Sunny's Ice Cream, 1013 5th Avenue NE
Mobile Business: La Michoacana Minnesota Inc, Waseca, MN
Mobile Business: Mami Churros & Creamery, Albert Lea, MN
Right of Way: Universal Service's LLC, Woodbury, MN
Temporary Liquor: Gravity Storm Brewery Cooperative on July 3 & 4, 2024
Temporary Liquor: Austin Community Education Fund on July 9, 2024

Claims:

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

Event Applications:

Freedom Festival on July 3 & 4, 2024

Algorithm 4th Annual Bike Show on June 16, 2024

Carried.

PETITIONS AND REQUESTS

Public Works Director Steven Lang discussed changes to the lease agreement with Thompson Sanitation for the operation of the Austin Transfer Station. He stated there were changes to the terms. There will be the initial one-year term and then it would proceed into three two-year terms. A baseline on the tonnage rate has been set at 1,300 tons per month.

The City is responsible for maintenance and repair. Mr. Lang stated that if the scale were to go down or equipment were to go down for more than three business days, the monthly lease would be adjusted accordingly.

Council Member Baker would like to see the language toned down to excessive down time.

Mr. Lang stated public hours have increased. He stated Exhibits A & B only had rate changes. Exhibits C through F were from the previous contract with Waste Management and brought over into the Thompson Sanitation Lease Agreement.

Council Member Postma wanted to know how much time had to be given if Thompson Sanitation wanted to cancel their contract. Mr. Lang stated it would be six months.

Council Member Baskin wanted to know how much time it takes the City to get the scales or equipment repaired if it goes down. Mr. Lang stated it takes a contractor approximately one day to two days to fix it.

Council Member Baker stated there is no language about hazardous materials and accepting paint. He would like that clarified in the lease agreement.

The Council approves the lease agreement with the changes requested.

Moved by Council Member Postma seconded by Council Member Baker to adopt a resolution approving a lease agreement with Thompson Sanitation Inc. to include the changes requested by Council. Carried 7-0.

Park and Rec Director Jason Schon stated there are approximately 2,000 ash trees on City maintained property. They are in the process of treating approximately 500 ash trees. They need to figure out how to remove 1,500 ash trees. He stated the parks crew can remove approximately 800 trees over a four-year period. He is being conservative with this number. Mr. Schon would

like to propose that the Park and Recreation Department contract to have an additional 175 ash trees removed annually over a three-to-four-year period.

Mr. Sehon would like to get bids on this project. He is estimating this might cost over a million dollars over the four-year period.

Council Member Baker asked what the average cost is for City staff to remove an ash tree.

Mr. Sehon stated for the City, on average, to remove a tree it costs approximately \$1,000-\$1,200.

Council Member Baskin would like more information about the total costs for removal, the long-term costs, and a cost benefits analysis.

Director of Administrative Services Tom Dankert stated the predecessor was also looking to hire additional staff to assist with tree trimming. He recommended seeing where the bids come in and to get a more accurate analysis of costs.

Moved by Council Member Baker seconded by Council Member Fischer, approving a request to obtain bids for tree trimming. Carried

Moved by Council Member Baker, seconded by Council Member Baskin, accepting donations to the City of Austin. Carried 7-0.

Moved by Council Member Baker, seconded by Council Member Postma, to grant the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 506 12th Street NE, Brito De Rouge Property. Carried.

Moved by Council Member Fischer, seconded by Council Member Baker, to grant the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1306 11th Street NW, Hastings Property. Carried.

REPORTS AND RECOMMENDATIONS

Representative Patricia Mueller gave a report on the legislative session.

City Administrator Craig Clark stated 4th Avenue Fest is on June 5th from 4pm to 8pm, and invited all to attend. He noted this is the first meeting without Jason Grant from KAUS. He stated this is a loss for our community and in keeping people informed about what is going on in our local government. We will miss him being here.

COUNCIL REPORTS

Council Member Helle invited everyone to attend 4th Avenue Fest at Mill Pond. She thanked Steven Lang and the Public Works Department on the quick work on making the best possible outcome happen with the transfer station.

Council Member Postma stated that KAUS is no longer doing any local coverage and we only have the Austin Daily Herald covering our local news so he is encouraging people to subscribe to help keep the Austin Daily Herald and local news around.

Council Member Baker stated that after spending some time with Sicora this last week, he would like to see Mr. Clark and his staff define what success looks like. He would like to know how do we measure success. He also stated we have six months until benefits renewal is up and he would like administration to start to look at what the strategies are and how we can do a better job of communication.

Council Member-at-Large Austin stated that filing for office closes tomorrow at 5:00 p.m. if you are interested in running.

Council Member Baskin congratulated all the recent graduates. He echoed the sentiment for KAUS. He expressed his condolences to the Minneapolis police officer that lost his life this past weekend.

Council Member Fischer stated if you are out and about and see a bad ash tree to report it to the Park and Rec. Department.

Council Member Poshusta welcomed Isaac, the Honorary Council Member and echoed the sentiment of losing Jason from KAUS.

Moved by Council Member Postma, seconded by Council Member Baskin, adjourning the meeting to June 17, 2024. Carried.

Adjourned: 6:25 p.m.

Approved: June 17, 2024

Mayor: _____

City Recorder: _____

City of Austin
Craig Clark,
City Administrator



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

TO: Honorable Mayor and City Council Members

FROM: Craig D. Clark, Administrator

RE: NuTek Bioscience MIF requested extension

The Minnesota Department of Employment and Economic Development (DEED) has sent us notice that the compliance period of the Minnesota Investment Fund for NuTek Bioscience was due March 31, 2024 that was originally authorized by Council on January 19, 2021 (Exhibit 1). As part of this agreement, NuTek was required to produce 35 jobs over a two-year period and make capital investment of \$35 million in exchange of state funds of \$325,000 to purchase capital equipment. The City of Austin oversees the funding from DEED.

We have received notice from NuTek (Exhibit 2) that they were able to produce 26 jobs but given that the plant has not had production demand to operate the plant on a 24/7 basis, which was anticipated at the time of the application, they need an extension to meet the requirement for job creation as they continue to ramp up production. This is NuTek's first brand new facility and also took longer to get up and running but plans are to have the additional 9 employees as added production is advanced and further functionality added by the end of 2024.

We have to hold a public hearing before considering an extension. That has been published as required and to be held tonight. Following the public hearing the Council may consider the attached resolution (Exhibit 3) to extend the term for one year to March 31, 2025.

Let me know if you have any questions.

Council Action is requested to approve the resolution included as Exhibit 3 and authorize the Mayor to sign and Recorder attest the agreement.

RESOLUTION NO. 16196

MINNESOTA INVESTMENT PROGRAM

BE IT RESOLVED that the City of Austin act as the legal sponsor for the project contained in the Minnesota Investment Fund Application to be submitted on or about January 19, 2021 and that Craig Clark, Administrator is hereby authorized to apply to the Department of Employment and Economic Development for funding of this project on behalf of the City of Austin.

BE IT FURTHER RESOLVED that the City of Austin has the legal authority to apply for financial assistance, and the institutional, managerial, and financial capability to administer the proposed project.

BE IT FURTHER RESOLVED that City of Austin has not violated any Federal, State, or local laws pertaining to fraud, bribery, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice.

BE IT FURTHER RESOLVED that upon approval of its application by the State, the City of Austin may enter into a Grant Contract with the State of Minnesota for the approved project, and that the City of Austin certifies that it will comply with all applicable laws, statutes, regulations and rules as stated in the Grant Contract and described in the Project Compliance Certification of the Application.

AS APPLICABLE, BE IT FURTHER RESOLVED that the City of Austin has obtained credit reports and credit information on Nu-Tek Biosciences, LLC and its principal owners Thomas Yezzi and Allan Routh. Upon review by the City of Austin and Avisen Legal, no adverse findings or concerns regarding, but not limited to, tax liens, judgments, court actions, and filings with state, federal and other regulatory agencies were identified. Failure to disclose any such adverse information could result in revocation or other legal action.

NOW, THEREFORE BE IT RESOLVED that Craig Clark, Administrator, or his successors in office, are hereby authorized to execute the Grant Contract and amendments, thereto, as are necessary to implement the project on behalf of the City of Austin.

Passed by a vote of yeas and nays this 19th day of January, 2021.

YEAS 7

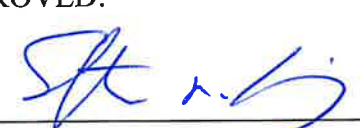
NAYS 0

ATTEST:



City Recorder

APPROVED:



Mayor



5400 Opportunity Court, Suite 120, Minnetonka, MN 55343
O: +1 952.936.3600 | F: +1 952.933.1396
www.nu-tekbiosciences.com | sales@nu-tekbioscience.com

May 30th, 2024

Craig Clark
City Administrator
City of Austin
500 Fourth Ave N. E.
Austin, MN 55912-3773

Dear Craig,

Nu-Tek BioSciences (NTB) would like to formally request a one-year extension to meet its head count requirements under the Minnesota Investment Fund Grant Contract Agreement CDAP-20-0061-H-FY21 with the City of Austin.

This extension is requested as NTB hiring has been slowed due to delayed demand for the Company's products and installation of other production capabilities. The Company believes it will meet its required new jobs of 35 positions by 3/31/2025.

Thank you for your consideration.

Sincerely,

Kent McCoy
CFO
Nu-Tek BioSciences, LLC

**RESOLUTION NO.
CITY OF AUSTIN, MINNESOTA**

**RESOLUTION REGARDING THE APPROVAL OF A
MINNESOTA INVESTMENT FUND APPLICATION REQUEST
FOR MIF PROJECT EXTENTION
IN CONNECTION WITH AUSTIN, MINNESOTA FOR THE PROJECT ENTITLED
NU-TEK BIOSCIENCES, LLC**

WHEREAS, the City of Austin, Minnesota, desires to assist Nu-Tek Biosciences, LLC which has constructed a manufacturing facility for specialty protein products used in the development and manufacturing of pharmaceuticals and working towards job creation goals in the City; and,

WHEREAS, the City of Austin, understands that Nu-Tek Biosciences, LLC through and with the support of the City of Austin wishes to apply or has applied to the Minnesota Department of Employment and Economic Development's Minnesota Investment Fund Program for project financing; and,

WHEREAS, the City of Austin, held a City Council meeting on June 17, 2024 to consider this matter.

NOW, THEREFORE, BE IT RESOLVED that, after due consideration, the Mayor and City Council of the City of Austin, Minnesota, hereby express their approval of the Minnesota Investment Fund application from the City of Austin to assist with this project by extending the time period of the project to March 31, 2025.

Passed by a vote of yeas and nays this 17th day of June, 2024.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

Rev. 4/13

MnDOT Agreement No. **1055863A01****AMENDMENT # A01 TO MnDOT GRANT AGREEMENT #1055863**

This Amendment is by and between the state of Minnesota, through its Commissioner of Transportation (“State”), and the **City of Austin, MN** (“Grantee”).

Recitals

1. The State has an agreement with the Grantee identified as MnDOT Agreement Number **1055863** (“Original Agreement”), to provide for **Upgrade Aircraft Fueling System – Fuel tanks.**
2. The Original Agreement is being amended to **include installation & construction of new fuel tanks; install new fuel tank monitoring system; remove existing system & fuel tanks.**
3. The State and the Recipient are willing to amend the Original Agreement as stated below.

Agreement Amendment

In this Amendment deleted agreement terms will be ~~struck out~~ and the added agreement terms will be underlined.

REVISION 1. Section 4.1, Cost Participation is amended as follows:

- 1.1 **4. Cost Participation.** Costs for the Project will be proportionate and allocated as follows:

<u>Item Description</u>	<u>Federal Share</u>	<u>State Share</u>	<u>Grantee Share</u>
Design Engineering (S.E.H.) \$82,400.00	0%	70%	30%
<u>Construction – Construction Administration- Administration \$831,086.00</u>	<u>0%</u>	<u>70%</u>	<u>30%</u>

Federal Committed:	\$	0.00
State:	\$57,680.00	<u>\$639,440.00</u>
Grantee:	\$24,720.00	<u>\$274,046.00</u>

~~These funds are not committed and are only available after being made so by the U.S. Government. Federal funds for the Project will be received and disbursed by the State.~~ **No Federal Funds are authorized for this project.** In the event federal reimbursement becomes available or is increased for the Project, the State will be entitled to recover from such federal funds an amount not to exceed the state funds advanced for this Project. No more than 95% of the amount due under this Agreement will be paid by the State until the State determines that the Grantee has complied with all terms of this Agreement and furnished all necessary records.

REVISION 2. Section 4.4, Total Obligation is amended as follows:

4.4Total Obligation. The total obligation of the State for all compensation and reimbursements to Grantee under this agreement will not exceed \$ ~~57,680.00~~ **\$639,440.00.**

The terms of the Original Agreement are expressly reaffirmed and are incorporated by reference. Except as amended herein, the terms and conditions of the Original Agreement and all previous amendments remain in full force and effect.

***THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY
LEFT BLANK.***

State Encumbrance Verification

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

By: _____

Date: _____

SWIFT Purchase Order No: _____

Grantee

Grantee certifies that the appropriate person(s) have executed the Agreement on behalf of the Grantee as required by applicable resolutions, charter provisions or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Commissioner, Minnesota Department of Transportation

By: _____

Director, Office of Aeronautics

Date: _____

MnDOT Contract Management

as to form & execution

By: _____

Date: _____

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

May 9, 2024

RE:Austin Municipal Airport
SP A5001-60 Grant Amendment Request
Fuel Tank Upgrades

Luke Bourassa, Regional Engineer
MnDOT Office of Aeronautics
395 John Ireland Blvd,
St. Paul, MN 55155-1800

**SP A5001-60 Contract #1055863
Amendment A01**

Dear Mr. Bourassa,

The City of Austin / Austin Municipal Airport hereby requests a Grant Amendment to State Project Number A5001-60 for the inclusion of the construction and construction administration services for the Fuel Tank Upgrades Project. The costs associated with this project are shown below:

Original Grant:

Final Design (SEH)	\$82,400.00
Total	\$82,400.00
MnDOT Share – 70%	\$57,680.00
Local Share – 30%	\$24,720.00

Amendment #1:

Construction Administration (SEH)	\$87,700.00
Construction (Minnesota Petroleum) – Base Bid + Alternate 1 + Alternate 2	\$742,386.10
Admin Expenses (Estimated)	\$1,000.00
Total	\$831,086.10
MnDOT Share – 70%	\$581,760.27
Local Share – 30%	\$249,325.83

Revised Grant:

Final Design (SEH)	\$82,400.00
Construction Administration (SEH)	\$87,700.00
Construction (Minnesota Petroleum) – Base Bid + Alternate 1 + Alternate 2	\$742,386.10
Admin Expenses (Estimated)	\$1,000.00
Total	\$913,486.10
MnDOT Share – 70%	\$639,440.27
Local Share – 30%	\$274,045.83

This letter serves as a formal request to amend the State funding for this project from \$57,680.00 to \$639,440.27. Please contact me if you have any questions or need further information. Thank you for supporting the Austin Municipal Airport.

Sincerely,



Digitally signed by
Steven Lang
Date: 2024.05.09
13:44:45 -05'00'

Steven Lang, City Engineer/Director of Public Works
City of Austin

Enclosures:

- SEH Construction Administration Agreement for 2024 AUM Fuel Tank Upgrades
- Bid Tabulation

Cc: Brian Conklin, MnDOT Office of Aeronautics
Arika Johnson, MnDOT Office of Aeronautics
Chelsea Kuchta, SEH
Adinda Van Espen, SEH

See Attached Cost Splits for Funding Rates

Airport: Austin Municipal Airport
Ident: AUM
Sponsor: City of Austin
State Project: A5001-60 Amendment A01
State Agreement #: 1055863 A01
Description: Fuel Tank Upgrades
Version Date: 8/11/2023 (date modified)

Construction	Description	Total	State Funding Rate	State	Local
	Consturion (Minnesota Petroleum) -Base Bid+ Alternate 1 + Alternate 2	\$ 742,386.00	70%	\$ 519,670.20	\$ 222,715.80
		\$ -	0%	\$ -	\$ -
		\$ -	0%	\$ -	\$ -
CONSTRUCTION SUBTOTAL		\$ 742,386.00		\$ 519,670.20	\$ 222,715.80
Engineering	Description	Total		State	Local
	Design Engineering (SEH)	\$ 82,400.00	70%	\$ 57,680.00	\$ 24,720.00
	Construction Administration (S.E.H.)	\$ 87,700.00	70%	\$ 61,390.00	\$ 26,310.00
		\$ -	0%	\$ -	\$ -
ENGINEERING SUBTOTAL		\$ 170,100.00		\$ 119,070.00	\$ 51,030.00
Administration	Description	Total		State	Local
	City Admin Expenses	\$ 1,000.00	70%	\$ 700.00	\$ 300.00
		\$ -	0%	\$ -	\$ -
		\$ -	0%	\$ -	\$ -
ADMINISTRATION SUBTOTAL		\$ 1,000.00		\$ 700.00	\$ 300.00
Amendment A01	Amendment Sub-Total	\$ 831,086.00	70%	\$ 581,760.20	\$ 249,325.80
	Grant Amounts Unadjusted	\$ 913,486.00		\$ 639,440.20	\$ 274,045.80
	Grant Amounts	\$ 913,486.00		\$ 639,440.00	\$ 274,046.00
	Grant Percentages	100.00%		70.00%	30.00%

**STATE OF MINNESOTA
STATE AIRPORTS FUND
GRANT AGREEMENT**

This agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State"), and The City of Austin, 500 Fourth Street Austin, MN 55912-3773 ("Grantee").

RECITALS

1. Minnesota Statutes Chapter 360 authorizes State to provide financial assistance to eligible airport sponsors for the acquisition, construction, improvement, marketing, maintenance, or operation of airports and other air navigation facilities.
2. Grantee owns, operates, controls, or desires to own an airport ("Airport") in the state system, and Grantee desires financial assistance from the State for an airport improvement project ("Project").
3. Grantee represents that it is duly qualified and agrees to perform all services described in this agreement to the satisfaction of the State. Pursuant to [Minn.Stat.§16B.98](#), Subd.1, Grantee agrees to minimize administrative costs as a condition of this agreement.

AGREEMENT TERMS

1 Term of Agreement, Survival of Terms, and Incorporation of Exhibits

- 1.1 **Effective Date.** This agreement will be effective on January 11, 2024, or the date the State obtains all required signatures under [Minn. Stat.§16B.98](#), Subd. 5, whichever is later. As required by [Minn.Stat.§16B.98](#) Subd. 7, no payments will be made to Grantee until this agreement is fully executed. Grantee must not begin work under this agreement until this agreement is fully executed and Grantee has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration Date.** This agreement will expire on June 30, 2028, or when all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this agreement, including, without limitation, the following clauses: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 11. Workers Compensation; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15 Data Disclosure.
- 1.4 **Plans, Specifications, Descriptions.** Grantee has provided the State with the plans, specifications, and a detailed description of the Project A5001-60, which are on file with the State's Office of Aeronautics and are incorporated into this Agreement by reference.
- 1.5 **Exhibits.** Exhibit "A" - City of Austin's Grant Request Letter; and Exhibit "B": Credit Application, are attached and incorporated into this Agreement.

2 Grantee's Duties

- 2.1 Grantee will complete the Project in accordance with the plans, specifications, and detailed description of the Project, which are on file with the State's Office of Aeronautics. Any changes to the plans or specifications of the Project after the date of this Agreement will be valid only if made by written change order signed by the Grantee and the State. Subject to the availability of funds, the State may prepare an amendment to this Agreement to reimburse the Grantee for the allowable costs of qualifying change orders.
- 2.2 If the Project involves construction, Grantee will designate a registered engineer to oversee the Project work. If, with the State's approval, the Grantee elects not to have such services performed by a registered engineer, then the Grantee will designate another responsible person to oversee such work.
- 2.3 Grantee will notify State's Authorized Representative in advance of any meetings taking place relating to the Project.
- 2.4 Grantee will comply with all required grants management policies and procedures set forth through [Minn.Stat.§16B.97](#), Subd. 4 (a) (1).
- 2.5 **Asset Monitoring.** If Grantee uses funds obtained by this agreement to acquire a capital asset, the Grantee is required to use that asset for a public aeronautical purpose for the normal useful life of the asset. Grantee may not sell or change the purpose of use for the capital asset(s) obtained with grant funds under this agreement without

the prior written consent of the State and an agreement executed and approved by the same parties who executed and approved this agreement, or their successors in office.

- 2.6 **Airport Operations, Maintenance, and Conveyance.** Pursuant to Minnesota Statutes Section 360.305, subdivision 4 (d) (1), the Grantee will operate the Airport as a licensed, municipally-owned public airport at all times of the year for a period of **20 years** from the date the Grantee receives final reimbursement under this Agreement. The Airport must be maintained in a safe, serviceable manner for public aeronautical purposes only. Without prior written approval from the State, Grantee will not transfer, convey, encumber, assign, or abandon its interest in the airport or in any real or personal property that is purchased or improved with State funds. If the State approves such a transfer or change in use, the Grantee must comply with such conditions and restrictions as the State may place on such approval. The obligations imposed by this clause survive the expiration or termination of this Agreement.

3 Time

- 3.1 Grantee must comply with all the time requirements described in this agreement. In the performance of this grant agreement, time is of the essence.

4 Cost and Payment

- 4.1 **Cost Participation.** Costs for the Project will be proportionate and allocated as follows:

<u>Item Description</u>	<u>Federal Share</u>	<u>State Share</u>	<u>Grantee Share</u>
Design Engineering - Fuel System (SEH)	0%	70%	30%
Federal Committed:	\$ 0.00		
State:	<u>\$57,680.00</u>		
Grantee:	<u>\$24,720.00</u>		

These funds are not committed and are only available after being made so by the U.S. Government. Federal funds for the Project will be received and disbursed by the State. In the event federal reimbursement becomes available or is increased for the Project, the State will be entitled to recover from such federal funds an amount not to exceed the state funds advanced for this Project. No more than 95% of the amount due under this Agreement will be paid by the State until the State determines that the Grantee has complied with all terms of this Agreement and furnished all necessary records.

- 4.2 **Travel Expenses.** No Reimbursement for travel and subsistence expenses are included in this Grant. Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.
- 4.3 **Sufficiency of Funds.** Pursuant to Minnesota Rules 8800.2500, the Grantee certifies that (1) it presently has available sufficient unencumbered funds to pay its share of the Project; (2) the Project will be completed without undue delay; and (3) the Grantee has the legal authority to engage in the Project as proposed.
- 4.4 **Total Obligation.** The total obligation of the State for all compensation and reimbursements to Grantee under this agreement will not exceed **\$57,680.00.**
- 4.5 **Payment**
- 4.5.1 **Invoices.** Grantee will submit invoices for payment by **Credit Application**. Exhibit "**B**", which is attached and incorporated into this agreement, is the form Grantee will use to submit invoices. The State's Authorized Representative, as named in this agreement, will review each invoice against the approved grant budget and grant expenditures to-date before approving payment. The State will promptly pay Grantee after Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices will be submitted timely and according to the following schedule: Monthly, or as work completion dictates.
- 4.5.2 **All Invoices Subject to Audit.** All invoices are subject to audit, at State's discretion.
- 4.5.3 **State's Payment Requirements.** State will promptly pay all valid obligations under this agreement as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving Grantee's invoices for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify Grantee within ten days of discovering the error. After State receives the corrected invoice, State will pay Grantee within 30 days of receipt of such invoice.
- 4.5.4 **Grantee Payment Requirements.** Grantee must pay all contractors under this agreement promptly.

Grantee will make undisputed payments no later than 30 days after receiving an invoice. If an invoice is incorrect, defective, or otherwise improper, Grantee will notify the contractor within ten days of discovering the error. After Grantee receives the corrected invoice, Grantee will pay the contractor within 30 days of receipt of such invoice.

4.5.5 Grant Monitoring Visit and Financial Reconciliation. During the period of performance, the State will make at least annual monitoring visits and conduct annual financial reconciliations of Grantee's expenditures.

4.5.5.1 The State's Authorized Representative will notify Grantee's Authorized Representative where and when any monitoring visit and financial reconciliation will take place, which State employees and/or contractors will participate, and which Grantee staff members should be present. Grantee will be provided notice prior to any monitoring visit or financial reconciliation.

4.5.5.2 Following a monitoring visit or financial reconciliation, Grantee will take timely and appropriate action on all deficiencies identified by State.

4.5.5.3 At least one monitoring visit and one financial reconciliation must be completed prior to final payment being made to Grantee.

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

4.5.7 Closeout Deliverables. At the close of the Project, the Grantee must provide the following deliverables to the State before the final payment due under this Agreement will be released by the State: (1) Electronic files of construction plans as a PDF and in a MicroStation compatible format; and (2) Electronic files of as-builts as a PDF and in a MicroStation compatible format. (3) Electronic files of planning documents (Airport Layout Plans – ALP) and Airport Zoning as a PDF and in a MicroStation compatible format and in GIS.

4.6 Contracting and Bidding Requirements. Prior to publication, Grantee will submit to State all solicitations for work to be funded by this Agreement. Prior to execution, Grantee will submit to State all contracts and subcontracts funded by this agreement between Grantee and third parties. State's Authorized Representative has the sole right to approve, disapprove, or modify any solicitation, contract, or subcontract submitted by Grantee. All contracts and subcontracts between Grantee and third parties must contain all applicable provisions of this Agreement. State's Authorized Representative will respond to a solicitation, contract, or subcontract submitted by Grantee within ten business days.

5 Conditions of Payment

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

6 Authorized Representatives

6.1 The State's Authorized Representative is:

Luke Bourassa, South Region Airports Engineer; (luke.bourassa@state.mn.us) (651)508-0448 and/or Brian Conklin, Regional Airport Specialist Sr.; (brian.conklin@state.mn.us) (651)252-7658 or his/her successor. The State's Authorized Representative has the responsibility to monitor Grantee's performance and the authority to accept the services provided under this agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

6.2 Grantee's Authorized Representative is:

Steven J. Lang, P.E. City Engr./Public Works Dir.

Phone (507) 437-9949 slang@ci.austin.mn.us

City of Austin

500 Fourth Avenue N.E.

Austin, MN 55912-3773

Or his/her successor.

If the Grantee's Authorized Representative changes at any time during this agreement, Grantee will immediately notify the State.

7 Assignment Amendments, Waiver, and Grant Agreement Complete

- 7.1 Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this agreement without the prior written consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.
- 7.2 Amendments.** Any amendments 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. Notwithstanding the foregoing, when FAA issues a Letter Amendment on a federal grant agreement that results in an increase in federal funds beyond the total amount in this grant agreement (i.e., federal amendment), MnDOT's receipt of the Letter Amendment from FAA has the effect of amending the total amount in this grant agreement.
- 7.3 Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or the State's right to subsequently enforce it.
- 7.4 Grant Agreement Complete.** This grant agreement contains all negotiations and agreements between the State and Grantee. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.
- 7.5 Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 7.6 Certification.** By signing this Agreement, the Grantee certifies that it is not suspended or debarred from receiving federal or state awards.

8 Liability

In the performance of this agreement, and to the extent permitted by law, Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this agreement by Grantee or Grantee's agents or employees. This clause will not be construed to bar any legal remedies Grantee may have for the State's failure to fulfill its obligations under this agreement.

9 State Audits

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of Grantee, or other party relevant to this grant agreement or transaction, are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this 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. Grantee will take timely and appropriate action on all deficiencies identified by an audit.

10 Government Data Practices and Intellectual Property Rights

- 10.1 Government Data Practices.** Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee 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 Grantee or the State. If Grantee receives a request to release the data referred to in this section 10.1, Grantee must immediately notify the State. The State will give Grantee instructions concerning the release of the data to the requesting party before the data is released. Grantee's response to the request shall comply with applicable law.
- 10.2 Intellectual Property Rights.**
- 10.2.1 Intellectual Property Rights.** State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this agreement. "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by Grantee, its employees, agents and subcontractors, either individually or jointly with others in the performance of this agreement. Works includes Documents. "Documents" are

the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by Grantee, its employees, agents or subcontractors, in the performance of this agreement. The Documents will be the exclusive property of State, and Grantee upon completion or cancellation of this agreement must immediately return all such Documents to State. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” Grantee assigns all right, title and interest it may have in the Works and the Documents to State. Grantee must, at the request of State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the Works and Documents.

10.2.2 **Obligations**

10.2.2.1 Notification. Whenever any invention, improvement or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by Grantee, including its employees and subcontractors, in the performance of this agreement, Grantee will immediately give State’s Authorized Representative written notice thereof and must promptly furnish State’s Authorized Representative with complete information and/or disclosure thereon.

10.2.2.2 Representation. Grantee must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of State and that neither Grantee nor its employees, agents or subcontractors retain any interest in and to the Works and Documents. Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless State, at Grantee’s expense, from any action or claim brought against State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including but not limited to, attorney fees. If such a claim or action arises, or in Grantee’s or State’s opinion is likely to arise, Grantee must, at State’s discretion, either procure for State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of State will be in addition to and not exclusive of other remedies provided by law.

11 **Workers Compensation**

The Grantee certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers’ compensation insurance coverage. The Grantee’s employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers’ Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State’s obligation or responsibility.

12 **Publicity and Endorsement**

12.1 Publicity. Any publicity regarding the subject matter of this agreement must identify the State as the sponsoring agency and must not be released without prior written approval from the State’s Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant agreement. All projects primarily funded by state grant appropriation must publicly credit the State of Minnesota, including on the Grantee’s website when practicable.

12.2 Endorsement. The Grantee must not claim that the State endorses its products or services.

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 the State.** The State or Commissioner of Administration may unilaterally terminate this agreement at any time, with or without cause, upon written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 14.2 Termination for Cause.** The State may immediately terminate this grant agreement if the State 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 Grantee has been convicted of a criminal offense relating to a state grant agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.
- 14.3 Termination for Insufficient Funding.** The State 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 Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State will provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.
- 14.4 Suspension.** The State 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 Grantee 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, Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

- 16 Fund Use Prohibited.** The Grantee 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 Grantee from utilizing these funds to pay any party who might be disqualified or debarred after the Grantee's contract award on this Project. For a list of disqualified or debarred vendors, see www.mmd.admin.state.mn.us/debarredreport.asp.

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

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

19 **Title VI/Non-discrimination Assurances.** Grantee 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. Grantee will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. State may conduct a review of the Grantee's compliance with this provision. The Grantee must cooperate with State throughout the review process by supplying all requested information and documentation to State, making Grantee staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by State.

20 **Additional Provisions**
[Intentionally left blank.]

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

STATE ENCUMBRANCE VERIFICATION

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

Signed: Tina Skala Digitally signed by Tina Skala
Date: 2024.02.09 13:28:55 -06'00'

SWIFT Contract/PO No(s): _____

GRANTEE

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

By: [Signature]
Title: Mayor
Date: 2/7/24

By: [Signature]
Title: City Recorder
Date: 2/7/24

DEPARTMENT OF TRANSPORTATION

By: Kirby Becker Digitally signed by Kirby Becker
(with delegated authority) Date: 2024.02.09 12:55:29 -06'00'

Title: _____

Date: _____

**DEPARTMENT OF TRANSPORTATION
CONTRACT MANAGEMENT**

By: Fatema Haji-Taki Digitally signed by Fatema Haji-Taki
Date: 2024.02.09 16:15:49 -06'00'

RESOLUTION NO. 16936

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

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

1. That the state of Minnesota Agreement No. 1055863, "Grant Agreement for Airport Improvement Excluding Land Acquisition," for State Project No. A5001-60 at the Austin Municipal Airport is accepted.
2. That the Mayor and City Recorder are authorized to execute this agreement and any amendments on behalf of the City of Austin.

Passed by a vote of yeas and nays this 5th day of February, 2024.

YEAS 7

NAYS 0

ATTEST:

APPROVED:



City Recorder



Mayor

CERTIFICATION

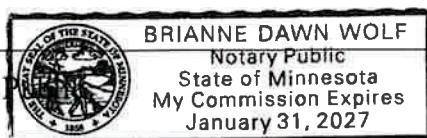
I certify that the above Resolution is a true and correct copy of the Resolution adopted by the Council of the City of Austin at an authorized meeting held on the 5th day of February, 2024, as shown by the minutes of the meeting in my possession.



Brianne Wolf, City Clerk

Subscribed and sworn to before me
This 5th day of February, 2024

Notary



January 31, 2027

My Commission Expires:

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



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

Memorandum

To: Mayor & Council
From: Steven J. Lang, P.E.
Date: June 10, 2024
Subject: WWTP Expansion & Phosphorus Reduction Project
Change Order 004

As we progress through the project, changes to the overall project scope and construction plans will come up from time to time. Many of these items are addressed without issue, but some result in a change to the project cost. These project cost changes can be both project savings and project expenses. In order to keep progress moving along on the project, these cost changes are addressed in a Work Change Directive (WCD). These are first reviewed by SEH as part of their construction inspection and administrative duties. Then the WCD is reviewed by both myself and Hormel for approval. I have simplified the process as I have described it above, but there is a great deal of back-and-forth communication and problem solving involved before a WCD is approved. Finally, once a few WCD have been developed a Change Order is drafted. The change order will be present to Council for official approval, the overall project budget is adjusted and the items are eligible for payment.

Attached for your review is a summary of Change Order 004.

- WCD 057, \$ 61,517 Site Fiber Reroute
- WCD 058, \$ 5,850 Admin-Grit Bypass Water/Air Relocation
- WCD 059, \$ 1,426 MH Demo near Str 10
- WCD 060, \$ 61,004 Site Electric Medium Voltage Reroute
- WCD 061, \$ 71,192 Contaminated Soil at Watermain Loop
- WCD 062, \$ 1,712 Str 60-68-90 Air Inlet & Duct Mods
- WCD 063, (\$ 4,187) Str 60 Process Pipe Mods
- WCD 064, (\$17,019) Str 60 Containment Curb Deletion
- WCD 066, \$572,343 Str 13 Vactor Leachate

I would request approval of Change Order 004 in the amount of \$753,838, which includes 9 WCD's valuing a \$407,886.86 cost increase to the Domestic budget and a \$345,951.14 cost increase to the Industrial budget.

	Work Change Directive (WCD)	Domestic	Industrial	Total
Original Project Bid		\$ 47,518,974.00	\$ 52,489,026.00	\$ 100,008,000.00
Change Order #1 (9)	SubTotal	\$ 31,154.16	\$ (273,541.16)	\$ (242,387.00)
Change Order #2 (25)	SubTotal	\$ 361,462.13	\$ 113,175.87	\$ 474,638.00
Change Order #3 (23)	SubTotal	\$ 426,436.28	\$ 426,348.72	\$ 852,785.00
Change Order #4 (9)	SubTotal	\$ 407,886.86	\$ 345,951.14	\$ 753,838.00
	Total WCD's	\$ 1,226,939.42	\$ 611,934.58	\$ 1,838,874.00
Current Project Amount		\$ 48,745,913.42	\$ 53,100,960.58	\$ 101,846,874.00
Cost Increase		2.58%	1.17%	1.84%

	Work Change Directive (WCD)	100% Domestic	Combined		100% Industrial
			54.2% Domestic	45.8% Industrial	
Change Order #4 (9)	WCD-056				
	WCD-057		\$ 33,342.21	\$ 28,174.79	
	WCD-058	\$ 5,850.00			
	WCD-059	\$ 1,426.00			
	WCD-060		\$ 33,064.17	\$ 27,939.83	
	WCD-061		\$ 38,586.06	\$ 32,605.94	
	WCD-062	\$ 1,662.00	\$ (4,759.84)	\$ (4,022.16)	\$ 8,832.00
	WCD-063		\$ (2,269.35)	\$ (1,917.65)	
	WCD-064		\$ (9,224.30)	\$ (7,794.70)	
	WCD-065				
	WCD-066		\$ 310,209.91	\$ 262,133.09	
	SubTotal	\$	407,886.86	\$	345,951.14

Change Order

No. **04**

Date of
Issuance: _____

<u>Project:</u>	<u>Owner:</u>	<u>Owner's Contract No.:</u>
WWTF Expansion and Phosphorus Reduction Project	City of Austin	N/A
<u>Contract:</u>	<u>Date of Contract:</u>	
WWTF Expansion and Phosphorus Reduction Project	August 1, 2022	
<u>Contractor:</u>	<u>Engineer's Project No.:</u>	
Rice Lake Construction Group	AUSTN 169135	

The following change(s) will be made to the Contract Documents:

Item No.	D/C/I*	Description, Reason, Contract Price and Time Change
1	C	<p><u>WCD-057 Description:</u> Site Fiber Optic Modifications – Furnish labor and materials (except fiber optic cables) to install Owner furnished fiber optic cables.</p> <p><u>Reason:</u> Contract Plans included scope for Contractor furnished and installing fiber optic cables, but also included a conflicting General Note stating Owner would install fiber optic cables. The Contractor provided bid quotes from multiple Electrical bidders stating fiber optic cable and conduits were not included in their bids, and Owner and Contractor agreed that Contractor would furnish labor and conduits to install Owner furnished fiber optic cables.</p> <p><u>Price Change (Combined):</u> \$61,517.00</p> <p><u>Time Change:</u> 0 days</p>
2	D	<p><u>WCD-058 Description:</u> Admin-Grit Bypass Tie-in, Water & Air Line Relocation – Furnish material, equipment, and labor to relocate the 3-inch W2 non-potable water line and 1-inch compressed air line to facilitate installation of the fittings, valve and 18-inch RW Admin & Grit Bypass line.</p> <p><u>Reason:</u> This is an unforeseen condition. Contract Documents indicated the non-potable water line and compressed air line were adjacent to the RW line. Excavation of the tie-in location clarified that the non-potable water line and compressed air line were installed directly above the RW line and required relocation in order to proceed with the installation of the 18-inch RW Admin & Grit Bypass line.</p> <p><u>Price Change (Domestic):</u> \$5,850.00</p> <p><u>Time Change:</u> 0 days</p>

3	D	<p>WCD-059 Description: Unforeseen Manhole Demolition Near LS #10 – Furnish material, equipment, and labor to demolish unforeseen manhole near Structure #10 (Main Lift Station).</p> <p><u>Reason:</u> This is an unforeseen condition. Contract Documents did not show this abandoned manhole. This abandoned manhole was discovered during asphalt pavement removal and the Contractor was directed to demolish it.</p> <p><u>Price Change (Domestic):</u> \$1,426.00</p> <p><u>Time Change:</u> 0 days</p>
4	C	<p>WCD-060 Description: Site Medium Voltage Modifications - Furnish labor, materials, and credits to install revised site medium voltage electrical power supply for the project, generally located on the east side of the WWTF.</p> <p><u>Reason:</u> Owner, Contractor, and Engineer collaboratively modified the site medium voltage power plans to improve constructability and reduce utility conflicts. These changes will optimize the installation of the site medium voltage power, reduce the Final Clarifier 32 and 33 installation costs, and minimize impacts to WWTF operations.</p> <p><u>Price Change (Combined):</u> \$61,004.00</p> <p><u>Time Change:</u> 0 days</p>
5	C	<p>WCD-061 Description: Contaminated Soils at Watermains – Excavate, stockpile, and protect contaminated soil encountered while installing site pipe, wrap installed pipe in protective sleeve, and provide and install clean suitable fill to replace the volume of removed contaminated soil required to compete the pipe trench backfill.</p> <p><u>Reason:</u> Contract Documents did not indicate contaminated soil would be encountered while excavating for site pipe installation. On August 17, 2023, Contractor encountered suspected contaminated soil. Testing confirmed it was contaminated soil. The Owner and Contractor agreed that the Contractor would excavate, stockpile, and protect the contaminated soil encountered, provide a protective wrap around the pipe, and provide clean suitable fill to replace the removed contaminated soil, and the Owner would load and haul it to a certified landfill.</p> <p><u>Price Change (Combined):</u> \$71,192.00</p> <p><u>Time Change:</u> 0 days</p>

6	D, C, I	<p>WCD-062 Description: Structures 60-68-90 Air Inlet and Duct Modifications – Furnish materials, equipment, and labor to: change 1 supply grill from aluminum to stainless steel (Structure 10), change HVAC unit 60-EF-2 ductwork from FRP to galvanized G90 (Structure 60), change ductwork grill inlets and outlets on EG-1 and EG-2 units from stainless steel to painted aluminum (Structure 68), change HVAC units 90-MAU-1 and 90-EF-1 branch ductwork from rectangular FRP to round FRP, revise the elevations of the ductwork, and change 6 supply grills from aluminum to stainless steel (Structure 90).</p> <p>Reason: These changes increase material longevity (or in some cases are more appropriate for the room environment), eliminate blocked operator views, match existing materials, and improve the facility operations and maintenance.</p> <p>Price Change (Domestic): \$1,662.00</p> <p>Price Change (Combined): (\$8,782.00)</p> <p>Price Change (Industrial): \$8,832.00</p> <p>Time Change: 0 days</p>
7	C	<p>WCD-063 Description: Structure 60 Thickened Sludge Pump Piping Revisions – Provide labor and material credit for Owner requested modifications to simplify the Thickened Sludge Pumps’ discharge piping per FO-053.</p> <p>Reason: This change simplifies the piping layout while providing the same functionality and is an overall cost savings to the project.</p> <p>Price Change (Combined): (\$4,187.00)</p> <p>Time Change: 0 days</p>
8	C	<p>WCD-064 Description: Structure 60 Containment Curb Removal and Equipment Support Changes – Provide labor and material credits for Owner requested deletion of the Gravity Belt Thickener (GBT) containment curbs, and Contractor suggested modification of GBT equipment supports.</p> <p>Reason: This change provides the same operation and maintenance functionality and is an overall cost savings to the project.</p> <p>Price Change (Combined): (\$17,019.00)</p> <p>Time Change: 0 days</p>
9	C	<p>WCD-066 Description: Structure #13 Vactor Leachate Receiving Modifications - Furnish labor, materials, and credits to install revised Structure 13 (Vactor/Leachate Receiving).</p> <p>Reason: During the construction phase of the project the Owner re-evaluated the capacity and functional requirements for Structure 13, and requested size (larger) and layout changes. These changes optimize the functionality, operation, and maintenance of Structure 13, and provide sufficient facility capacity for current and future operations.</p> <p>Price Change (Combined): \$572,343.00</p> <p>Time Change: 0 days</p>

* D = Domestic, C=Combined, I=Industrial

Attachments (list documents supporting change):

WCD-057
WCD-058
WCD-059
WCD-060
WCD-061
WCD-062
WCD-063
WCD-064
WCD-066

Contract Price Change – Domestic and Industrial Split

Work Change Directive (WCD)	100% Domestic	Combined		100% Industrial
		54.2% Domestic	45.8% Industrial	
WCD 056*				
WCD 057		\$33,342.21	\$28,174.79	
WCD 058	\$5,850.00			
WCD 059	\$1,426.00			
WCD 060		\$33,064.17	\$27,939.83	
WCD 061		\$38,586.06	\$32,605.94	
WCD 062	\$1,662.00	\$(4,759.84)	\$(4,022.16)	\$8,832.00
WCD 063		\$(2,269.35)	\$(1,917.65)	
WCD 064		\$(9,224.30)	\$(7,794.70)	
WCD 065*				
WCD 066		\$310,209.91	\$262,133.09	
Totals		\$407,886.86		\$345,951.14

*WCD will be include in a future change order.

Contract Status:

Original Contract Price	\$100,008,000.00
Previous Contract Price Revisions	\$1,085,036.00
(Through Change Order: 03)	
Current Contract Price	\$101,093,036.00
Price Change (this Change Order)	\$753,838.00
Revised Contract Price	\$101,846,874.00
Original Contract Times (days)	
Substantial Completion	1,120
Final Completion	1,370
Previous Contract Time Revisions (days)	
Substantial Completion	0
Final Completion	0
Current Contract Times (days)	
Substantial Completion	1,120
Final Completion	1,370
Time Changes (this Change Order, days)	
Substantial Completion	0
Final Completion	0
Revised Contract Times (days)	
Substantial Completion	1,120
Final Completion	1,370

<u>Recommended for Approval by Engineer:</u> Name: John Glatzmaier, Project Manager Signature: <i>John W. Glatzmaier</i>	Date: 06/07/2024
<u>Approved for Owner (City of Austin, MN) by:</u> Name: Signature:	Date:
<u>Approved for Hormel Foods Corp. (if applicable) by:</u> Name: Signature:	Date:
<u>Approved for Contractor by:</u> Name: Signature:	Date:

RESOLUTION NO.

RESOLUTION APPROVING CHANGE ORDER NO. 4 WITH RICE LAKE CONSTRUCTION GROUP FOR THE WASTE WATER TREATMENT PLAN CONTRACT

WHEREAS, the City of Austin, Minnesota entered into a contract with Rice Lake Construction group for the construction of a new waste water treatment plant via ordinance no. 706 on August 1, 2022; and

	Work Change Directive (WCD)	100% Domestic	Combined		100% Industrial
			54.2% Domestic	45.8% Industrial	
Change Order #4 (9)	WCD-056				
	WCD-057		\$ 33,342.21	\$ 28,174.79	
	WCD-058	\$ 5,850.00			
	WCD-059	\$ 1,426.00			
	WCD-060		\$ 33,064.17	\$ 27,939.83	
	WCD-061		\$ 38,586.06	\$ 32,605.94	
	WCD-062	\$ 1,662.00	\$ (4,759.84)	\$ (4,022.16)	\$ 8,832.00
	WCD-063		\$ (2,269.35)	\$ (1,917.65)	
	WCD-064		\$ (9,224.30)	\$ (7,794.70)	
	WCD-065				
	WCD-066		\$ 310,209.91	\$ 262,133.09	
	SubTotal	\$	407,886.86	\$	345,951.14

WHEREAS, changes to the overall scope and construction plans will come up from time to time; and

WHEREAS, the contractor requested a change order for the additional work; and

WHEREAS, the following change orders have been requested:

WHEREAS, said contract, among other things, requires that change orders to the contract be approved by the City of Austin; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Austin, Minnesota approves change order number 4 to the waste water treatment plant construction project.

BE IT FURTHER RESOLVED, that the Mayor and City Recorder are authorized to execute said change order.

Passed by a vote of yeas and nays this 17th day of June, 2024.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor



Date: May 28, 2024

To: Austin City Council

From: Mark Nibaur

Subject: PEAK Natural Gas Prepay Extension – Ordinance Approval

Austin Utilities executed both a Long Term (30 year) and Short Term (6 year) Natural Gas Supply Contract with the Public Energy Authority of Kentucky (PEAK) in 2018, which was approved by the City Council, where AU committed to purchase a set volume of natural gas daily in an effort to achieve a discount on the gas – commonly referred to as a prepay agreement. You might recall the Gas Supply Contracts have price reset points roughly every six years. The PEAK agreements have hit the reset point, and we have discussed strategy moving forward with their team. These Agreements have been very successful the past six years, saving AU and our customers roughly \$962,000.

PEAK is currently planning to go to the market and execute on the next reset period in the July – November timeframe. The minimum discount is set at \$0.20/MMBTU; if this level is not achieved AU has an option to leave the deal for the established reset period. However, we don't anticipate leaving the deal, even if a lower discount were achieved. PEAK has asked if AU would be interested in extending the Long Term Gas Supply Contract by a term of six years to 2054 in an effort to achieve a larger discount for the participants. Due to the fact that the Agreement may be extended for a period greater than five (5) years, and a Short Term Gas Supply Contract may be executed for a term greater than five (5) years, an Ordinance approved by Council is required. Staff, along with the AU Board of Commissioners supports this request by PEAK; therefore, has provided the following documents for review:

- Amendment to Gas Supply Contract: Amendment outlines the term extension to 2054
- Short Term Gas Supply Contract: Contract which will be executed in the event AU determines this will be advantageous to our supply strategy
- Ordinance: Ordinance granting AU's General Manager Authority to execute on required documents to participate in the Gas Supply Agreements
- Resolution: Executed AU Board Resolution granting Mark Nibaur Authority to execute on required documents to participate in the Gas Supply Agreements (For Reference)

There are many complexities to these deals which could impact AU's ability to move additional volume into the Long Term deal, therefore we've kept the door open on an additional Short Term deal and written the Ordinance to accommodate this. The City Attorney reviewed the Ordinance and Agreements and he is supportive. The AU Board approved Resolution No. 331 on May 21st, 2024; AU staff will present a similar Ordinance to the City Council for approval due to the Agreement extending longer than five (5) years.

If you have any questions prior to the board meeting, please contact me at your convenience.

Thank You,
Mark Nibaur

ORDINANCE NO. ____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUSTIN AUTHORIZING THE EXECUTION OF AN AMENDMENT TO ITS LONG-TERM GAS SUPPLY CONTRACT WITH THE PUBLIC ENERGY AUTHORITY OF KENTUCKY (“PEAK”); AUTHORIZING THE ACCEPTANCE OF A DISCOUNT BELOW THE MINIMUM DISCOUNT SPECIFIED IN THE GAS SUPPLY CONTRACT IN CONNECTION WITH THE RESET OF THE AVAILABLE DISCOUNT IN PEAK’S GAS PREPAYMENT PROJECT; AUTHORIZING THE EXECUTION OF A NEW SHORT-TERM GAS SUPPLY CONTRACT WITH PEAK; AND ADDRESSING RELATED MATTERS

WHEREAS, the City of Austin (the "City") is a municipal corporation of the State of Minnesota; and

WHEREAS, the City owns and operates a municipal gas distribution or electric utility, by and through its Board of Water, Electric, Gas and Power Commissioners (the “Board”) and is authorized by the provisions of the City of Austin Charter to acquire, purchase, transport, store and manage supplies of gas necessary to meet the requirements of the residential, commercial and industrial customers served by such utility; and

WHEREAS, pursuant to the Charter of the City, the Board, known as the Austin Utilities, has the authority to execute and deliver contracts on behalf of the City of Austin; and

WHEREAS, the Public Energy Authority of Kentucky (“PEAK”), which was formed pursuant to the Natural Gas Acquisition Authority Act, KRS 353.400 to 353.410, has acquired long-term natural gas supplies from BP Energy Company ("BPEC"), for resale to the City and certain other public gas distribution systems that elected to contract with PEAK for a portion of the gas purchased from BPEC (the "Prepaid Project"); and

WHEREAS, in order to fund the prepayment of gas supplies in connection with the Prepaid Project, PEAK has issued its Gas Supply Revenue Bonds, Series 2018 B (the “Series 2018 B Bonds”); and

WHEREAS, the City and PEAK are parties to (i) that certain Gas Supply Contract dated as of September 1, 2018 (the “Long Term Supply Contract”); and (ii) that certain Short-Term Gas Supply Contract dated as of September 1, 2018 (the “Short-Term Gas Supply Contract”), each providing for the sale and purchase of gas supplies from the Prepaid Project; and

WHEREAS, the Long-Term Supply Contract provides for the periodic recalculation of the Available Discount for Reset Periods subsequent to the Initial Reset Period pursuant to procedures and parameters set forth in a Repricing Agreement between PEAK and BPEC (with such capitalized terms having the meaning ascribed to them in the Long-Term Supply Contract); and

WHEREAS, the Initial Reset Period expires on November 30, 2024 and pursuant to the Repricing Agreement the amount of the Available Discount and the length of the Reset Period during which the Available Discount will be in effect will be determined; and

WHEREAS, the Short-Term Gas Supply Contract expires by its terms as of December 31, 2024; and

WHEREAS, PEAK is in discussions with BPEC in connection with the optimal approach to structuring the refunding of the Series 2018 B Bonds and is considering different options which affect the Available Discount for the Reset Period, including different options for the term and discount to be available during the Reset Period; and

WHEREAS, certain of those options may require an Amendment to the Long-Term Supply Contract, while others may not;

NOW, THEREFORE, be it hereby resolved by the City Council of the City of Austin that:

1. The General Manager, of Austin Utilities, is hereby authorized to (a) respond to all notices provided by PEAK with respect to the estimated Available Discount, the final Available Discount and the Reset Period, including the Remarketing Notice, pursuant to the Supply Contract, and (b) enter into an amendment to the Long-Term Supply Contract between the City and PEAK, if necessary and appropriate, to reflect such changes to the Long-Term Supply Contract as shall be necessary or desirable in structuring the best resolution of the Reset Period options that may be available to PEAK under the Repricing Agreement, as described in the following section of this resolution.
2. The Authorized Officer is hereby delegated full authority to effectuate a continuation of the transaction for the Reset Period from among the options that may be available, including but not limited to: (i) accepting an Available Discount for the next Reset Period (as determined under the Repricing Agreement) that is less than the Minimum Discount specified in the Long-Term Supply Contract, but in no case less than \$0.00 cents per MMBtu to the City; (ii) extending the Delivery Period in the Long-Term Supply Contract for up to an additional seventy-two (72) months with purchases at least equal to the daily contract quantity in effect in Year 30 of the Long-Term Supply Contract during such extended Delivery Period.
3. The execution and delivery of a new Short-Term Supply Contract, in substantially the form previously submitted to the Board and attached hereto as Exhibit A, is hereby approved pursuant to which the City will agree to purchase specified quantities of natural gas from PEAK, such deliveries to be made on the dates, at volumes and for the prices set forth in such contract.

4. The General Manager is hereby authorized to execute any such other closing documents or certificates which may be required or contemplated in connection with (i) the execution and delivery of the Amendment to the Long-Term Supply Contract and the establishment of a new Reset Period for the Prepaid Project; and (ii) the execution and delivery of a new Short-Term Supply Contract.

This Ordinance shall take effect immediately upon its adoption and shall be effective for all decisions that may be made in order to effectuate the refunding of PEAK's Series 2018 B Bonds and the City's continued participation in the Prepaid Project.

All ordinances or portions thereof inconsistent with this Ordinance are hereby repealed and superseded.

Passed by a vote of Yeas and Nays this _____ day of June, 2024.

Yeas _____

Mays _____

APPROVED: _____

Title: Mayor

Attest: _____

Title: City Recorder

[SEAL]

EXHIBIT A

Form of Short-Term Gas Supply Contract

[Attached]

RESOLUTION NO. _____

SUMMARY OF ORDINANCE NO. _____

**ORDINANCE APPROVING AGREEMENT BETWEEN
AUSTIN UTILITIES AND THE PUBLIC ENERGY AUTHORITY OF KENTUCKY (“PEAK”)**

SUMMARY FOR PUBLICATION PURSUANT TO MINN.STAT. § 412.191.subd. 4.

**A full copy of the Ordinance is available for pickup at the City Clerk’s Office
located at 500 4th Avenue NE, Austin, MN 55912,
or a copy may be requested to be mailed by USPS by calling 507-437-9940.**

Austin Utilities, under the approval of the City of Austin, entered into certain Gas Supply Contracts on September 1, 2018, and said contracts are long-term contracts under which prices and other consideration is reset periodically. The initial reset is to occur in late 2024. PEAK has requested Austin Utilities approve up to a 72-month extension of the term of said contract in an effort to minimize price fluctuations by securing longer-term commitments. The Austin Utilities Board of Directors has approved this requested extension. The Austin City Charter requires City Council Approval of any contract with a term longer than five years. This summary is published in fulfillment of the Charter’s requirements. Austin Utilities believes its contracts with PEAK have allowed it to minimize price fluctuations for Natural Gas. Austin Utilities believes the extension requested by PEAK will further this goal. Austin Utilities has asked the Council to Approve its extension of the PEAK contracts consistent with the above.

Passed by a vote of yeas and nays this 17th day of June, 2024

YEAS

NAYS

APPROVED:

Stephen M. King, Mayor

ATTEST:

Tom Dankert, City Recorder

This ordinance was introduced on July __, 2024; approved on _____, 2024; was published in the Austin Daily Herald on _____, 2024, and becomes effective _____ .

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



Holly Wallace
 Planning & Zoning Administrator
 507-437-9952 / Fax 507-437-7101
 Cellular 1-507-438-2380
 Email: hollyw@ci.austin.mn.us

Date: June 12, 2024

To: City Council

From: Holly Wallace, Planning and Zoning Administrator

CC: Craig Clark, City Administrator and Steven Lang, City Engineer

RE: Approval of selection of consultant for the Comprehensive Plan and Downtown Master Plan updates and Memorandum of Agreement.

Background:

As part of an effort to continue to improve the City of Austin, Impact Austin hosted several planning activities on their own and with Velocity Group over the past few years. As part of those activities, Impact Austin's steering committee recommended updating the city's comprehensive and downtown master plans. At the same time, Mower County was proposing to update their comprehensive plan.

The city and county allocated funds to update their respective plans and Impact Austin, City of Austin and Mower County staff collaborated on a proposed RFP (request for proposals) to engage a consultant to lead a joint project. The joint project would include individual comprehensive plans for the city and county, as well as a downtown master plan for the city. In order to address a wider range of issues and some specific items, such as a food city concept, Impact Austin applied for and received a grant from the Hormel Foundation, as well as contributions from Hormel Foods and Mayo. As a cost savings, there will be some efficiencies in areas where the city and county overlap (see attached services agreement).

Selection Committee Recommendation

Six firms submitted proposals, which were reviewed by a selection committee of eight individuals representing the three collaborating organizations as well as local businesses and organizations (Katie Larson, Chris Johnson, Chaunce Stanton, Holly Wallace, Craig Clark, John Garry, Val Sheedy, and Nate Toland).

Design Workshop
HKGi
Stantec
SEH + Velocity
WSB
MSA

Blue = interviewed

Recommendation

All six proposals were well done, the three chosen to be interviewed stood out from the rest. The RFP included a not to exceed amount, therefore the proposals were similar in cost. With eight people on the selection committee, there was a great deal of discussion. The committee looked at overall content and in particular, public engagement and implementation.

Ultimately SEH + Velocity stood out because of their partnership and experience in the community, as well as discussions on public engagement and implementation strategies during the interview. The team has experience across the US and brings a diverse selection of experts.

Memorandum of Agreement (MOA)

The project has multiple sources of funding, including: city, county, Mayo, Hormel Foods, and Hormel Foundation. Through discussions with Impact Austin, DCA, the Foundation, city and county finance and administration, a Memorandum of Agreement was developed to address how the project would be invoiced and paid between various entities. I am requesting that council approve the MOA, which memorializes the pay arrangement between the parties. (See attached MOA).

Agreement for Professional Services

Austin Community Charitable Fund will receive funds from all sources throughout the project to cover the costs per the agreement. This agreement does not require any action on the part of the council, but details the obligations (scope and deliverables) of SEH, required to complete the project.

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Memorandum” or “MOA”) is dated this ____ day of June, 2024, by and between City of Austin (“Austin”), a Minnesota municipal corporation; Mower County (“Mower”), a Minnesota municipal corporation; and the Austin Community Charitable Fund, a Minnesota 503c non-profit organization.

RECITALS

WHEREAS, Austin, Mower, and Austin Community Charitable Fund all recognize the importance of comprehensive planning to a community so therefore are willing to enter into a joint planning process; and

WHEREAS, Austin, Mower, and Austin Community Charitable Fund have each committed funding to the joint planning process; and

WHEREAS, Austin, Mower, and Austin Community Charitable Fund developed, approved, and issued an RFP for the work; and

WHEREAS, Austin, Mower, and Austin Community Charitable Fund received 6 proposals, interviewed 3 firms, and selected SEH as the Consultant; and

WHEREAS, the Consultant will develop a detailed scope of work and contract to execute the work under; and

WHEREAS, the Consultant desires to have a single entity hold the contract and receive/pay invoices; and

WHEREAS, Austin, Mower, and Austin Community Charitable Fund wish to memorialized their understanding of the roles, responsibilities, and contributions toward the execution of the work, and be bound thereby.

UNDERSTANDING

NOW THEREFORE, the parties set forth herein their common understanding of the fiscal contributions, roles, responsibilities, and decision making regarding the proposal according to the scope of work for the project and subject to the terms set forth herein.

- 1. Fiscal Contributions.** Each entity has committed funds to the joint comprehensive planning process with deliverables as outlined by the SEH contract. Austin has committed \$160,000 to the project; Mower County will contribute \$100,000 to the project; and Austin Community Charitable Fund has received grants allocated to the project as follows: Mayo Clinic \$15,000, Hormel Foods \$25,000, Hormel Foundation Grant \$166,600.
- 2. Payment of Invoices.** Each entity agrees and commits that invoices properly payable to the Consultant related to any deliverable item within the scope of work and governed by the SEH contract will first be paid by Austin Community Charitable Fund utilizing the Mayo Clinic and Hormel Foods grant funds until such funds are fully expended. Thereafter, remaining amounts so payable will be paid by percentage of remaining funds contributed until the project is complete or

the available funding has been depleted with the Hormel Foundation being the last-in funding source. For clarity, Austin will pay 61.5% and Mower will pay 38.5% of the invoices until their respective contributions have been exhausted, then Austin Community Charitable Fund will pay 100% of the remaining contract utilizing the Hormel Foundation Grant. Austin and Mower Agree to advance their share funds to the Austin Community Charitable Fund through invoice to provide a cash buffer needed by Austin Community Charitable Fund to pay the SEH invoices. Neither Austin, Mower, nor Austin Community Charitable Fund shall be obligated to pay beyond their initial commitment (described above) without further agreement and approval of all entities to incur additional costs and expenses in this endeavor. Consultant shall be instructed to carefully monitor its costs and expenses consistent with this provision.

3. **Allocation of Additional Costs and Expenses.** Should the amounts initially committed above be insufficient to complete the project, work will be suspended and Austin, Mower, and Austin Community Charitable Fund will negotiate in good faith to determine the additional funds likely required to complete the project, whether those funds are available, and how to allocate those additional costs and expenses by and between the entities. Consultant shall be instructed to carefully monitor its scope of work and advise Austin, Mower, and Austin Community Charitable Fund as early as possible if it lacks confidence that the scope of work can be completed for the amounts already committed and thereby allow the entities to coordinate the approval of the needed funds or a tailoring of the scope of work to fit within available funding.
4. **Roles and Responsibilities.** Austin Community Charitable Fund will receive the Hormel Foundation Grant, hold the contract with SEH, and make the payments according to the plan outlined above. Austin and Mower hold the final decision-making authority on work within the scope of work of the project.

CITY OF AUSTIN, MN

MOWER COUNTY, MN

By: _____

By: John D. Mueller

Its: _____

Its: BOARD CHAIR

Austin Community Charitable Fund

By: _____

Its: _____

By: Quish Hansen Cjusvik
Its: Board Clerk

Acknowledgement of Receipt of MOA by Contractor

On behalf of SEH, I acknowledge receipt of the above MOA and confirm that SEH has received the instructions contained therein.

By: _____

Agreement for Professional Services

This Agreement is effective as of June 12, 2024, between Austin Community Charitable Fund (Client) and Short Elliott Hendrickson Inc. (Consultant). The Client is an entity (funding mechanism) of the Development Corporation of Austin.

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **Mower County-City of Austin Comprehensive Plans**

Client's Authorized Representative: John Garry

Address: 329 N Main St # 106L, Austin, Minnesota 55912, United States

Telephone: +1 (507) 433-9495 **email:** jkgarry@austindca.org

Project Manager: Brea Grace

Address: 717 Third Avenue SE, Suite 101, Rochester, Minnesota 55904

Telephone: 608.977.0002 **email:** bgrace@sehinc.com

Background: The project will develop two distinct comprehensive plans, a comprehensive plan for Mower County and a comprehensive plan for the City of Austin. The plans will include citywide and countywide policies, goals, and strategies, which reflect a unified vision for both the City of Austin and Mower County into the year 2045.

Scope: The Basic Services to be provided by Consultant are outlined in the Proposal for Professional Services dated March 15, 2024, provided to the City of Austin and Mower County, and as set forth herein. Services provided are subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 05.15.22), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

Task 1 – Project Initiation and Data Gathering

Task 1 Subtasks include:

1. Project initiation.
2. Data collection from the County and City.
3. GIS mapping set-up.
4. Review and analyze local conditions, existing comprehensive plans, plan amendments, and other related information.
5. Creation of the Public Participation Plan.

Deliverable: Public Participation Plan

6. Project kick-off meeting with County and City staff and Project Steering Committee (PSC).

Deliverables: Meeting minutes

Task 2 – Community Engagement

Task 2 Subtasks include (All meetings will occur virtually unless noted as in-person):

1. Public Engagement Plan
Deliverables: Engagement Plan
2. Technical Advisory Committee meetings (Virtual or In-person)

Deliverables: Meeting minutes

3. Stakeholder Committee meetings (Virtual or In-person)

Deliverables: Meeting minutes

4. County-wide Elected Official Updates (Virtual or In-person)
5. City Elected Official Updates (Virtual or In-person)
6. Project website

Deliverables: New website for projects, linked to each community's webpage, website analytics

7. City and County Joint Interactive Mapping Tool

Deliverables: Comment map, summary report

8. Online City-focused Community Survey

Deliverables: Online survey, summary report

9. County-wide Community Survey

Deliverables: Online survey, summary report

10. Two (2) City-focused Open Houses (In-person)

Deliverables: Summary report

11. Two (2) County-wide Open Houses (In-person)

Deliverables: Summary report

12. Two (2) Virtual Open Houses – hosted on project website

Deliverables: Analytics summary report

13. Two (2) City-focused Targeted Engagement Activity for Missing Voices (Virtual or In-person)

Deliverables: Summary report

14. Two (2) County-wide Targeted Engagement Activity for Missing Voices (Virtual or In-person)

Deliverables: Summary report

15. In-person Pop-up Workshop at County Fair (includes up to two SEH staff for two days)

Deliverables: Summary report

16. In-person Pop-up Workshops (Up to four workshops in County and one in City)

Deliverables: Summary report

17. Engagement Activities Associated with Additional Services - Food City, Downtown Master Plan, and Arts, Culture, Justice, Equity, Diversity, and Inclusion Planning (See Task 6)

Deliverables: Summary reports to be provided as part of Task 6: Additional Services

Task 3 – Comprehensive Plans Document Production

Task 3 Subtasks include:

1. Consultant will work with Technical Advisory Committee to develop a County Comprehensive Plan and a City Comprehensive Plan to address current and future needs. The Comprehensive Plans are anticipated to include the following chapters:
 - a. Executive Summary
 - b. Public Participation
 - c. Goals, Objectives, and Policies
 - d. Future Land Use
 - e. Growth Management Plan
 - f. Transportation
 - g. Water
 - h. Infrastructure Element
 - i. Agricultural Preservation
 - j. Waste Management
 - k. Economic Development and Tourism
 - l. Parks, Trails, and Open Space
 - m. Neighborhood Revitalization
 - n. Alternative Development and Redevelopment
 - o. Emergency Management

- p. Healthy Community
 - q. Sustainability / Resiliency Plan
 - r. Other Special Planning Areas
 - s. Historical/Archaeological Protected Sites
 - t. Community Character and Urban Design
 - u. Implementation Plan
 - v. Capital Improvement Plan
 - w. Environmental Justice (No chapter, concept spread throughout Plan)
 - x. Public Services (Emergency Mgmt./AT/Assessor/VA/LE and Corrections/Data)
 - y. Technology
2. The Comprehensive Plans will include data analysis and mapping, goals, objectives, policies, and specific recommendations for implementation. This effort will largely rely on information collected throughout the public engagement sessions as well as the steering committee meetings and recommendations.
 3. Integrate recommendations from existing County and City planning documents into the new Comprehensive Plans, as appropriate.
 4. Develop complete drafts of Comprehensive Plan documents.
- Deliverables: Digital copy (PDF) of draft County and draft City Comprehensive Plans.

Task 4 – Plan Adoption

Task 4 Subtasks include:

1. Coordination & Support of County and City Public Hearings for draft Comprehensive Plans.
 2. Prepare materials for, attend, and present to Planning Commission and subsequently to the County Board and City Council for consideration of adoption of the Comprehensive Plans.
 3. Draft adoption resolution / ordinance and provide for review by County and City Attorneys.
- Deliverable: Adoption Resolution / Ordinance
4. Revise the Draft Plans, as directed by County Board and City Council.
 5. Prepare and print the final, adopted Comprehensive Plan documents.
- Deliverables: 15 bound copies, digital copy (PDF), and GIS data/maps

Task 5 – Additional Services

Task 5.1 – Downtown Master Plan

1. Provide a Downtown Master Plan for the City of Austin as a supplement to the Comprehensive Plan. Elements of the plan include:
 - a. Block and street level plans (sub-planning districts) for 4 neighborhood focus areas as part of the downtown master area plan.
 - b. Overview of neighborhood design elements.
 - c. High-level zoning code audit for neighborhood revitalization, includes summary matrix of existing zoning and based upon the neighborhood area plans produced.
 - d. Case studies identifying impacts of tax base increase and use data to compare to potential impact with the neighborhood focus area plans.
 - e. Wayfinding and signage zones.
 - f. Identified gateway areas.
 - g. 5-Year investment focus areas, with strategic implementation plan.
 - h. Catalytic project recommendations – immediate, mid-term, and long-range parking and traffic management best practices.
 - i. Walkability and connectivity infrastructure recommendations.
 - j. Parks, green space and trail connectivity best practices.
 - k. Outside drinking and dining opportunities.
 - l. Downtown brand and story
 - m. Organization and management strategies.

Deliverables: Downtown Master Plan

Task 5.2 – Food City

1. Develop Food City systems framework for Mower County and City of Austin. Elements include:
 - a. Focus areas to include equity and access, production, distribution, policy, and management.
 - b. High level gap analysis.
 - c. Austin farmers market review and recommendations.
 - d. Culinary and hospitality development frameworks for Austin, with focus on downtown area implementation.

Deliverables: Food City Report with frameworks and recommendations

Task 5.3 – Arts, Culture, Justice, Equity, Diversity, and Inclusion Planning

1. Identify public and private catalytic project opportunities.
2. Develop high-level recommendations for implementation.

Deliverables: Recommendations for catalytic project opportunities and high-level implementation plan.

Task 6 – Subconsultant Services

Subconsultants services will assist with data collection, analysis, recommendations, community and stakeholder engagement, and other associated tasks to complete this project. Subconsultants and their role:

A) Maxfield Research and Consulting LLC

1. Review of pertinent background information including the 2016 City of Austin Comprehensive Plan, 2002 Mower County Comprehensive Plan, and 2014 City of Austin Downtown Master Plan to become familiar with Comprehensive Plan project area.
2. Participate in up to one (2) SEH team / Maxfield teleconferences or meetings.
3. Participate in up to one (1) Technical Advisory Committee meeting with SEH team and City of Austin / Mower County staff.
4. Provide an update to city and county demographic data and growth projections for 10- and 20-year time horizons.
5. Provide information / data in digital format useable for incorporating into the draft and final City of Austin Comprehensive Plan and Mower County Comprehensive Plan.

B) Velocity Group - Daniel Hintz

Velocity Group will provide the following services:

1. Downtown Master Plan
 - a. Downtown Development and Experience Design Frameworks for Implementation to include:
 - i. Wayfinding and Signage Zones.
 - ii. Identified Gateway areas.
 - iii. Organization and Management Strategies.
 - iv. 5-Year Investment Focus Areas, with strategic implementation plan developed in partnership with SEH.
 - b. Experience District Profiles and District Specific Frameworks, to include:
 - i. District Specific Data and Current Conditions.
 - ii. Catalytic Project Recommendations – Immediate, Mid-Term and Long Range developed in partnership with SEH, Place Strategies, CIVITAS, Karin Endy.
 - iii. Four Neighborhood Specific Designs & Code Audit developed in partnership with Place Strategies.
 - iv. Parking and Traffic Management Best Practices developed in partnership with SEH.
 - v. Walkability and Connectivity Infrastructure Recommendations developed in partnership with SEH.

- vi. Parks, Green Space and Trail Connectivity Best Practices developed in partnership with SEH/CIVITAS.
- c. Downtown Brand and Story
 - i. Facilitate meeting with Discover Austin and the Tourism Community of Practice on Downtown Brand in partnership with DMO Proz.
- 2. Food City
 - a. Culinary and Hospitality Development Frameworks for Austin, with focus on downtown area implementation.
 - b. Austin Farmers Market Review and Recommendations.
 - c. Support Food City Initiative work with Karin Endy for Mower County and Austin and contribute to final report.
 - d. Facilitate meeting with Discover Austin and DCA on Austin & Mower County Brand
- 3. Community Engagement
 - a. Co-develop and support SEH team on Mower County & Austin Comprehensive Plan Steering Committee engagement and activation.
 - b. Co-develop partner organization strategy and support SEH team on partner organization engagement and activation on Mower County & Austin Comprehensive Plans and Downtown Maste Plan.
 - c. Co-develop and co-manage with SEH and specialists the Communities of Practice groups around Food City, Tourism, Arts & Culture, Downtown Master Plan, Parks and Open Space and Community Engagement.
 - d. Support SEH development of community engagement strategies for public, Steering Committee, Community Partners, and Communities of Practice.
 - e. Daniel Hintz in-person engagement to be coordinated through SEH engagement team within site visit schedule above.
- 4. Tourism and Brand
 - a. Co-facilitate strategic planning session with Discover Austin and Tourism Community of Practice.
 - b. Support work of DMO Proz in developing Discover Austin strategic plan.
- 5. Administrative
 - a. Manage specialist contracts and ensure final deliverables are provided to SEH.
- 6. Arts & Culture
 - a. Facilitate strategic planning session with Arts & Cultural Community of Practice and develop recommendations white paper with frameworks, key strategies, and short-term implementation recommendations.
- 7. Organizational Support and Implementation Capacity Building
 - a. Facilitate strategic planning session with Impact Austin and provide report.
- 8. Anticipated Timeline for Site Visits by Velocity Group
 - a. 2-day visit in July or August (conduct Client workshop, Steering Committee/Technical Advisory Committee workshop, Community Partner workshop, Community of Practice Workshop, community individual interviews, conduct Impact Austin strategic planning session).
 - b. 2-day visit in September (full Velocity Group team specialist visit, conduct Client workshop, Steering Committee/Technical Advisory Committee workshop, Community Partner workshop, Community of Practice Workshop, community individual interviews).
 - c. 2-day visit in February (report findings and solicit feedback Client, Steering Committee/Technical Advisory Committee, Community Partners, Community of Practice, public events).
 - d. Velocity Group Zoom community engagements will be limited to 2 per month and will be completed by March 2024 (total of 16).
 - e. All Velocity Group team members will be completed with their draft reports and findings by December 2024. Edits will be a rolling process to be completed no later than March to include February community feedback sessions.

- f. Velocity Group and its specialist team will be completed with their scopes no later than March 2024.

Velocity Group will contract for the following services:

a. Urban3

1. Data and analysis of per acre tax productivity in Mower County and Austin to determine areas of opportunity for future investment.
2. Provide visualizations of Mower County and Austin revenue sources to determine overall fiscal health of the county and city.
3. Financial health analysis regarding taxable returns on public investment to inform future capital improvement decisions for building roads, maintaining pipes, and other infrastructure investments.
4. Financial health analysis regarding taxable returns on public investment to inform future capital improvement decisions for building roads, maintaining pipes, and other infrastructure investments.
5. Examine property tax revenue production from a race, social, and health equity perspective that inform public policy adjustments that produce more equitable property assessment practices.
6. Presentations of the above work and materials for the community and inclusion in plans.

b. CIVITAS

1. Frameworks for design and development of downtown Austin regional park along the Cedar River from 1st Street Northwest and 4th Avenue NE to connect Bandshell Community Park to White Water Park concept and frame south side of downtown.
 - a. Plan level diagrams that incorporate existing systems as well as proposed systems of open space (Active vs. passive areas, connective corridors, edge conditions, relationship to proposed adjacent land uses, and manicured vs native typologies).
 - b. Precedent images/narratives to highlight the systems and potential outcomes.
 - c. Written narrative to describe open space approach, strategy, and proposed systems.
2. Review current open space and parks plan and make observational and recommendation memo.
3. Mower County land conservation strategies memo.
4. Scope of Work Assumes up to two (2) site visits:
 - a. One to occur during analysis and understanding to meet city and county representatives, and to tour the city and county open space systems.
 - b. One to occur during more detail strategic planning, to collaborate with other team members and host focused working sessions and meetings with open space stakeholders and agencies.

c. Place Strategies

1. Develop block and street level plans for 3-4 neighborhood focus areas as part of the downtown master area plan.
2. Prepare overview of neighborhood design elements.
3. Provide a high-level zoning code audit for neighborhood revitalization, includes summary matrix of existing zoning, and based upon the neighborhood area plans produced.
4. Present case studies identifying impacts of tax base increase and use data to compare to potential impact with the neighborhood focus area plans.

d. Karin Endy

1. Develop Food City systems framework for Mower County and Austin, with focus areas to include equity and access, production, distribution, policy, and management.
2. High level gap analysis.
3. Provide Food City Report with frameworks and recommendations.

e. DMO Proz

1. Strategic and Organizational Development Plan for Discover Austin.
2. An online survey to Discover Austin's stakeholder list.
3. Review of Discover Austin organizational documents (by-laws, financials, meeting minutes, budgets, and community communiques).
4. 1.5 days of follow up conversations and Focus Groups with representatives of Austin's Visitor Economy and community leaders as appropriate.
5. Half day meeting with Discover Austin Board and Staff.
6. Analysis and summary report/memo with recommendations on how Discover Austin can become a more intentional partner in moving the community forward.

Client Responsibilities:

1. The County and City shall designate a staff member(s) to be a liaison for the project for contact and direction with the SEH Project Manager regarding project matters including review and comment on draft plan documents.
2. Publication of public hearing and meeting notices.
3. Coordination of public meeting locations, room arrangements, and other logistics for public meetings.
4. Community mailings and advertising of the planning process.
5. Legal review of draft and final Comprehensive Plan documents.
6. Distribution of Comprehensive Plan drafts and the final adopted Plans.

Schedule: Consultant services will begin promptly upon the approval of this agreement. We estimate services will take approximately 18 months. A detailed project schedule will be reviewed and agreed upon at the first Technical Advisory Committee meeting.

Payment: The estimated fee is subject to a not-to-exceed amount of \$449,972 including expenses and equipment.

The fee is broken into the tasks as listed below:

- Task 1 – Project Initiation and Data Gathering (\$35,000)
- Task 2 – Community Engagement (\$95,500)
- Task 3 – Comprehensive Plans Document Production (\$252,300)
- Task 4 – Plan Adoption (\$16,400)
- Task 5 – Additional Services (\$50,772)
- Task 6 – Subconsultant Services – the fee is included in Tasks 1-5.

The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-1.

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

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:

- Section I(C)(1) is modified to read as follows: "If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's

effort required to perform its services under this Agreement exceeds the stated fee for the Services, then Consultant shall promptly notify the Client regarding the need for additional Services. Upon written agreement between the Parties, Consultant shall be entitled to additional compensation for the additional Services and to an extension of time for completion of additional Services.”

- Section II(A)(3) is modified to read as follows: “Client shall not be required to inspect or observe Consultant’s Services. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant’s Services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements, and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide Services in a timely manner.”
- Section II(A)(5) is modified to read as follows: “Excepting circumstances where Consultant knows such information to be inaccurate, Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.”
- Section IV(A)(4) is added and reads as follows: “To the fullest extent permitted by law, Consultant agrees to indemnify and hold harmless the Client from and against all claims, actions, damages, losses and expenses, including reasonable attorney fees, to the extent caused by the Consultant’s negligence. Consultant’s indemnification obligation shall apply to the Consultant’s subcontractor(s), or anyone directly employed or hired by the Consultant, or anyone for whose acts the Consultant is liable. Consultant agrees this indemnity obligation shall survive the completion or termination of this Agreement for a period of 18 months.”

Short Elliott Hendrickson Inc.

Austin Community Charitable Fund

By: _____
Full Name: _____
Title: _____

By: _____
Full Name: _____
Title: _____

Exhibit A-1
to Agreement for Professional Services
Between Austin Community Charitable Fund (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated June 12, 2024

Payments to Consultant for Services and Expenses
Using the Hourly Basis Option

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

A. Hourly Basis Option

The Client and Consultant select the hourly basis for payment for services provided by Consultant. Consultant shall be compensated monthly. Monthly charges for services shall be based on Consultant's current billing rates for applicable employees plus charges for expenses and equipment.

Consultant will provide an estimate of the costs for services in this Agreement. It is agreed that after 90% of the estimated compensation has been earned and if it appears that completion of the services cannot be accomplished within the remaining 10% of the estimated compensation, Consultant will notify the Client and confer with representatives of the Client to determine the basis for completing the work.

Compensation to Consultant based on the rates is conditioned on completion of the work within the effective period of the rates. Should the time required to complete the work be extended beyond this period, the rates shall be appropriately adjusted.

B. Expenses

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client. Their costs are not included in the hourly charges made for services but instead are reimbursable expenses required in addition to hourly charges for services and shall be paid for as described in this Agreement:

1. Transportation and travel expenses.
2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets.
3. Lodging and meal expense connected with the Project.
4. Fees paid, in the name of the Client, for securing approval of authorities having jurisdiction over the Project.
5. Plots, Reports, plan and specification reproduction expenses.
6. Postage, handling and delivery.
7. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
8. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Client.
9. All taxes levied on professional services and on reimbursable expenses.
10. Other special expenses required in connection with the Project.
11. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses.

C. Equipment Utilization

The utilization of specialized equipment, including automation equipment, is recognized as benefiting the Client. The Client, therefore, agrees to pay the cost for the use of such specialized equipment on the project. Consultant invoices to the Client will contain detailed information regarding the use of specialized equipment on the project and charges will be based on the standard rates for the equipment published by Consultant.

The Client shall pay Consultant monthly for equipment utilization.

General Conditions of the Agreement for Professional Services

SECTION I – SERVICES OF CONSULTANT

A. General

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

B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render Services hereunder will be for a period which may reasonably be required for the completion of said Services.
2. If Client has requested changes in the scope, extent, or character of the Project or the Services to be provided by Consultant, the time of performance and compensation for the Services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform the Services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for the Services, then Consultant shall promptly notify the Client regarding the need for additional Services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional Services and to an extension of time for completion of additional Services absent written objection by Client.
2. Additional Services, including delivery of documents, CAD files, or information not expressly included as deliverables, shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon seven days written notice or, at its option, accept an equitable adjustment of compensation provided for elsewhere in this Agreement to reflect costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the Services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for Services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

SECTION II – CLIENT RESPONSIBILITIES

A. General

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

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

SECTION III – PAYMENTS

A. Invoices

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

- costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.
- Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
 - Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

SECTION IV – GENERAL CONSIDERATIONS

A. Standards of Performance

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

B. Indemnity for Environmental Issues

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

C. Limitations on Liability

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

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

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

D. Assignment

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

E. Dispute Resolution

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

SECTION V – INTELLECTUAL PROPERTY

A. Proprietary Information

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

B. Client Use of Instruments of Service

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

C. Reuse of Documents

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

RESOLUTION NO.

**RESOLUTION APPROVING CONSULTANT COMPANY FOR THE
COMPREHENSIVE PLAN AND DOWNTOWN MASTER PLAN
OF THE CITY OF AUSTIN, MINNESOTA AND APPROVAL OF
A MEMORANDUM OF AGREEMENT**

WHEREAS, the City Council, in its commitment to the future prosperity of Austin, Minnesota, has determined that the current Comprehensive Plan and the Downtown Master Plan do not accurately reflect the best and highest future use of the area; and

WHEREAS, the City Council has further determined that the Comprehensive Plan and Downtown Master Plan shall be updated to provide a framework for decision making for the long-term desired outcomes in Downtown Austin.

WHEREAS, the City, in its dedication to ensuring the best possible outcome, has meticulously reviewed and considered all submitted proposals for the review of the City of Austin, Comprehensive Plan and Downtown Master Plan; and

WHEREAS, the City has chosen SEH + Velocity due to their partnership and experience in the community; and

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Austin, that the Comprehensive Plan and the Downtown Master Plan will be updated under the guidance of SEH + Velocity, the chosen Consultant Company.

Passed by vote of yeas and nays this 17th day of June, 2024.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
Brianne Wolf,
City Clerk



500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9944
briannew@ci.austin.mn.us
www.ci.austin.mn.us

MEMO

To: Honorable Mayor and City Council Members

From: Brianne D. Wolf, City Clerk

Date: June 12, 2024

Subject: Hoot & Ole's Liquor License Premises Expansion

We are updating the information for Hoot & Ole's, 105 11th Street SE, to expand their liquor license to the outdoor fenced patio area to the south of the building.

The Clerk's Office would request that the Council authorize the approval of this expansion.

RESOLUTION NO.

GRANTING HARD LIQUOR ON-SALE & SUNDAY ON-SALE LICENSE

WHEREAS, the establishment hereinafter named has applied to the City Council at Austin, Minnesota, for license to sell hard liquor on-sale and Sunday on-sale at the respective address listed below; and

WHEREAS, after due investigation, it appears said establishment for said license for sale of hard liquor on-sale and Sunday on-sale has complied with all the provisions of the law relative thereto and is entitled to have a license issued to them for the address listed below their name.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Austin, Minnesota does hereby grant license for the sale of hard liquor on-sale and Sunday on-sale to the following named licensee at the following location in Austin, Minnesota, which license shall expire December 31, 2024.

Hoot & Ole's
105 11th Street SE
Outdoor Fenced Patio Area to the South
Austin, MN 55912

Passed by a vote of yeas and nays this 17th day of June, 2024.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

RESOLUTION NO.

ACCEPTING DONATIONS TO THE CITY OF AUSTIN

WHEREAS, the City has received gift as follows:

Gift	Donor	For
\$ 9,266.76	Austin Area Foundation	Worlein Park Clean Up
\$ 1,000.00	Belita Schindler	Bike Club
\$10,000.00	SEMAC	Exploring Belonging Through Theater (Culture & Arts Commission)

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 17th day of June, 2024.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
Building Department



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

September 14, 2022

Maria Neri
1011 7th Ave NE
Austin MN 55912

RE: Housing Violations at 1008 7th Ave NE, Austin, MN 55912

Dear Maria:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on September 13th 2022 at this site, and the following issues need to be resolved:

1. **Repair/Replace roof on house**
2. **Repair/Secure exterior doors on house**
3. **Repair/Remove/Replace dilapidated garage**

The violation of International Property Maintenance Code Sections 304 and 305 were found. These Property Maintenance Code Sections read as follows:

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

1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;
2. The *anchorage* of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects;
3. Structures or components thereof that have reached their limit state;
4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or water tight;
5. Structural members that have evidence of *deterioration* or that are not capable of safely supporting all nominal loads and load effects
6. Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly *anchored* or are not capable of supporting all nominal loads and resisting all load effects;
7. Exterior walls that are not *anchored* to supporting and supported elements or are not

plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly *anchored* or are not capable of supporting all nominal loads and resisting all load effects;

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

Exception:

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

304.5 Foundation walls. Foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

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

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

304.15 Doors. Exterior doors, door assemblies, operator systems if provided, and hardware shall be maintained in good condition. Locks at all entrances to dwelling units and sleeping units shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 702.3.

305.2 Structural members. Structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

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

Sincerely,

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

Brent Johnson
Zoning Inspector

City of Austin
Building Department



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

April 4th, 2024

Maria Neri
1011 7th Ave NE
Austin MN 55912

RE: Housing Violations at 1008 7th Ave NE, Austin, MN 55912

Dear Maria:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on September 13th 2022 and April 4th, 2024 at this site, and the following issues need to be resolved:

1. **Repair/Replace roof on house**
2. **Repair/Secure exterior doors on house**
3. **Repair/Remove/Replace dilapidated garage**

(No progress has been made)

The violation of International Property Maintenance Code Sections 304 and 305 were found. These Property Maintenance Code Sections read as follows:

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

1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;
2. The *anchorage* of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects;
3. Structures or components thereof that have reached their limit state;
4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or water tight;
5. Structural members that have evidence of *deterioration* or that are not capable of safely supporting all nominal loads and load effects
6. Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly *anchored* or are not capable of supporting all nominal loads and resisting all load effects;

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

Exception:

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

304.5 Foundation walls. Foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

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

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

304.15 Doors. Exterior doors, door assemblies, operator systems if provided, and hardware shall be maintained in good condition. Locks at all entrances to dwelling units and sleeping units shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 702.3.

305.2 Structural members. Structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

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

Sincerely,

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

Brent Johnson
Zoning Inspector

City of Austin
Zoning Department



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

Memorandum

To: Mayor and City Council

Cc: Maria Neri
Abraham Palma
1011 7th Ave NE
Austin, MN 55912

From: Holly Wallace, Planning & Zoning Administrator

Re: Hazardous Structures located at 1008 7th Ave NE, Austin MN 55912

Date: June 12, 2024

May I ask the City Council to review and approve this resolution classifying the property located at 1008 7th Ave NE, Austin, Minnesota, as hazardous pursuant to Minnesota Statutes 463.15 – 463.261. City staff has been dealing with numerous complaints regarding this property and the owner has failed to repair these structural deficiencies. (See attached)

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

Thank You!

RESOLUTION NO. _____

**RESOLUTION ORDERING SECURING AND RAZING OF A HAZARDOUS BUILDINGS
LOCATED AT 1008 7th Ave NE AUSTIN, MINNESOTA
OWNED BY Maria Neri & Abraham Palma**

WHEREAS, Pursuant to Minnesota Statutes, Section 463.15 to 463.61, the City Council of Austin, Minnesota, finds the building located at 1008 7th Ave NE to be a hazardous building for the following reasons:

- 1. Repair/Replace roof on house**
- 2. Repair/Secure exterior doors on house**
- 3. Repair/Remove/Replace dilapidated garage**

WHEREAS, The conditions listed above are more fully documented in the inspection report prepared by Brent Johnson on September 14th, 2022 & April 4th, 2024 a copy (or copies) of which is (are) attached to the resolution as Exhibit A.

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

1. Pursuant to the foregoing findings and in accordance with Minnesota Statutes, Sections 463.15 to 463.261, the City Council hereby orders the record owner(s) of the above hazardous buildings to make such buildings safe to the public health, welfare, and safety by taking the following actions:
 - 1. Repair/Replace roof on house**
 - 2. Repair/Secure exterior doors on house**
 - 3. Repair/Remove/Replace dilapidated garage**
2. The repairs listed above must be made within 30 days after the order is served upon the record owner and in compliance with applicable codes, regulations and permits.
3. The City Council further orders that unless such corrective action is taken, the building(s) is/are ordered to be razed, the foundation(s) filled and the property left free of debris in compliance with all applicable codes, regulations and permits. The structures must be removed within 20 days after the initial 30 day repair period has expired.
4. If corrective action is not taken and an answer is not served within 20 days as specified in Minn. Stat. Section 463.18, a motion for summary enforcement of this order will be made to the District Court of Mower County.
5. In accordance with Minn. Stat. Section 463.24, the owner or occupant must remove all personal property and/or fixtures that will reasonably interfere with the work within 14 days. If the property and/or fixtures are not removed and the city enforces this order, the city may sell personal property, fixtures, and/or salvage materials at a public auction after three days posted notice.
6. The City Council further orders that if the city is compelled to take any corrective action herein, all necessary costs expended by the city will be assessed against the real estate concerned and collected in accordance with Minnesota Statutes, Section 463.22, 463.161 and 463.21.

7. The Mayor, City Recorder, City Attorney and other officers and employees of the City are authorized and directed to take such action, prepare, sign and serve such papers as are necessary to comply with this order and to assess the costs thereof against the real estate described above for collection along with taxes.
8. The city attorney is authorized to proceed with the enforcement of this order as provided in Minn. Stat. Sections 463.15 to 463.261.

Passed by a vote of Yeas and Nays this _____ day of _____, 2024

YEAS _____ NAYS _____

ATTEST:

APPROVED:

City Recorder

Mayor

TIME STAMP 

September 13, 2022
11:04 AM

TIME STAMP 

April 4, 2024
10:22 AM

TIME STAMP 

September 13, 2022
11:09 AM

TIME STAMP

June 12, 2024
10:19 AM

**City of Austin
Zoning Department**



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

January 10th, 2024

William & Deborah Wakefield
503 8th Ave SE
Austin, MN 55912

RE: Zoning Violations at 503 8th Ave SE, Austin, MN 55912

Dear William & Deborah:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on January 10th, 2024 at this site and the following issues need to be resolved:

- 1. Remove all junk/garbage from property**
- 2. All refuse must be in watertight containers and lawfully disposed of, at least once each week during the year.**

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

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

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

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

City Code Section 10.01 Subd. 4 Containers

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

except tune-up parts, inflammable liquids, tree trunk sections over four inches in diameter. Tires and white goods need not be accepted as refuse by licensed garbage haulers, but shall be disposed of at the depository as designated by the County Board.

B. *Container requirements.* Each container shall be watertight, shall be impervious to insects and rodents and shall not exceed 32 gallons in capacity, garbage containers when full shall not exceed 60 pounds in weight, when waste is collected by licensed haulers by mechanical lifting devices, the use of the container shall not exceed 90 gallons or limited, as defined by the hauler. Containers shall be maintained in good and sanitary condition. Any container not conforming to the requirements of this section or having ragged or sharp edges or any other defect likely to hamper or injure the person collecting the contents shall be promptly replaced after notice by the city.

Notwithstanding the foregoing, grass clippings and leaves may be temporarily stored in bags provided by licensed garbage haulers for pick up by licensed garbage haulers or in plastic bags provided by the owner for ultimate disposal at a site designated by the Council.

C. *Placement.*

1. Garbage containers shall be placed in a driveway or open area outside of the garage or where public alley - garbage shall be placed adjacent to the alley, easily accessible for pickup to be made. Other refuse - properly bagged or bundled such as leaves, clippings or brush shall be placed by the curb of the street or by the alley for collection. Containers must be placed properly for pickup prior to 5:30 a.m. on the day of collection to insure service.

2. At the request of the garbage hauler, garbage containers may be placed on boulevard, curbside or other convenience place in front yard for collection, but the containers shall not be permitted to remain on curbside or in front yard for more than 24 consecutive hours.

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

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

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

B. *Public nuisances affecting health*

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

D. *Public nuisances affecting peace and safety.*

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

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

NOTICE AND ABATEMENT.

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

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

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

City Code Section 10.14, Subd. 5:

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

City Code Section 10.14, Subd. 6:

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

Please resolve the City Code violations within **10 days** of the date of this letter, or the matter will be referred to the Austin City Council for corrective action. Council generally meets the first and third Mondays of every month. You will be fined a maximum of \$2,000, the amount varies depending on the type of violations.

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

Sincerely,

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

Brent Johnson
Zoning Inspector

City of Austin
Zoning Department



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

Memorandum

To: Mayor and City Council

Cc: William & Deborah Wakefield
503 8th Ave SE, Austin, MN 55912

From: Holly Wallace, Planning & Zoning Administrator

Re: Accumulation of Refuse and Junk
At 503 8th Ave SE, Wakefield Property

Date: June 14, 2024

May I ask the City Council to approve granting the Planning & Zoning Department the power to contract for the removal of refuse and junk at 503 8th Ave SE. The property owner has been notified of this violation to the City Code Sections 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

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

Thank You



June 12, 2024
11:24 AM

503 8th Ave SE

**City of Austin
Zoning Department**



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

April 21st, 2023

Danial & Shelly Wendroth
506 11th Ave SW
Austin, MN 55912

RE: Zoning Violations at 506 11th Ave SW, Austin, MN 55912

Dear Danial & Shelly:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on April 21st, 2023 at this site and the following issues need to be resolved:

- 1. Remove all junk from property**
- 2. Provide current registration for all vehicles, and must be operable. Remove from property or store in an enclosed structure**

The violation of Austin City Code Sections 10.14 Subd.1(B) 4, 10.14 Subd.4-6 and 10.33 Subd. 1(G), 2 & 4 were found. These City Code sections read as follows:

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

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

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

B. *Public nuisances affecting health*

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

D. *Public nuisances affecting peace and safety.*

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

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

NOTICE AND ABATEMENT.

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

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

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

City Code Section 10.14, Subd. 5:

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

City Code Section 10.14, Subd. 6:

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

City Code Section 10.33 Subd. 1 (G)

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

City Code Section 10.33 Subd. 2. *Off-street outside parking within residential districts.*

A. Vehicle outside parking shall be accessory to the permitted primary use of the property, and vehicles parked on a property must be owned by a licensed resident of the property except as follows:

B. The number of vehicles permitted for outside parking in rear yard and side yard areas shall be limited as follows:

1. Two currently registered passenger vehicles registered to the licensed owner/occupant of the residence may be parked in the rear or side yard areas.

2. In addition to currently registered passenger vehicles, two recreational vehicles may be temporarily stored in the rear yard. If a recreational vehicle is of a type which is required to be registered, it must be currently registered.

3. C. Outside parking of vehicles shall not be permitted in any portion of the front yard unless the vehicle is parked on a driveway or on a hard-surfaced parking area directly adjacent to the side of the driveway and vehicles are currently registered. The square footage of the front yard which is devoted to green space shall always be as required by the applicable provisions of the City of Austin Zoning Ordinance.

City Code Section 10.33 Subd. 4. *Procedure on violations.* Any violation of this section is declared to be a nuisance. Upon ten days written notice to the owner of private premises on which such vehicle is found, as shown by the records in the office of the City Zoning Office or by the placarding of said vehicle, the city may remove the vehicle and certify the cost of such removal as any other special assessment.

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

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

Sincerely,

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

Brent Johnson
Zoning Inspector

City of Austin
Zoning Department



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

Memorandum

To: Mayor and City Council

Cc: Danial & Shelly Wendroth
506 11th Ave SW, Austin, MN 55912

From: Holly Wallace, Planning & Zoning Administrator

Re: Accumulation of Refuse and Junk
At 506 11th Ave SW, Wendroth Property

Date: June 14, 2024

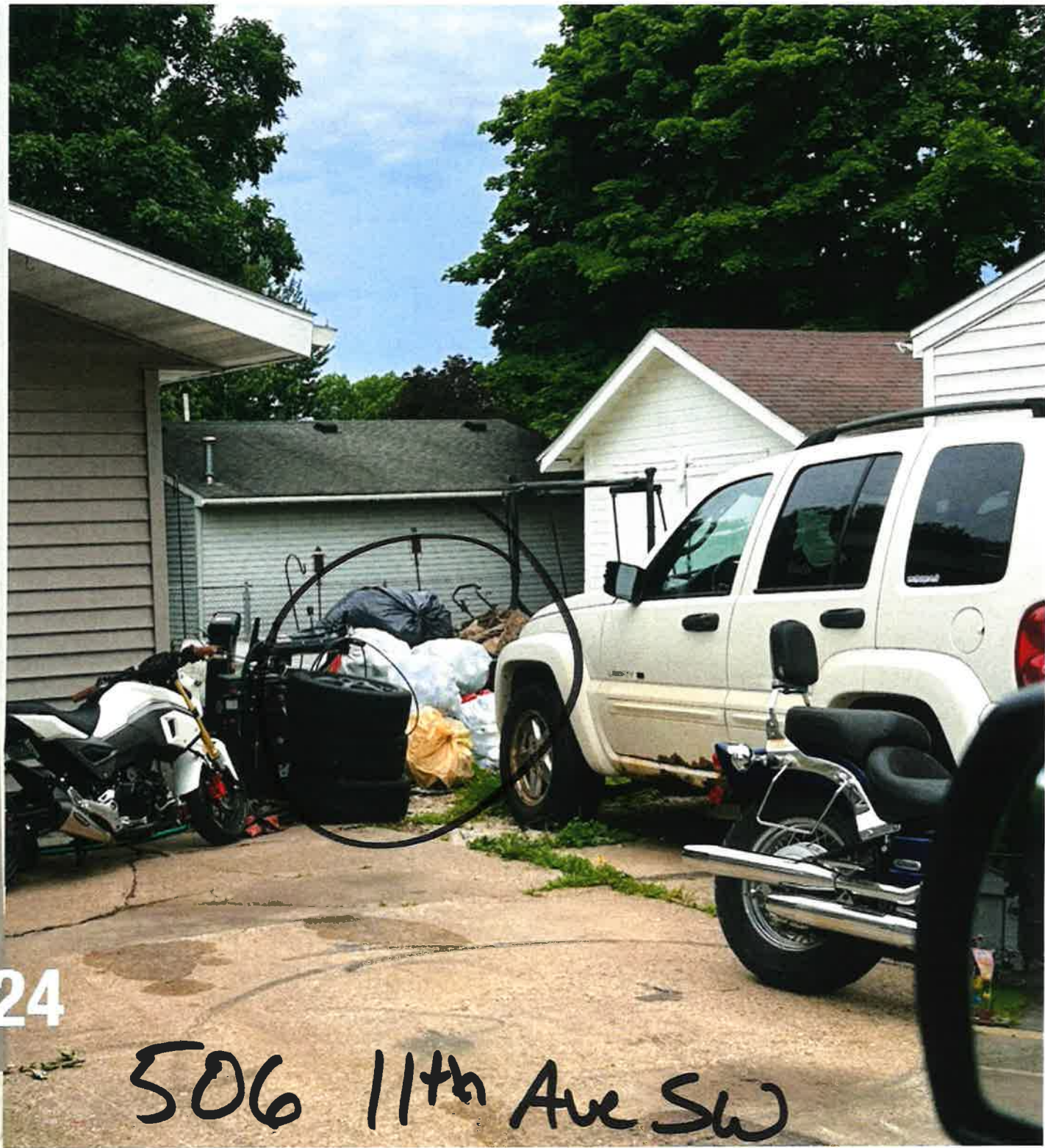
May I ask the City Council to approve granting the Planning & Zoning Department the power to contract for the removal of refuse and junk at 506 11th Ave SW. The property owner has been notified of this violation to the City Code Sections 10.14 Subd.1(B), 10.14 Subd.4-6 but has failed to resolve this issue. (See Attached)

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

Thank You



June 12, 2024
10:42 AM



506 11th Ave SW