



500 Fourth Ave. NE
Austin, MN 55912-3773

www.ci.austin.mn.us

507-437-9940
Fax: 507-434-7197

AGENDA

PORT AUTHORITY

WEDNESDAY, JANUARY 27, 2021
CITY HALL - COUNCIL CHAMBERS
4:30PM

1. Roll Call.
2. Approval of minutes of the September 23, 2020 meeting.
3. Approval of Claims for Payment 09/11/20-01/07/2021. (Tom Dankert)
4. Election of Officers. (Tom Dankert)
5. Approve Sale of Property located at 102 Main Street S. (PIN 34.095.0020) to MetroFibemet, LLC DBA/MetroNet. (Craig Clark).
6. Approve Developer's Agreement with WDS/JCW. (Craig Clark)
7. Approve Sale of Property PINS 34.156.0030 and 34.156.0060 to WDS/JCW. (Craig Clark)
8. Authorization for combination of PINS 34.156.0030 and 34.156.0060 for the WDS/JCW land sale. (Craig Clark)
9. Executive Director Report. (Craig Clark)
10. Any other business.
11. Adjourn.

M I N U T E S
PORT AUTHORITY SPECIAL MEETING
WEDNESDAY, SEPTEMBER 23, 2020
4:30 P.M.
COUNCIL CHAMBERS

Members Present: **Commissioners Jerry McCarthy, Jeff Austin, and Jerry Mohrfeld.**

Members Present via Zoom: **Commissioners Lee BJORNDAL, Laura Helle, Michael Bednar, Chuck Moline.**

Staff Present: **Port Authority Executive Director Craig Clark, Port Authority Attorney Craig Byram, and Port Authority Secretary Tom Dankert.**

Others Present: **Tim Penny (Executive Director of The Initiative Fund), Austin HRA Director Taggart Medgaarden, and Terry Hall.**

President McCarthy called the meeting to order at 4:30 p.m.

Item #2. – Approval of minutes of the June 17, 2020 regular meeting: Motion by Commissioner Bednar, seconded by Commissioner Mohrfeld to approve the minutes of the June 17, 2020 regular meeting. Carried 7-0.

Item #3. – Claims for Payment: Mr. Dankert discussed the claims paid from January 1, 2020 through September 10, 2020 noting in total, payments made were \$29,315.62. Mr. Dankert noted some of the large unusual payments as follows:

- \$6,000 to the Initiative Fund for 2020 pledged support.
- \$11,186.00 to Mower County for property taxes and ditch assessments.

Motion by Commissioner Moline, seconded by Commissioner Austin to approve the claims for payment as presented. Carried 7-0.

Item #4. – The Initiative Fund Update: Tim Penny, Executive Director of The Initiative Fund presented the results of the last fiscal year and thanked the Port Authority for their continued support. Mr. Penny noted some of the programs they support, including:

- Head Start
- Training for child care providers (36 from Mower County participated in the 20-20 virtual conference)
- \$40,000 worth of books given in Mower County
- Targeted loans/grants
- 520 grants for Covid-19 related costs, \$12,000 of which were right here in Austin

President McCarthy thanked Mr. Penny for all he and The Initiative Fund do in Mower County.

Item #5. – Review purchase agreements, and approving sale of property located at 117 and 119 2nd Avenue N.E.: HRA Executive Director Taggart Medgaarden introduced Terry Hall as he has been working with Terry to create a plan to renovate the two buildings the Port Authority owns located at 117 and 119 2nd Avenue N.E.

Terry Hall discussed his project details by going through his presentation as had been given to the Port Authority at a prior meeting. The project includes 4 luxury apartments on the second floor, and totally redone exterior including improvements in the back. The Port Authority is being asked to do the following as part of the sale and renovation of the facility:

- Port Authority will reimburse up to \$70,000 for roof replacement.
- Port Authority will acquire an easement on the exterior for 50% of the cost of the exterior improvements, not to exceed \$142,500 for the Port Authority's share.
- The Port Authority will loan Terry Hall up to \$60,000 at 0% interest amortized over 240 months (20 years), with monthly payments due the first 120 months (10 years) followed by a balloon payment due in month number 121.
- The Port Authority will loan Terry Hall up to \$185,000 at 0% interest amortized over 240 months (20 years), with monthly payments due the first 120 months (10 years) followed by a balloon payment due in month number 121.
- Port Authority gets paid \$100 at closing for the buildings.

After further discussion, motion by Commissioner Austin, seconded by Commissioner Moline to approve the purchase agreement and all related documents. Carried 7-0.

Item #6. – 401 Main Street North amendments: Mr. Clark discussed a request by Terry Hall for his project at 401 Main Street North. Mr. Hall has asked for the following three amendments to his contracts:

1. Extend the completion date for the project from the contract date of December 31, 2020 to July 31, 2021 to avoid any concerns that he would technically be in default if not completed by December 31, 2020. The project is actively moving forward, so this just gives him additional time.

Motion by Commissioner Bednar, seconded by Commissioner Mohrfeld to approve extending the completion date to July 31, 2021. Carried 7-0.

2. Signage would like to be added to the south side of the building. The proposed signage would be aesthetically appealing.

Motion by Commissioner Austin, seconded by Commissioner Mohrfeld approving signage for the 401 North Main Building. Carried 7-0.

3. Third, the existing budget did not allow for the inclusion of signage costs within the budget/easement that was approved for the project, hence the need to now allow for a modification of the budget.

Motion by Commissioner Austin, seconded by Commissioner Mohrfeld to approve a modification of the existing budget to allow for inclusion of signage costs. Carried 7-0.

Item #7. – Unaudited financial statements as of August 31, 2020: Mr. Dankert discussed the financial situation of the Port Authority as of August 31, 2020, noting the following:

- Combined Balance Sheet ALL FUNDS (Page 1) – The Port Authority has \$2,984,019 of cash on hand. We also own the Hormel Institute expansion since state bonding money was involved. In total, the book value of all of our capital assets is at \$22,442,670.

- Combined Income Statement ALL FUNDS (Page 2) – We have \$460,404 of net loss for the eight-month period. However, \$532,299 of this is depreciation, most of which is on The Hormel Institute building and is just on paper.
- Property Management (Pages 3-4) – This fund has \$1,550,678 of cash, and another \$258,716 of loans receivable. Land held for resale equates to \$1,199,791.
- Walker Building (Pages 5-6) – We have \$490,730 of cash and over \$586,000 of fund balance existing. This building has net income of \$33,001 so far in 2020.
- Oak Park Mall (Pages 7-8) – We have \$942,611 of cash available, which includes the \$400,000 sales proceeds from the Old HyVee transaction with Slaby and Associates and the \$250,000 sale to Cobblestone Hotels. Net income of 4,090 exists so far in 2020.

Motion by Commissioner Austin, seconded by Commissioner Mohrfeld to approve the unaudited financial statements as of August 31, 2020. Carried 7-0.

Item #8. – Executive Director Report: Mr. Clark noted he is working on a project for Creekside Business Park. There is also interest for a project on the east side of the business park, but the Port Authority Board will need to have discussion on what aesthetically appealing buildings they might desire on the east side versus the west side of Creekside Business Park.

Mr. Clark also noted there is potential interest in the small parking lot we own next to Domino's pizza.

Item #9. – Any other business: Mr. Dankert noted the next regularly scheduled Port Authority meeting is set for October 28, but we will decide later if there is a need for such meeting.

Item #10. Adjournment: With no further business, motion by Commissioner Mohrfeld, seconded by Commissioner Austin to adjourn the meeting at 5:22 pm. Carried 7-0.

Approved: _____

President: _____

Secretary: _____

Item #3

Claims for Payment

Check #	Date	Amount	Supplier / Explanation	PO#	Doc No	Inv No	BU	Obj	Sub	Subledger	Account Description	BU Description	Co	Dept	Div
70460	12/24/2020	5,000.00	YEAR 3 TIF LOAN PMT	00101326	113191	2020 HYVEE TIF	64000	2080			Intergovernmental Payables	Oak Park Mall	64000	115	
		5,000.00													
			<u><u>Oak Park Mall - Port Authority</u></u>												
69539	9/17/2020	1,425.00	APR-JUNE PORT AUTH LEGAL	00098971	11169	181628 PORT	46510	6309			Professional Services	Port Authority General	66000	115	
		1,425.00													
69642	10/1/2020	35.00	SEPTEMBER 2020	111349	SEPTEMBER 2020	46510	6306				Personnel Services	Port Authority General	66000	115	
		35.00													
69648	10/1/2020	35.00	SEPTEMBER 2020 PORT AUTH MEET	111355	SEPTEMBER 2020	46510	6306				Personnel Services	Port Authority General	66000	115	
		35.00													
69649	10/1/2020	35.00	SEPTEMBER 2020 PORT AUTH MEET	111356	SEPTEMBER 2020	46510	6306				Personnel Services	Port Authority General	66000	115	
		35.00													
69655	10/1/2020	39.99	WALKER BLDG	00100811	111555	0013045091720	46560	6321			Communications	Port Authority Walker Bld	66000	115	
		39.99													
69660	10/1/2020	6.54	CENTRAL STATION SECURITY	00100811	111512	126284	46560	6402			Repair and Maint. - Structur	Port Authority Walker Bld	66000	115	
		6.54													
69668	10/1/2020	35.00	SEPTEMBER 2020 PORT AUTH MEET	111366	SEPTEMBER 2020	46510	6306				Personnel Services	Port Authority General	66000	115	
		35.00													
69698	10/1/2020	35.00	SEPTEMBER 2020 PORT AUTH MEET	111369	SEPTEMBER 2020	46510	6306				Personnel Services	Port Authority General	66000	115	
		35.00													
69703	10/1/2020	35.00	SEPTEMBER 2020 PORT AUTH MEET	111372	SEPTEMBER 2020	46510	6306				Personnel Services	Port Authority General	66000	115	
		35.00													
69705	10/15/2020	35.00	SEPT 2020 PORT AUTH MEET	111373	SEPTEMBER 2020	46510	6306				Personnel Services	Port Authority General	66000	115	
		35.00													
69768	10/15/2020	6.73	19383-001 27 AVE SW SIGN	111858	SEPTEMBER 2020	46510	6306				Utilities	Port Authority General	66000	115	

Check #	Date	Amount	Supplier / Explanation	PO#	Doc No	Inv No	BU	Obj	Sub	Subledger	Account Description	BU Description	Co	Dept	Div
		6.73													
69900	10/29/2020	39.99	102569 CHARTER COMMUNICATIONS	00101200	111948	0013045101720	46560	6321			Communications	Port Authority Walker Bui	66000	115	
69930	10/29/2020	39.99	100675 HOVERSTEN JOHNSON BECKMAN HOVEY				46520	6320			Buildings	Port Authority Downtown R	66000	115	
		1,042.90	117/119 2ND AVE NE CLOSING	00098994	111931	181628									
70033	11/12/2020	6.73	100160 AUSTIN UTILITIES		112428	OCTOBER 2020	46510	6386			Utilities	Port Authority General	66000	115	
		1,042.90	19383-011 SIGNAL 27 AVE NW												
70048	11/12/2020	6.73	100263 CRC INC		112268	126870	46560	6402			Repair and Maint - Structur	Port Authority Walker Bui	66000	115	
		6.54	CENTRAL STATION SECURITY												
70075	11/12/2020	6.54	100675 HOVERSTEN JOHNSON BECKMAN HOVEY		112231	201041	46510	6304			Legal Fees	Port Authority General	66000	115	
		564.00	PROF SERVICE-PORT & MILLS												
70188	11/25/2020	564.00	102509 CHARTER COMMUNICATIONS	00101514	112670	0013045111720	46560	6321			Communications	Port Authority Walker Bui	66000	115	
		39.99	WALKER BLDG												
70309	12/10/2020	39.99	100160 AUSTIN UTILITIES		113038	NOVEMBER 2020	46510	6386			Utilities	Port Authority General	66000	115	
		6.73	19383-011 SIGNAL LITE												
70328	12/10/2020	6.73	100263 CRC INC		112803	127575	46560	6402			Repair and Maint - Structur	Port Authority Walker Bui	66000	115	
		6.54	CENTRAL STATION SECURITY												
70356	12/10/2020	6.54	110958 HPW LLC		00101318	112808	DRAW 2 117*119 2ND 66000	1290	58		Loan - HPW \$185,000 Ville	Fund 66	66000	115	
		6.54	ENV ASSURANCE REIMB				AVE NE								
		40,000.00	ENV PLANT SERV REIMB		00101318	112808	DRAW 2 117*119 2ND 66000	1290	58		Loan - HPW \$185,000 Ville	Fund 66	66000	115	
		3,437.00	MJ OCONNOR REIMB		00101318	112808	DRAW 2 117*119 2ND 66000	1290	58		Loan - HPW \$185,000 Ville	Fund 66	66000	115	
		602.20	MATYAS ELEC REIMB		00101318	112808	DRAW 2 117*119 2ND 66000	1290	58		Loan - HPW \$185,000 Ville	Fund 66	66000	115	
		269.00	FOX ELEC REIMB		00101318	112808	DRAW 2 117*119 2ND 66000	1290	58		Loan - HPW \$185,000 Ville	Fund 66	66000	115	
		45,218.54					AVE NE								
70476	12/24/2020		102509 CHARTER COMMUNICATIONS												



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TO: Port Authority Board Members
FROM: Tom Dankert, Secretary
DATE: January 9, 2021
RE: Election of Officers
S:\Port Authority\2021\Election of Officers - 2021.docx

Attached are the by-laws for the Austin Port Authority. Included is the requirement for the annual election of officers that must occur at our annual meeting. The current officers are as follows:

- President – Jerry McCarthy
- Vice President – Jeff Austin
- Treasurer – Lee Bjorndal
- Secretary and Assistant Treasurer – Tom Dankert

Craig Clark is the Executive Director of the Austin Port Authority and no motion is needed for him to continue in that role.

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

By-Laws and Rules of Procedure of
Port Authority Commission of the City of Austin

Article I

The Commission

Section 1. Name of Commission. The name of the Commission shall be the Austin Port Authority.

Section 2. Seal of Commission. The official seal of the Commission shall be in the form affixed hereto.

Section 3. Seal of Commission: Place of Meetings. The office of the Commission shall be at such place in Austin, Minnesota as the Commission may from time to time designate by resolution. Regular and special meetings of the Commission shall be open to the public and shall be held at the office of the Commission; provided, however, that upon five days written notice to the commissioners of the place of such meeting, any regular or special meetings may be held at such other place as the notice shall designate.

Article II.

Officers

Section 1. Officers. The officers of the Commission shall be a president, a vice president, a treasurer, a secretary, an assistant treasurer, and such others as from time to time are provided by official action of the Commission. The president, vice president, and treasurer shall be elected from among the commissioners. A commissioner may not serve as president and vice-president at the same time. The other offices may be held by one commissioner. The offices of secretary and assistant treasurer need not be held by a commissioner.

Section 2. President. The president shall have the duties and powers usually attendant upon the office of the president, and such other duties and powers as may be prescribed by statute and as may be provided from time to time by the Commission. The president shall preside at all meetings of the Commission. At each meeting he/she shall make such reports to

the Commission as deemed necessary or as may be required, and perform such other duties as are incident to the office or as are required of him/her by the Commission.

Section 3. Vice President. The vice president shall perform the duties of the president when the president is absent or incapacitated and/or because of death or resignation of the president, until a new president is elected.

Section 4. Secretary. The secretary shall perform the duties of the office of secretary of the Commission.

Section 5. Treasurer and Assistant Treasurer. The treasurer shall receive and be responsible for all moneys of the Commission; shall also be responsible for the acts of the assistant treasurer. The treasurer shall disburse the same only on check signed by the mayor and city recorder, and each check shall state the name of the payee and the nature of the claim for which the same is issued. The treasurer shall keep an account of the source of all receipts; and the nature, purpose and authority of all disbursements; and at least once each year, at times to be determined by the Commission; shall file with the secretary a detailed financial statement of the Commission. The Commission's detailed financial statement must show all receipts and disbursements, their nature, the money on hand, the purposes to which the money on hand is to be applied, the Commission's credits and assets, and its outstanding liabilities. The Commission shall examine the statement together with the treasurer's vouchers. If the Commission finds the statements and vouchers correct, it shall approve them by motion and enter the motion in its records. The treasurer shall preside at all meetings of the Commission in the absence of the president and vice president. The assistant treasurer shall have the powers and perform the duties of the treasurer in the event of the absence or disability of the treasurer.

Section 6. Execution of Instruments. All deeds, contracts, promissory notes, warrants and other instruments, excepting bonds issued by the Commission and excepting checks authorized by the Commission shall be signed by the president or vice president and secretary of the Commission, or in the event the action approving execution of the instrument shall so provide, the same may be signed by other officers duly authorized thereto by such action. Checks shall be signed by the mayor and city recorder. Except where otherwise provided by law, the Bonds of the Commission shall be signed by the person or persons designated in the resolution authorizing the issuance of said Bonds.

Article III.

Terms of Officers

All officers of the Commission shall be elected at each annual meeting of the Commission and shall serve in whatever capacity they are chosen, for a term of one year and until their successors are elected and qualify. In the event the annual meeting is continued and the election held at such continued meeting, all officers elected shall serve until the next annual meeting and until their successors are elected and qualify.

Article IV.

Vacancies

Should the office of the president, vice president, secretary, treasurer or assistant treasurer become vacant, the Commission shall elect a successor at a regular meeting or a special meeting called for such purpose, and such election shall be for the unexpired term of said office.

Article V.

Executive Director and Additional Personnel

An executive director shall be appointed by the Commission at such compensation, for such term and with such duties as the Authority shall determine by resolution. The Commission may from time to time employ such additional personnel as it deems necessary to exercise its power, duties and functions as prescribed by Chapter 469 of the Laws of Minnesota and all other laws applicable thereto. The compensation of such personnel shall be determined by the Commission upon recommendation of the executive director.

Article VI.

Annual Meetings

The annual meeting of the Authority shall be held on the fourth Wednesday of January of each year at 4:30 pm; provided, however, that the date of the annual meeting may be postponed to the next regular or special meeting of the Commission.

Article VII.

Regular Meetings

The commission shall meet on the fourth Wednesday of the months of January, April, July and October at 4:30 pm, unless the same shall be a legal holiday in which event the meeting shall be held on the next succeeding secular day. Said meetings may be set for another day or another time upon a majority of commissioners responding to the executive director as to their availability and intent to attend. The meetings shall be held at the principal office of the Commission unless a different location of said meeting is specified in the notice as provided in Section 3 of Article I.

Article VIII.

Special Meetings

Special meetings of the commissioners may be called by the president, the executive director, or any two commissioners in a writing filed with the executive director or secretary who shall then mail, email or personally deliver to all members notice of the time and place of such meeting at least one day before the meeting.

Article IX.

Adjourned Meeting

Any meetings of the Commission may be adjourned from time to time to a specified time and place without additional notice published or otherwise.

Article X.

Quorum

The powers of the Commission shall be vested in the commissioners thereof in office at any one time; a majority of whom shall constitute a quorum for all purposes, but a lesser number may adjourn a meeting from time to time until a quorum is obtained. When a quorum is in attendance, action may be taken by the Authority upon a vote of a majority of the commissioners present, except as otherwise provided for by law or in these bylaws.

Article XI.

Order of Business

At the regular meetings of the Commission, the following shall be the order of business:

1. Roll call.
2. Approval of the minutes of the previous meeting
3. Finance
4. Report of executive director
5. Old business
6. New business
7. Adjournment.

Upon direction of the president or on motion of two members of the Commission, all resolutions shall be in writing and shall be filed in the journal of the proceedings of the Commission.

Roberts Rules of Order shall apply to all proceedings of this Commission except where inconsistent with these bylaws, the enabling ordinance or applicable statutes.

The Commission shall comply with the Open Meeting Law of the State of Minnesota.

Article XII.

Manner of Voting

The voting on all questions coming before the Commission shall be by the president calling of the voice vote on the question and shall be entered upon the minutes of each meeting. The president and all members of the Commission at every meeting of the Commission shall be entitled to vote. A roll call on any question before the Commission may be taken upon demand of one or more members of the Commission. Real property owned by the Commission must not be sold, exchanged, or have its title transferred without approval of two-thirds of Commission members following notice to all of them. All commissioners must have five days' written notice of a regular or special meeting at which a sale, conveyance, exchange, or transfer of property is to be voted on. The notice must contain a complete description of the affected real estate. The resolution authorizing the real estate transaction is not effective unless a quorum is present. A commissioner need not vote on all questions, but may abstain from voting on a question.

Article XIII.

Committees

The president of the Commission shall appoint such committees and subcommittees as may be determined are necessary. These committees shall report all recommendations to the Commission for further action.

Article XIV.

Contracts

The Commission shall advertise for and let contracts in the same manner as provided for by Chapter 469 of the Laws of Minnesota and the laws amendatory thereto.

Article XV.

The Bylaws and Rules of Procedure of the Commission shall be amended by a vote of a majority of the Commissioners only when said proposed amendment has been submitted in writing to the Commissioners a reasonable period of time prior to the meeting at which said amendment is to be considered.

Adopted: August 17, 1987 at a regular meeting of the Austin Port Authority.

Amended: January 27, 2010 at a regular meeting of the Austin Port Authority.

President

Attest:

Secretary

City of Austin
Craig Clark,
City Administrator



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

TO: President and Port Board Members
FROM: Craig D. Clark, Administrator
RE: Port Authority Property of 34.095.0020 102 Main Street S.

The Port Authority was approached with interest in finding property for their operations hub for a fiber system in Austin. Through these discussions, I suggested the Port property at 102 Main Street S. between 1st Avenue and Oakland Avenue (Exhibit 1). As you may recall the Port accepted this property from the City of Austin as a remnant parcel from assisting KSMQ on what was the Plunkett Law Office site. This site met their interest of being centrally located within the City.

The purchase agreement (Exhibit 2) provides the following:

- \$50,000 purchase price
- Purchaser may enter the property to perform due diligence work
- Purchase is contingent on environmental review
- Any environmental concerns either party may back out
- Closing 30-90 of the effective date
- Other regular items of a purchase agreement

The purchase agreement has been reviewed by our legal counsel.

This has been posted as a public hearing and is subject to the Statutory 20 day objection period before the President can sign the purchase agreement presuming Port Authority approval. Please let me know if you have any questions.

Board action is requested to approve the sale of parcel 34.095.0020 as outlined in the Purchase Agreement Exhibit 2.

Untitled Map

Write a description for your map.

Legend

- Apold Music
- Austin Fire Dept
- Bank
- Church
- County of Mower
- Feature 1
- Fuhrman Real Estate
- Law Enforcement Center
- Mower Vehicle Registration
- Port owned downtown parcel
- Precision Signs

Exhibit 1



Tom Dankert

From: Craig Clark
Sent: Monday, January 11, 2021 3:27 PM
To: Tom Dankert
Cc: Craig Byram
Subject: signed version
Attachments: Metronet Purchase Agreements 12-21 CLS Redline (Austin) (002) - signed.pdf

Tom,
Here is the buyers signed version of the MetroNet purchase agreement for the Port packet.



Craig Clark
City Administrator
City of Austin
500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
507-437-9941

Exhibit 2

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is entered into as of this _____ day of _____, 2020 by and between Austin Port Authority, located at 500 4th Avenue NE, Austin, MN 55912 ("Seller"), and MetroFibernet, LLC, a Nevada Limited Liability Company, with offices located at 3701 Communications Way, Evansville, IN ("Purchaser").

1. **PURCHASE AND SALE**. Seller offers to sell, and Purchaser offers to purchase, on the following terms and conditions, the property with the common address of 102 Main Street S., Austin, Minnesota (the "Property"). A legal description of the Property is attached hereto as Exhibit A and is subject to update by current ATLA survey.

2. **CONTINGENCIES**. This Agreement is contingent upon the following:

(A) The Property must comply with all applicable laws and regulations and must conform to all specifications required by the Seller for placement of its shelter building.

(B) Purchaser's review and approval of the Title Commitment pursuant to Section 8 below.

(C) Purchaser's review and approval of a Phase I and, if necessary, a Phase II environmental report. In the event there is any remediation recommended under either a Phase I or Phase II environmental report, Seller may terminate this contract upon written notice to Purchaser at which time each party shall be released from all further obligations and liability under this Agreement, or Seller may perform the remediation at its sole costs and this Agreement shall remain binding on both parties.

(D) Purchaser's confirmation that the Property can be used for Purchaser's intended use as set forth in Section 6 below.

(E) In the event any of the approvals required by the above contingencies are not obtained prior to the closing, either party may terminate this Agreement upon written notice to the other party without further obligation or liability whatsoever, except that Seller will reimburse Purchaser for one-half of any costs and expense for a Phase I or Phase II.

(F) Seller will provide copies of any abstracts, prior title commitments, title insurance policies, surveys, and environmental reports in its possession to Purchaser at the time of execution of this Agreement; and

(G) Seller is statutorily obligated to comply with certain public notice and objection period requirements ("Public Requirements"). Notwithstanding the Public Requirements, Purchaser will be allowed to enter the Property and begin its due diligence, including but not limited to the environmental testing and survey, during the time period for the Public Requirements process. Purchaser's activities will be conducted at its own risk and the Parties understand that this Agreement will terminate should the necessary approvals not be obtained after Seller completes the Public Requirements should they not result in a favorable approval.

3. **PURCHASE PRICE**. The purchase price for the Property shall be Fifty Thousand and 00/100 Dollars (\$50, 000.00). The purchase price for the Property shall be payable by the Purchaser to the Seller at the closing via wire transfer to an account designated by the Seller.

4. **TAXES AND ASSESSMENTS.** The Property is exempt from real property tax. Any assessment becoming due and payable in the year of closing shall be pro-rated on an annual basis. Seller shall pay its pro-rated share of the assessments by deducting the same from the purchase price at the time of closing.

5. **PURCHASER'S USE.** Seller acknowledges that Purchaser desires to use the Property for the purpose of building and operating a fiber optics and telecommunication facility and agrees that any and all use of the Property shall comply with the zoning for the Property for this purpose at the time of the closing or there is no obligation to close.

6. **DEED AND EXCEPTIONS.** At closing, Seller shall furnish a general warranty deed, in a form acceptable for transfer and recording by public authorities, conveying to Purchaser or nominee, a merchantable, fee simple title to the Property, subject to legal highways, free and clear of all liens, rights to take liens, and encumbrances whatsoever, except: (A) all restrictions of record and any agreements, reservations and easements of record, all of which Purchaser may accept under paragraph 7 of this Agreement; (B) such taxes and assessments as Purchaser is to pay as provided in paragraph 4 of this Agreement; and (C) the restrictions set forth in paragraph 12 of this Agreement.

7. **EVIDENCE OF TITLE.** In the event that Purchaser, or Purchaser's mortgage company, requires evidence of title in the form of owner's fee simple title insurance policy (the "Commitment"), Purchaser or Purchaser's mortgage company may, at Purchaser's sole expense, obtain from the title insurance company selected by Purchaser, a Commitment for said title insurance policy. Purchaser shall notify Seller in writing not later than ten (10) days prior to closing, of any title defect not acceptable to Purchaser, all other exceptions which are acceptable to Purchaser shall be referred to as "Permitted Exceptions." Seller, if it chooses, shall remedy or remove the unacceptable exceptions prior to closing to Purchaser's satisfaction. If Seller cannot or does not remove the same or obtain an affirmative assurance to insure against such defect by the closing, Purchaser shall then have the right, at its option: (A) to terminate this Agreement by giving Seller written notice to that effect, at which time each party shall be released from all further obligations and liability under this Agreement; or (B) to proceed with this purchase, in which event Purchaser shall waive such exceptions and pay the total purchase price; provided that Purchaser may require that any monetary liens be paid and discharged out of the proceeds of sale, or if Purchaser elects, such monetary liens may be assumed with abatement of the purchase price. Purchaser shall pay all costs, fees or premiums for the Commitment, examination, certificates and policy.

8. **SURVEY.** In the event Purchaser or Purchaser's mortgage company elects to obtain a Commitment as to the Property, the Purchaser, at Purchaser's sole expense shall be responsible for procuring a Survey that complies with the required ALTA Minimum Survey Standards.

9. **PURCHASER'S ACCESS.** At all times prior to closing, Purchaser, its agents, employees, contractors and representatives, **at their sole and absolute risk**, shall have the right to enter upon the Property, with all necessary or desirable equipment, to make topographic and boundary surveys, determine the location of utilities, perform engineering and environmental studies and conduct soil tests and borings and other testing and exploration work necessary or appropriate to formulate plans and determine the suitability of the Property for Purchaser's intended use. Purchaser shall not cause any damage to the Property as a result of its access.

10. ENVIRONMENTAL MATTERS.

(A) For purposes of this Agreement, the term "Environmental Law(s)" shall mean any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substance, as now or at any time hereafter in effect. For purposes of this Agreement, the term "Hazardous Substance(s)" shall have the meaning ascribed in any Environmental Law to any hazardous, toxic or dangerous waste, substance, pollutant or material, whether liquid, solid or gaseous.

(B) To the best of Seller's knowledge, represents and warrants that Seller has not violated any Environmental Laws in connection with the use, ownership, lease, maintenance or operation of the Property and the conduct of the business related thereto.

(C) To the best of Seller's knowledge, neither Seller nor any other person within Seller's knowledge and/or control, including any lessees of the Property, has caused or permitted any Hazardous Substance to be placed, held, located or disposed of on, under or at the Property nor any part thereof and neither the Property nor any part thereof has ever been used by Seller or by any other person as a dump site or storage site, whether permanent or temporary, for any Hazardous Substance.

(D) Seller represents and warrants that, with respect to the Property, Seller is not a party to any litigation or administrative proceeding, nor, so far as is known by Seller after reasonable investigation, is any litigation or administrative proceeding threatened against the Property, which in either case asserts or alleges that: (i) Seller violated any Environmental Law; (ii) Seller is required to clean up or take other response action due to the release or threatened release or transportation of any Hazardous Substance; or (iii) Seller is required to pay all or a portion of the cost of any past, present or future cleanup, removal or remedial or other response action which arises out of or is related to release or threatened release or transportation of any Hazardous Substance.

12. REPRESENTATIONS OF SELLER. Seller represents, warrants and covenants to Purchaser that Seller has all necessary power and authority to enter into and perform this Agreement, and to carry out and perform its obligations under this Agreement. This Agreement is, and of the date of the closing will be, a valid, legal and binding obligation, enforceable against Seller in accordance with its terms. On the date of the closing, Seller will have all necessary power and authority to enter into, execute and deliver each of the closing documents required to be delivered by Seller and to carry out and perform Seller's obligations under this Agreement and under the terms of the closing documents. With the exception of any express representations or warranties set forth in this Agreement, the Seller shall convey and the Purchaser shall accept the Property in its **AS-IS/WHERE-IS** condition without any warranties as to the condition thereof by the Seller.

12. WARRANTIES OF PURCHASER. Purchaser represents, warrants and covenants to Seller that Purchaser has all necessary power and authority to enter into and perform this Agreement, and to carry out and perform its obligations under this Agreement. This Agreement is, and of the date of the closing will be, a valid, legal and binding obligation, enforceable against Purchaser in accordance with its terms. On the date of the closing, Purchaser will have all necessary power and authority to enter into, execute and deliver each of the closing documents required to be delivered by Purchaser and to carry out and perform Purchaser's obligations under this Agreement and under the terms of the closing documents.

13. CLOSING. The closing date for delivery of the deed and payment of the purchase price shall be on a date selected by the Purchaser with five (5) days prior notice to Seller provided such date shall

be no sooner than thirty (30) days after the Effective Date of the Agreement and no later than ninety (90) days after the Effective Date of the Agreement. Place and date of closing shall be designated by Seller, but shall be within or near Austin, Minnesota. At the closing, the parties shall deliver the following respective items:

(A) Seller shall deliver to Purchaser a recordable general warranty deed as described above and exclusive possession of the Property.

(B) Seller shall deliver to Purchaser an Affidavit, in form satisfactory to Purchaser, stating that Seller is not a foreign person under Internal Revenue Code Section 1445.

(C) Seller shall furnish the title company and Purchaser with a customary owner's Affidavit as to mechanics' and materialmen's liens, tax liens, and persons in possession of the Property required by the title company as a condition to its agreement to delete the printed General Exceptions related to such liens and possession from the Commitment.

(D) Purchaser shall pay the purchase price as provided in paragraph 3 above.

(E) Seller shall provide Purchaser with possession of the Property.

16. DEFAULT AND REMEDIES. In the event of any default hereunder, the parties shall have the following remedies:

(A) In the event of default by Purchaser, Seller shall have the right to terminate this Agreement as its sole and exclusive remedy.

(B) In the event of a default by Seller, Purchaser shall have the right to obtain a decree of specific performance to require conveyance of the Property to Purchaser in accordance with the terms of this Agreement, or to terminate this Agreement.

17. NOTICE. Any notice or other writing required or permitted to be given to a party to this Agreement shall be deemed given to a party under this Agreement when mailed by United States certified mail, postage prepaid, return receipt requested, as addressed as follows:

SELLER:
Austin Port Authority
500 4th Ave NE
Austin, MN 55912

PURCHASER:
Metro Fibernet, LLC
Attn: Legal Department
8837 Bond Street
Overland Park, KS 66214

18. INDEMNITY. The parties agree to indemnify, save harmless, and defend each other from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses

incident thereto (including costs of defense and settlement), which either party may subsequently incur, become responsible for, or pay out as a result of a breach by the other party.

19. **EMINENT DOMAIN.** If prior to closing all or any part of the Property is taken by eminent domain, Purchaser shall have the option to (A) receive the proceeds of such, taking up to the full amount of the purchase price and close this purchase; (B) reduce the purchase price by the amount of the eminent domain proceeds paid to Seller, up to the full amount of the purchase price; or, (C) terminate this Agreement, in which event the parties shall be released from any further obligations under this Agreement.

20. **BINDING EFFECT AND EXCLUSIVE TERMS.** Upon acceptance, this offer shall become a complete agreement binding upon and inuring to the benefit of Purchaser and Seller and their respective heirs, successors, executors, administrators and assigns, and shall be deemed to contain all terms and conditions agreed upon, there being no oral conditions, representations, warranties or agreements. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the parties, unless in writing, signed by both parties.

21. **BROKERAGE.** Each party represents to the other that there is no Broker or other person who may be entitled to a commission or similar fee in connection with this transaction. Each party covenants and agrees to defend, indemnify and save harmless the other from and against all other claims for brokerage or other commission or similar fees for compensation for any service rendered at its instance in connection with this purchase and sale.

22. **ASSIGNMENT.** This Agreement may not be assigned by either party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Purchaser may, without notice or consent, assign this Agreement to: (1) an affiliate or parent company; (2) a successor that purchases all or substantially all of Purchaser's assets or equity; or (3) any entity into which Purchaser merges or consolidates.

23. **ARBITRATION.** Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either party may start by delivering to the other party a written notice describing the Dispute and the amount involved ("Demand"):

- A. After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after thirty (30) days after the receipt of the Demand, either party may start binding arbitration in the jurisdiction where the property is located or close proximity agreed to by the Parties.
- B. The arbitration will be before a three-arbitrator panel. Each party will each select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either party may apply to a court of law to have a judge select an impartial arbitrator.
- C. The primary objective of the impartial arbitrator is to endeavor to get all three arbitrators to agree on a final disposition of the Dispute. If this cannot be attained, then the three arbitrators by majority

ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication

- D. The parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators other than to enforce the final determination of the arbitrators.
- E. No statements by or communications between the parties during negotiations or mediation, or both, will be admissible for any purpose in arbitration.
- F. Each party shall bear its internal expenses, the costs of its partial arbitrator and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator.
- G. No interest shall be applied to any arbitration award.
- H. It is the intent of the parties to first allow the arbitrators an opportunity to meet and negotiate a unanimous decision. However, if a unanimous agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the parties unless a party applies for interim relief as described herein.
- I. Notwithstanding the foregoing, either party may resort to a court by applying for interim relief if such party reasonably determines that such relief is necessary to prevent irreparable injury to it or to a third party. The venue for any such proceeding shall be in the jurisdiction where the property is located or in close proximity that can be agreed to by the Parties.
- J. This paragraph and subparagraphs shall survive closing and the termination or expiration of this Agreement.

24. HEADINGS. This Agreement shall be construed without reference to the titles or headings of the various paragraphs contained in this Agreement, which are inserted for convenience of reference only.

25. TIME OF ESSENCE. Time is of the essence of this Agreement. Whenever a date certain is established, named or defined for the payment of any sum of money or for the performance of any act or thing, the same enters into and becomes a part of the consideration supporting this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement to Purchase Real Estate as of the date appearing beneath their signatures.

- Signatures on the Following Page -

PURCHASER:

Metro Fibernet, LLC



Print Name: _____

Print Title: _____

Date: _____

ACCEPTANCE

The undersigned Seller agrees to and accepts the foregoing offer and warrants that those signing this acceptance constitute all of the owners of said Property, and that the undersigned has all necessary authority to so accept.

SELLER:

Austin Port Authority

Print Name: Jerry McCarthy

Print Title: Chairman

Date: _____

Print Name: Tom Dankert

Print Title: Secretary

Date: _____

EXHIBIT A

Legal Description of Property

All of Lot 3 and the South Half of Lot 2, in Block 1, Berry Subdivision to the City of Austin, Mower County, Minnesota.

Metronet Purchase Agreements 12-21 CLS Redline (Austin) (002)

Final Audit Report

2021-01-08

Created:	2021-01-08
By:	Connie Shidler (connie.shidler@metronetinc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAshiVX_TsIE8wEPI8L_mTnfDXdWua1h7

"Metronet Purchase Agreements 12-21 CLS Redline (Austin) (002)" History

-  Document created by Connie Shidler (connie.shidler@metronetinc.com)
2021-01-08 - 1:54:15 AM GMT- IP address: 162.221.216.135
-  Document emailed to John Greenbank (john.greenbank@metronetinc.com) for signature
2021-01-08 - 1:54:52 AM GMT
-  Email viewed by John Greenbank (john.greenbank@metronetinc.com)
2021-01-08 - 2:10:37 PM GMT- IP address: 162.221.216.134
-  Document e-signed by John Greenbank (john.greenbank@metronetinc.com)
Signature Date: 2021-01-08 - 2:10:56 PM GMT - Time Source: server- IP address: 162.221.216.134
-  Agreement completed.
2021-01-08 - 2:10:56 PM GMT

City of Austin
Craig Clark,
City Administrator



January 27, 2021

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

TO: President and Port Board Members

FROM: Craig D. Clark, Executive Director

RE: Port Authority Sale of Property of 34.156.0030 and 34.156.0060 and approval of Development Agreement with WDS/JCW.

The Port Authority is being asked to participate in an economic development package which includes a County loan, Grow Austin job and capital investment incentive above the State's Job Creation Fund (JCF), an 8 year Economic Development TIF for manufacturing, approval of Minnesota Investment Fund (MIF) and Job Creation Fund applications to the State and the Port Authority providing 8.68 acres of land at low cost (\$10) within the Creekside Business Park (Exhibit 1).

The incentive package is for NuTek Bioscience (operating company) and WDS/JCW (builder) who jointly will bring a production facility for vegetable and yeast-based proteins/peptones for the Pharma and Food industries to Austin, MN. This will be 60,000 square foot facility with a taxable value of \$4.3- \$4.7 million while adding 35 good paying jobs over a two-year period.

Our action is related directly with WDS/JCW as they will own the land and the building which will be leased to NuTek. Section IV of the Development Agreement (Exhibit 2) outlines WDS/JCW's requirement to construct a building with a minimum cost of \$16 million and conform to the details provided in Exhibit D of the agreement. An additional \$16 million is expected in equipment purchases.

For more information on NuTek please refer to Exhibit 3 which is their JCF application. This provides more depth to their business model and overall project.

At their January 19th meeting the City Council approved their pieces of the incentives package, JCF and MIF resolutions as well as a Development Agreement with NuTek which has commenced work on the economic development TIF. The applications will be forwarded to the State of Minnesota for their final approval. Mower County will consider their \$2.5 million loan package at a future meeting but has not been scheduled at this point.

If the Port Authority agrees to the land sale as part of the context of the overall incentive package, we would need your approval of the Development Agreement which has the terms of the transfer of the property outlined in 3.4 and 3.4 (i) \$10 and requirements to build the road to the eastern property line. Terms of the sale of land by the Port Authority agreement are contingent upon securing all state economic development incentives through the Department of Employment and Economic Development (DEED), state of Minnesota and upon final site selection announcement. Other development partners incentive contingencies are listed in section 3.2 of the Development Agreement.

NuTek has requested the Port move forward with the combination of the two parcels so I'm also requesting authorization for me to file these requests with the City of Austin and Mower County.

Please let me know if you have any questions.

Board action is requested to approve the sale of parcels 34.156.0030 and 34.156.0060 as outlined in the Development Agreement (Exhibit 2) and thereby authorizing the President to sign and secretary attest the document on behalf of the Port Authority.

Board action is requested to provide the Executive Director of the Port Authority the authorization to combine the two lots as necessary.

Creekside land sale to JCW

Exhibit



Exhibit 2

CONTRACT

FOR

PRIVATE DEVELOPMENT

By and Between

THE AUSTIN PORT AUTHORITY

And

JCW DEVELOPMENT LLC and W.D.S. CONSTRUCTION SERVICES, LLC

This document drafted by:

HOVERSTEN, JOHNSON, BECKMANN,
& HOVEY, LLP
807 West Oakland Avenue
Austin, MN 55912

TABLE OF CONTENTS

ARTICLE I Definitions

Section 1.1. Definitions

ARTICLE II Representations and Warranties

Section 2.1. Representations by the Port

Section 2.2. Representations and Warranties by Developer

ARTICLE III Conveyance of Property

Section 3.1. Port Recognition of Need for Development

Section 3.2. Transfer of the Development Property

Section 3.3. Closing

Section 3.4. Price

Section 3.5. Enforcement

Section 3.6. Place of Document Execution, Delivery and Recording

ARTICLE IV Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements

Section 4.2. Construction Plans

Section 4.3. Completion of Construction

Section 4.4. Certification of Construction Expenditures

Section 4.5. Certificate of Completion

ARTICLE V Prohibitions Against Assignment and Transfer

Section 5.1. Representation as to Development

Section 5.2. Prohibition Against Transfer of Property and Assignment of Agreement

ARTICLE VI Events of Default

Section 6.1. Events of Default Defined

Section 6.2. Remedies on Default

Section 6.3. No Remedy Exclusive

Section 6.4. No Additional Waiver Implied by One Waiver

ARTICLE VII Additional Provisions

Section 7.1. Port Representatives Not Individually Liable

Section 7.2. Restrictions on Use

- Section 7.3. Titles of Articles and Sections
- Section 7.4. Notices and Demands
- Section 7.5. Counterparts

SIGNATURES

- EXHIBIT A** Description of Development Property
- EXHIBIT B** Attachment to Development Property Deed
- EXHIBIT C** Certificate of Completion
- EXHIBIT D** Project Layout and Exterior Finishes

CONTRACT FOR PRIVATE DEVELOPMENT

THIS AGREEMENT, made this ____ day of January, 2021, by and between The Austin Port Authority, (the "Port"), a public corporation under the laws of the State of Minnesota, having its principal offices at 500 4th Avenue NE, Austin, Minnesota 55912, and JCW Development LLC, a Wisconsin Limited Liability Company having its principle office located at 100 Tower Drive, Beaver Dam, Wisconsin 53916-9178, and W.D.S. Construction Services, LLC, a Wisconsin Limited Liability Company having its principal office located at N4602 Wildwood Lane, Princeton, Wisconsin 54968 (collectively the "Developer").

WITNESSETH:

WHEREAS, the Port is a municipal corporation organized and existing pursuant to Minnesota Statutes § 469.070; and

WHEREAS, the Port has the duty to promote the general welfare of the Port District and to increase the volume and efficiency of commerce in and through the Port District (Minnesota Statutes § 469.055, Subd. 1); and

WHEREAS, the Port may cooperate with the City of Austin in achieving its industrial development objectives in the Port District (Minnesota Statutes § 469.064); and

WHEREAS, the City of Austin has identified a need for additional quality employment opportunities and has established certain economic development support programs to encourage the creation of such employment; and

WHEREAS, pursuant to Minnesota Statutes Section 469.058, et seq., the Port is authorized to assist in economic development; and

WHEREAS, the Port has determined that the Development Property is property for which economic development thereupon is in the best interests of the district and its people, and that the transactions described herein further the Port's general plan of port improvement, or industrial development, or both, and as such the Port has approved the Project pursuant to Minnesota Statutes Section 469.058, et seq.; and

WHEREAS, the Port recognizes that Project will result in increased employment and enhancement of the tax base in the Port District (Minnesota Statutes Section 469.174, subd. 12); and

WHEREAS, the Port recognizes the Project herein described would not happen through solely private investment in the reasonable foreseeable future and the net increase in market value for the Development Property will be higher with the provision of support by the City of Austin as described herein, including but not limited to the establishment of an Economic Development Tax Increment Financing District within a Project Area identified in a Tax Increment Financing Plan (Minnesota Statutes Section 469.174) (subject to said District meeting the statutory criteria and being approved by the City of Austin and other required governmental agencies (if any) (See Minnesota Statutes Section 469.175, Subd. 3); and

WHEREAS, an Economic Development Tax Increment Financing District may not have a term that exceeds eight years (Minnesota Statutes Section 469.176, Subd. 1b); and

WHEREAS, revenues derived from tax increments from an Economic Development Tax Increment Financing District must be used to finance eligible costs related to a Development Project under Minnesota Statutes Section 469.048 to 469.068 and 469.174 to 469.1799; and

WHEREAS, the major objectives of the Port in establishing the Project are to provide for economic development, enhanced employment and tax base, and overall improvement in the Port District; and

WHEREAS, the Port believes that the development of the Project pursuant to this Agreement, and fulfillment generally of the terms of this Agreement, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws under which the development and redevelopment are being undertaken and assisted; and

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I.

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Act” means Minnesota Statutes, Chapter 469.

“Agreement” means this Agreement, as the same may be from time to time modified, amended or supplemented.

“Approved Lessee” means Nu-Tek Biosciences, LLC, a Minnesota Limited Liability Company having its principal offices at 5400 Opportunity Court, Suite 120, Minnetonka, Minnesota 55343.

“Certificate of Completion” means the certification, in the form of the certificate contained in Exhibit C attached to and made a part of this Agreement, provided to Developers, pursuant to Section 4.5 of this Agreement.

“City” means the City of Austin, Minnesota.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by Developer on the Development Property which shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the building inspector of the City, and such other plans or supplements to the foregoing plans as the Port may reasonably request.

“County” means the County of Mower, Minnesota.

“Developer” means JCW Development LLC, a Wisconsin Limited Liability Company with its principle office located at 100 Tower Drive, Beaver Dam, Wisconsin 53916-9178, and W.D.S. Construction Services, LLC, a Wisconsin Limited Liability Company with its principal office located at N4602 Wildwood Lane, Princeton, Wisconsin 54968, jointly and severally.

“Development Property” means the real property described in Exhibit A attached hereto.

“Development Property Deed” means the Quit Claim Deed attached to which is the language described in Exhibit B.

“Event of Default” means the occurrence of any one or more of the events described in Section 7.1 of this Agreement.

“Minimum Improvements” means the construction of a new manufacturing facility (hereafter “Structure”). The Structure shall include no less than the following:

- a) A permanent structure with a footprint area, at ground level, of no less than 60,000 square feet, and a total investment by Developer as required under Section 4.4 below;
- b) The site layout for the Structure shall be consistent with the site layout shown in attached Exhibit D;
- c) The exterior elevations of the Structure shall be consistent with the exterior elevations shown in attached Exhibit D;
- d) The Structure shall be constructed consistent with currently applicable building codes and the development standards found in City Code Chapter 11;
- e) All exterior finishes and materials shall be consistent with those shown in the elevations attached hereto as Exhibit D.
- f) All signage will comply with City Code section 4.50.

“Project” shall mean the acquisition of the Development Property and the construction and completion of the Minimum Improvements on the Development Property.

“State” means the State of Minnesota.

“Unavoidable Delays” means delays which are the direct result of strikes, delays which are the direct result of unforeseeable and unavoidable casualties to the Minimum Improvements, the Development Property or the equipment used to construct the Minimum Improvements, delays which are the direct result of governmental action, delays which are the direct result of judicial action commenced by third parties, citizen opposition or action affecting this Agreement or adverse weather conditions or acts of God.

ARTICLE II
Representations and Warranties

Section 2.1. Representations by the Port. The Port makes the following representations as the basis for the undertaking on its part herein contained;

(a) The Port is a public corporation duly organized and existing under the laws of the State. Under the provisions of the Act, the Port has the power to enter into this Agreement and carry out its obligations hereunder.

Section 2.2. Representations and Warranties by Developer. Developer represents and warrants that:

(a) Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Plan, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations), except for variances necessary to construct the Minimum Improvements contemplated in the Construction Plans and approved by the City.

(b) The Minimum Improvements, as of the date of commencement of construction upon the Development Property, will be an allowed use under the zoning ordinance of the City.

(c) Developer agrees to acquire the Development Property subject to the existence of any pollutants, contaminants or environmental damage upon the Development Property, if any there be.

(d) Developer will use its best efforts to obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(e) Developer is a Wisconsin limited liability company, and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions, or provisions of any restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) Developer agrees that it will indemnify, defend, and hold harmless the Port, its officers, employees, contractors and agents, from and against any and all claims or causes of action arising or purportedly arising out of the actions of Developer in connection with the construction, installation, ownership or operation of the Minimum Improvements, except for claims or causes of action arising or purportedly arising out of the negligent acts or omissions of the Port's officers, employees, contractors or agents.

(g) Developer agrees that it will reasonably cooperate with the Port with respect to any litigation commenced by third-parties in connection with this Agreement.

(h) Subject to the obligations by the Port to be performed pursuant to the terms of this Agreement, Developer acquires the Development Property in its "as is" condition, without any warranties as to the suitability, use or fitness of the Development Property for any purpose.

(i) Whenever any Event of Default occurs and the Port shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligations or agreement on the part of the Developer under this Agreement, the Developer agrees that it shall, within ten days of written demand by the Port, pay to the Port the reasonable fee of such attorneys and such other expenses incurred by the Port.

ARTICLE III Conveyance of Property

Section 3.1. Port Recognition of Need for Development. The Port recognizes that for the proposed Project on the Development Property to be feasible it is necessary for the Port to furnish the assistance described herein. Further, the Port recognizes that this Project also involves certain grants and assistance from other governmental and private entities all of which rely upon the Port's participation as herein described. Similarly, the Port's participation as described herein is contingent upon the Project receiving such third-party grants and assistance more fully described in Section 3.2 below.

Section 3.2. Transfer of the Development Property. Other than expressly provided herein, all costs of conveyance of the Development Property shall be solely borne by the Developer. However, proceeding with closing the conveyance contemplated herein is expressly conditioned upon the following conditions precedent that are necessary (the Project is not viable without satisfaction of such conditions) for the Project's viability:

- (a) The Development Corporation of Austin securing funding through a loan from the County to support a loan to developer in the amount of \$2,500,000 payable over a ten year term with interest at no more than 3.25% per annum, secured by a second position mortgage on the Development Property and the Minimum Improvements, and other necessary security (e.g., guarantees) as determined by the Development Corporation of Austin and the County.
- (b) The City establishing a Tax Increment Financing District and TIF Plan related to this project providing a minimum of \$1,250,000 in revenues over a eight-year term to be applied to TIF eligible expenses. TIF eligible expenses will include, to the extent such inclusion is lawful, Developer's actual reimbursement of the costs of constructing the road extension as described in Section 3.4. Such TIF Plan shall require employment be maintained on the Development Property at or above 15 full-time employees by the first disbursal and 35 full-time employees by the second disbursal of TIF proceeds. To be counted, each such full-time employee shall be compensated at or above 140% of the Federal Poverty Level for a family of four (includes wages and nonmandatory benefits). Such TIF Plan shall include a minimum assessment agreement.
- (c) Fulfillment of all conditions and contingencies described in the Contract for Private Development entered into between the City of Austin and Approved Lessee contemporaneously with this Agreement, specifically but not limited to those

requirements pertaining to the Minnesota Investment Fund and Minnesota Job Creation Fund.

- (d) Developer entering into a long-term, triple-net, lease agreement with Approved Lessee to occupy and operate the Project after completion on terms acceptable to Developer.
- (e) The conveyance of the Development Property is subject to all of the conditions, covenants, restrictions and limitations imposed by this Agreement, and shall also be subject to building and zoning laws and ordinances and all other applicable local, state and federal laws and regulations, and subject to the Reversionary Right described in the following paragraph.
- (f) Pursuant to Minn. Stat. § 469.065, subd. 5, the conveyance of the Development Property shall be subject to a Reversionary Interest as hereinafter stated. In the event of a default under this Agreement or the terms of the Development Property Deed before the issuance by the Port of its Certificate of Completion, or upon the occurrence of an Event of Default, and particularly upon the failure of Developer to complete the Minimum Improvements by the date required pursuant to the terms of this Agreement, the Port shall have the right to re-enter and take possession of the Development Property and to terminate the estate conveyed by the Port to Developer, and upon such event, the estate conveyed by the Development Property Deed to Developer shall revest in the Port, its successors, or assigns without claim or interest in Developer. This Reversionary Interest shall terminate if the Minimum Improvements as required by this Agreement are substantially completed by the date required herein.

Section 3.3. Closing. At or before closing on the conveyance of the Development Property to Developer, Developer shall pay the actual cost of closing on the sale of the Development Property to Developer, including but not limited to any recording costs (including the cost of recording this document), closing fees, and any necessary filing fees, deed tax and mortgage registration tax regardless of whether said charges are customarily attributed to either a "Buyer" or a "Seller" under local custom.

Section 3.4. Price. Other than the obligations and requirements as described herein, the purchase price paid to the Port by Developer in exchange for Development Property Deed shall be \$10.00, due and payable in full at closing. In addition to the purchase price, Developer shall reimburse to the Port the costs incurred by the Port in constructing a public road extension along the Northern boundary of the Development property and terminating at the Northeast corner of the Development Property, as further limited and defined below:

- (i) Said road extension shall be constructed in conformance with all applicable regulations and specifications governing the construction of dedicated public roadways within the City, including the following minimum requirements: 10-Ton roadway design; 40 feet in width with curb & gutter; including all necessary underground utilities, subsurface drain tile, turf restoration, and street lighting. The parties hereto understand that the Port is likely to contract with the City of Austin for the construction of this road. However, the Developer's obligation to reimburse one-half (½) of the costs of construction of said road shall not be impacted by the Port's choice of the party engaged

to perform the construction of this road extension.

(ii) The Developer's reimbursement for the cost of said road extension shall be paid no later than 90 days after the provision by the Port of a demand for such payment accompanied by reasonable documentation supporting the amount claimed to be due.

(iii) Should a road be constructed along the East boundary of the Development parcel at some time in the future, the costs of said construction shall be borne by the Developer and other adjacent land owners according to the then applicable assessment policies of the City of Austin applicable to dedicated public roadways.

(iv) The provisions of this Section 3.4 shall survive closing and the issuance of the Certificate of Completion.

Section 3.5. Enforcement. In the event the Port is required to enforce the terms and provisions of this Agreement, and the Port prevails, Developer shall pay any legal and administration costs incurred by the Port in the course of such enforcement at the time such costs are incurred.

Section 3.6. Place of Document Execution, Delivery and Recording.

- (a) Unless otherwise mutually agreed by the Port and Developer, the closing conveyance of the Development Property Deed and all documents associated therewith shall be made at City Hall, 500 4th Avenue NE, Austin, Minnesota 55912. The closing date shall be on or reasonably following the date on which the conditions precedent described in Section 3.2 are met, but shall be no later than April 1, 2021, or such other date upon which the parties mutually agree.
- (b) This Agreement shall be in recordable form and shall be promptly recorded in the office of the Mower County Recorder, at the expense of Developer.

ARTICLE IV
Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. Developer agrees that, upon receiving title to the Development Parcel, it will promptly construct the Minimum Improvements on the Development Property in accordance with the approved Construction Plans.

Section 4.2. Construction Plans.

- (a) The Port has approved the Construction Plans as submitted by Developer, and the Port must be allowed to review and approve any revisions thereto.
- (b) If Developer desires to make any change in the Construction Plans, Developer shall submit the proposed change to the Port for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Agreement and the Plan, the Port shall approve the proposed change and notify Developer in writing of its approval. Any minor modification of the plans may be approved by the Port's Executive approval.

Director. A minor modification is any modification that does not materially alter the size, footprint, gross layout as shown in Exhibit D, or structural components.

Section 4.3. Completion of Construction. Subject to Unavoidable Delays, Developer shall have substantially begun construction of the Minimum Improvements by June 1, 2021, and thereafter must maintain reasonable progress in said construction until the Minimum Improvements are complete. Substantial completion of the Minimum Improvements must be met by June 1, 2022. All work with respect to the Minimum Improvements to be constructed or provided by Developer on the Development Property shall be in conformity with the Construction Plans as submitted by Developer and approved by the Port.

Prior to the Port furnishing Developer with a Certificate of Completion pursuant to Section 4.5., Developer shall make reports, in such detail and at such times as may reasonably be requested by the Port, as to the actual progress of Developer with respect to such construction.

Section 4.4. Certification of Construction Expenditures. Developer shall expend not less than Sixteen Million Dollars and No/100 (\$16,000,000) on the Minimum Improvements on the Development Property. Said minimum investment shall not include equipment, working capital, or other investment made by Approved Lessee in outfitting the Minimum Improvements for its use. Developer shall make such reports and provide such documentation, in such detail and at such times as may be reasonably requested by the Port as to the expenditures made by Developer for said Minimum Improvements.

Section 4.5. Certificate of Completion.

- (a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of the Agreement relating solely to the obligations of Developer, the Port will furnish Developer with an appropriate instrument so certifying, which Certificate shall be in the form of Exhibit C attached hereto. Such certification by the Port shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction of the agreements and covenants in this Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the Minimum Improvements by the date for the completion thereof. The issuance of the Certificate of Completion shall constitute a conclusive determination that the Reversionary Interest has terminated. As used here "substantial completion" shall mean completion to the point where Developer is entitled to, and receives, the issuance of a Certificate of Occupancy by the City under the current adopted Minnesota State Building Code.
- (b) If the Port shall refuse or fail to provide any certification in accordance with the provisions of this Agreement, the Port shall, within thirty (30) days after written request by Developer, provide Developer with a written statement, indicating in adequate detail in what respects Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Port, for Developer to take or perform in order to obtain such certification.
- (c) The Certificate of Completion will not be issued by the Port unless Developer has

complied with all of the terms and provisions of this Agreement.

ARTICLE V
Prohibitions Against Assignment and Transfer

Section 5.1. Representation as to Development. Developer further recognizes that, in view of the importance of the Project to the general welfare of the community, the qualifications and identity of Developer are of particular concern to the community and the Port. Developer further recognizes that it is because of such qualifications and identity that the Port is entering into the Agreement with Developer, and in so doing, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby by it to be performed.

Section 5.2. Prohibition Against Transfer of Property and Assignment of Agreement. For the foregoing reasons, and until the completion of the Minimum Improvements and the issuance of the Certificate of Completion, Developer represents and agrees that:

- (a) Except only by way of security for, and only for, the purpose of obtaining borrowed financing necessary to enable Developer or any successor in interest to the Development Property or Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under the Agreement, and any other purpose authorized by the Agreement, Developer (except as so authorized) has not made or created, and will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Development Property, the Development Property, or any part thereof or any interest therein or any contract or agreement to do any of the same, without the prior written approval of the Port, which approval shall not be unreasonably withheld if the Assignee thereof is appropriately licensed and authorized to do business in the State of Minnesota, agrees to perform the obligations of Developer in this Agreement, has engaged in the ownership and operation of other projects similar to those conducted upon the Development Property as of the time of such transfer or assignment, and if neither the Assignee or transferee, nor the owners of a majority of its issued and outstanding common stock if it is a corporation, nor its general partners if it is a partnership, have ever been convicted of a felony or been declared bankrupt or insolvent.
- (b) The Port shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that: (i) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the Port, necessary and adequate to fulfill the obligations undertaken in the Agreement by Developer; (ii) any proposed transferee, by instrument in writing satisfactory to the Port and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Port, have expressly assumed all of the obligations of Developer under the Agreement and agreed to be subject to all the conditions and restrictions to the extent that they relate to such part unless Developer agrees to continue to fulfill those obligations, in which case the preceding provisions of this Section 6.2.(b)(ii) shall not apply: Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, the Development

Property, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the Port) deprive or limit the Port of or with respect to any rights or remedies or controls with respect to the Development Property or the construction of the Minimum Improvements upon the Development Property; it being the intent of this, together with other provisions of the Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in the Agreement) no transfer of, or change with respect to, ownership in the Development Property, Development Property, or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Port of or with respect to any rights or remedies or controls provided in or resulting from the Agreement with respect to the Development Property, or the Development Property and the construction of the Minimum Improvements thereon, that the Port would have had, had there been no such transfer or change; (iii) there shall be submitted to the Port for review all instruments and other legal documents involved in effecting transfer; and if approved by the Port, its approval shall be indicated to Developer in writing.

- (c) In the absence of specific written agreement by the Port to the contrary, no such transfer or approval by the Port thereof shall be deemed to relieve Developer, or any other party bound in any way by the Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto or from any of its other obligations under this Agreement.
- (d) The transfer restrictions described in this Article V do not apply to Developer's transfer of the Development Property or the Development Property to a wholly owned subsidiary or an entity of which Developer has a controlling interest so long as Developer maintains such controlling interest throughout the period the transfer restrictions would otherwise apply, and so long as said transfer is reasonably intended to result in continued performance hereunder.

ARTICLE VI

Events of Default

Section 6.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any one or more of the following events:

- (a) Failure by Developer to commence construction by June 1, 2021.
- (b) Failure by Developer to complete construction of the Minimum Improvements pursuant to the terms, conditions and limitations of Article IV of this Agreement.
- (c) Failure by Developer to provide any material or substantial statements or information as required to be provided under this Agreement.
- (d) Failure by Developer to observe or perform any covenant, condition, obligation or

agreement on its part to be observed or performed under this Agreement.

Section 6.2. Remedies on Default. Whenever any Event of Default referred to in Section 6.1. of this Agreement occurs, the Port may take any one or more of the following actions:

- (a) Suspend its performance under this Agreement until it receives assurances from Developer, deemed adequate by the Port, that Developer will cure its default and continue their performance under the Agreement.
- (b) Terminate this Agreement and its obligations.
- (c) Withhold the Certificate of Completion.
- (d) The Port may re-enter the Development Property pursuant to the Reversionary Interest of the Port.
- (e) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the Port, including any actions to collect any damages suffered by the Port under this Agreement; or to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement, without regard to whether there is an adequate remedy at law.

Section 6.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Port is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Port or Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article VI.

Section 6.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE VII

Additional Provisions

Section 7.1. Port Representatives Not Individually Liable. No member, official, employee, attorney or agent of the Port shall be personally liable to Developers, or any successor in interest, in the event of any default or breach by the Port or from any amount which may become due to Developer or successor or on any obligations under the terms of the Agreement, except in the case of willful misconduct.

Section 7.2. Restrictions on Use. Developer agrees for themselves and their heirs, personal representatives and assigns, and every successor in interest to the and Development Property, or any part

thereof, that Developer, and such successors and assigns, shall devote the Development Property to, and in accordance with, the uses specified in the Plans and this Agreement or other uses that are in compliance with zoning, building and use ordinances of the City of Austin. Developer shall not discriminate upon the basis of age, race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or familial status in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 7.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 7.4. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

- (a) In the case of Developer, is addressed to or delivered personally to the mailing or delivery address Developer will, from time to time, furnish to the Port; and
- (b) In the case of the Port, is addressed or delivered personally to the Port at 500 4th Avenue NE, Austin, Minnesota 55912, or at such other address as the Port may, from time to time, designate in writing and forward to Developers.

Section 7.5. Counterparts. This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Port has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed and Developers have caused this Agreement to be duly executed on or as of the date first above written.

THE AUSTIN PORT AUTHORITY

JCW DEVELOPMENT LLC

By _____
Jerry McCarthy, Its President

By _____
Its: _____

By _____
Tom Dankert, Its Secretary

By _____
Its: _____

W.D.S. CONSTRUCTION SERVICES, LLC

By _____

Its: _____

STATE OF MINNESOTA

ss.

COUNTY OF MOWER

The foregoing was acknowledged before me this _____ day of _____, 2021, by Jerry McCarthy and Tom Dankert, the President and Secretary of The Austin Port Authority, a public corporation under the laws of the State of Minnesota, on behalf of The Austin Port Authority.

(SEAL)

Notary Public

STATE OF MINNESOTA

ss.

COUNTY OF MOWER

The foregoing was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of JCW Development LLC, a limited liability company under the laws of the State of Wisconsin, on behalf of JCW Development LLC.

(SEAL)

Notary Public

STATE OF MINNESOTA

ss.

COUNTY OF MOWER

The foregoing was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of W.D.S. Construction Services, LLC, a limited liability company under the laws of the State of Wisconsin, on behalf of W.D.S. Construction Services, LLC.

(SEAL)

Notary Public

EXHIBIT A
Description of Development Property

Lot 1 and Lot 4, Block 2, Cook Farm Business Park, City of Austin, County of Mower, State of Minnesota

EXHIBIT B
ATTACHMENT TO QUIT CLAIM DEED

*Subject to the requirements, terms and provisions of the Contract for Private Development dated _____, 2021, and recorded as Document No. _____, in the office of the Mower County Recorder (the Contract) by and between the Port of Austin, Minnesota and JCW Development LLC and W.D.S. Construction Services, LLC, to which Minimum Improvements as described in the Contract, must be completed by June 1, 2022.

In the event of a default under the Contract or upon the occurrence of an Event of Default pursuant to the terms of the Contract, and particularly upon a failure of the Grantee herein to complete the Minimum Improvements by the date required herein, the Grantor herein shall have the right to re-enter and take possession of the aforesaid premises and to terminate the estate of the Grantee created herein and upon such event, the title to the aforesaid premises shall vest in the Grantor or its assigns, or successors in interest, which right of re-entry, possession and revesting is referred to in the Contract as the "Reversionary Interest". The parties hereby incorporate into this Deed as a covenant running with the land the conditions of Minnesota Statutes, Sections 469.048 to 469.068 relating to the use of the land. Unavoidable Delays as defined in the Contract for Development between the Austin Port Authority, Grantor, and Grantee is good cause by which Grantor will extend the time to comply with any statutory conditions. The filing of a Certificate of Completion issued by the Grantor herein shall be conclusive evidence of the termination of the Reversionary Interest in favor of the Grantor and compliance with all statutory covenants.

This conveyance is made subject to easements and rights-of-way of record.

EXHIBIT C
Certificate of Completion

WHEREAS, The Austin Port Authority, a Minnesota public corporation (the "Port"), and Mower County Development Group, LLC, a Minnesota limited liability company (the "Developer") have entered into a Contract for Private Development (the "Contract") dated _____, 2021, and filed in the office of the Mower County Recorder on _____, 2021, recorded as Document No. _____, regarding certain real property located in the City of Austin, (hereinafter referred to in the Contract as the "Development Property"); and

WHEREAS, the Contract contains certain conditions and provisions requiring Developer to construct improvements upon the Development Property (hereinafter referred to and referred to in the Contract as the "Minimum Improvements"); and

WHEREAS, Section 4.5. of the Contract requires the Port to provide an appropriate instrument promptly after the substantial completion (as defined in the Contract) of the Minimum Improvements so certifying said substantial completion;

NOW, THEREFORE, in compliance with said Section 4.5. of the Contract, this is to certify that Developer has substantially completed the Minimum Improvements with regard to the specific real estate herein above described in accordance with the conditions and provisions of the Contract relating solely to the obligations of Developer to construct the Minimum Improvements (including the dates for beginning and completion thereof), and this certification shall be a conclusive determination of satisfaction of the agreements and covenants in the Contract with respect to the obligations of Developer, and its successors and assigns, to construct the Minimum Improvements and the dates for the beginning and completion thereof.

DATED: _____

THE AUSTIN PORT AUTHORITY

By _____
Its Chairman

By _____
Its Secretary

EXHIBIT D
Project Layout and Exterior Finishes

Job Creation Fund (JCF) Program Application

Please consult with DEED before completing this application.

APPLICATION PROCEDURES

The Job Creation Fund (JCF) Program provides job creation awards and capital investment rebates to designated businesses that retain or create high-paying, full-time permanent jobs and invest in real property improvements. The program is available statewide for manufacturing, distribution, warehousing, and other eligible business activities. Business must be able to locate outside of Minnesota and be able to serve the same customers. Applications are accepted on a year-round basis as funds are available. Projects that begin prior to becoming designated by DEED are not eligible for the Job Creation Fund. Project start activities include signed contracts, building permits, construction, and other activities that indicate the project would move forward as planned without a JCF award or rebate.

To become a designated JCF business and receive benefits, a business must work in conjunction with the city, county, or township government (Local Government) where the JCF business will be located. A JCF application must be completed and submitted to the Department of Employment and Economic Development (DEED) by the Local Government. Step-by-step instructions are listed below and applications may be submitted by mail or email to:

Tom Washa
Program Administrator – Principal
332 Minnesota Street, Suite E200
St. Paul, MN 55101
jobcreationfund@state.mn.us

PRE-AWARD PROCESS

In consultation with DEED, the Local Government will make a preliminary determination about whether a business meets the minimum program requirements. Use the Job Creation Fund Eligibility and Application Checklist on the program [website](#) for guidance.

If a business is potentially eligible, the following steps are to be completed:

1. The business and Local Government work together to complete the JCF Application. A Local Government resolution in support of the project must be included. The required template is included in this application. The Local Government will submit the completed application to DEED.
2. DEED evaluates the application and notifies the Local Government and business of approval or denial. If approved, DEED will formally designate the business as a JCF business via an award letter and determine a job creation and/or capital investment rebate amount. Awards and/or rebates of \$500,000 or more require DEED to hold a public hearing prior to formally designating the business as a JCF business. Awards and/or rebates of \$200,000 or more require that construction adhere to prevailing wage rules.
3. The project may begin once an award letter has been signed, however no jobs created or capital investment expenditures will be eligible until a Business Subsidy Agreement (BSA) has been fully executed.

POST-AWARD PROCESS

4. DEED and the JCF business will enter into a BSA specifying the details of the award and/or rebate to be provided after job creation and capital investment goals are met. The JCF business and the DEED commissioner sign the BSA. The date of final signature is considered the project Designation Date.
5. Jobs created and/or capital investment expenditures may be counted on or after the Designation Date.
6. The Local Government will assist the JCF business as needed with submitting required annual progress reports, payment request documentation, and other information requested by DEED.

SECTION 1 – Local Government and Business Applicant Information

Local Government Information	
Local Government Project Sponsor: City of Austin	Local Government Contact Name and Title: Craig Clark, Chief Administrative Officer
Email: craigc@ci.austin.mn.us	Telephone: (507) 437-9941
Address: 500 Fourth Avenue N.E.	City/State/Zip: Austin, MN 55912
Business Information	
Business Legal Name: Nu-Tek Biosciences, LLC	Parent Company (If Applicable):
Street Address for JCF Project Site: Immediately east of 1201 27th Ave NW, Austin, MN 55912	Business Mailing Address: 5400 Opportunity CT, Suite 120
City/State/Zip for JCF Project Site: Austin, MN 55912	Business Mailing City/State/Zip: Minnetonka, MN 55343
Primary Business Contact: Kent McCoy	Contact Title: CFO
E-mail: kmccoy@nu-tekbioscience.com	Telephone: 952-936-3602
Business Website: www.nu-tekbioscience.com	FEIN: 26-4312445
NAICS Code: 325414	SWIFT Minnesota Vendor Number*: 0000922025
<p>1. Is 51% of the business cumulatively owned by minorities, veterans, women, or persons with a disability?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If you answered "Yes" to this question, please complete the Targeted Population Designation Characteristic Form included in this application.</p>	
<p>2. Does the property or the business have any outstanding local, state, or federal tax liabilities?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>3. Are there current or unsatisfied judgements or injunctions against the business or owners?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If you answered "Yes" to this question, please describe.</p>	
<p>4. Is there current or pending litigation involving the business?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If you answered "Yes" to this question, please attach a summary and disposition.</p>	

5. Within the past five (5) years, has there been any violation(s), citation(s), or complaint(s) of discrimination filed against the company in a state or federal court or before any state, federal, or local government agency?

Yes No If you answered "Yes" to this question, please attach a copy of the violation(s), citation(s), or complaint(s) and the disposition of each.

* Every individual or organization doing business with the state is considered a vendor. If you are intending on submitting an application, you will need to register as a vendor by going to: <https://mn.gov/mmlb/accounting/swift/vendor-resources>. The vendor number will ensure proper payment via electronic funds transfer (EFT) once performance goals are met. For new vendors, please note that approval of your registration may take 3-4 business days. If you need assistance obtaining a Vendor Number or completing the registration process, please call 651-201-8100, Option 1

SECTION 2 – Project Overview

- Has the project started (i.e., Contracts have been signed, leases without contingency language have been executed, building permits have been issued, or construction started on-site)?
 Yes No If you answered "Yes" to this question, the project is ineligible for the JCF Program. Please contact DEED to see if there is a different program that you may be eligible for.
- Could this project be located outside of Minnesota and serve the same customers?
 Yes No If you answered "No" to this question, you may be ineligible to apply for the JCF Program. Please contact DEED to discuss.
- Project Type:
 Start-up Company (New business with no parent company or current operations)
 Minnesota Expansion – On Site (Expansion of an existing facility)
 Minnesota Expansion – Off Site (Expansion of an existing MN company at a new site)
 Out of State Expansion (Expansion to MN by a company with existing operations outside of MN)
- Project Involvement:
 Construction of new facility that will be owned by the business or a related party
 Renovations to an existing facility currently owned or to be acquired by the business or a related party
 Leasing a facility to be constructed by an unrelated third party
 Leasing an existing facility where leasehold improvements will be made by an unrelated third party
- Are there facility or land limitations that do not allow the business to expand at an existing Minnesota facility?
 Yes No Not Applicable
- Has state environmental review requirements been met for the project?
 Yes No Not Applicable

7. Project Timeframe:

Task:	Estimated Completion Date (MM/YYYY):
Commitment of Funds	1/1/2021
Start of Construction	3/1/2021
Purchase Equipment	3/1/2021
Complete Construction	3/31/2022
Begin Operations	3/31/2022

8. Project Sources and Uses:

Since the Job Creation Fund is pay-for-performance, do not include an anticipated JCF award or rebate as a source or use of funds.

Use of Funds	Bank(s)	Equity	State (e.g. MIF)	Local Government	Other	Total
Property Acquisition				\$450,000		\$450,000
Site Improvement					\$600,000	\$600,000
New Construction				\$2,500,000	\$15,450,000	\$17,950,000
Renovations of an Existing Building						
Purchase of Machinery & Equipment	\$12,800,000	\$875,000	\$325,000		\$2,000,000	\$16,000,000
Other						
Total Project Cost	\$12,800,000	\$875,000	\$325,000	\$2,950,000	\$18,050,000	\$35,000,000

Description of "Other" source of funds: Developer-backed construction; PACE Equity financing

Description of "Other" use of funds:

9. List and provide amount of other public financial assistance and location in which the business has received within the last five years or expects to receive related to this expansion from state or local governments, such as loans, grants, or project specific tax benefits (e.g., tax increment financing, tax abatements, tax refunds):

Subsidy Grantor	Subsidy Amount	Date Received/ Will be Received	Type of Subsidy	Location where Subsidy Received / Used
Example: City	\$100,000	01/01/16	Loan	St. Cloud, MN
Mower County	\$2,500,000	3/1/2021	Loan	Austin
City	\$1,200,000	3/1/2021	TIF	Austin
City	\$450,000	3/1/2021	Land Subsidy	Austin

10. Current number of permanent, full-time (2,080 hours) employees company-wide: 0

11. Current number of permanent, full-time (2,080 hours) employees in Minnesota: 0

12. Current number of permanent, full-time (2,080 hours) employees at the proposed JCF project site: 0
Include any employees that will relocate from another Minnesota site to the JCF project.

13. Will there be any reduction of positions (non-transfers) at other company sites during the next two years, or a reduction in purchases from Minnesota suppliers or vendors as a result of the project?

Yes No If you answered "Yes" to this question, please attach a description.

14. Will any jobs be relocated from another Minnesota site to the proposed JCF project site:

Yes No If you answered "Yes" to this question, which location(s) will the employees be relocated from?

Location	# of Employees

For jobs relocating from another Minnesota location, a letter in support of the move from the city where the jobs will be moving from must be included with the application.

15. Projected number of new permanent, full-time (2,080 hours) employees to be created at the proposed JCF project site:

# of New Permanent, Full- Time Employees	To be Created in Year 1	To be Created in Year 2	To be Created in Year 3
	15	20	0

The total number of New Permanent, Full-Time Employees listed above should equal the number of positions listed on the Job Creation Form.

JOB CREATION FORM – List All Permanent Jobs to Be Created

Total Jobs to be Created: 35

**For the purposes of the Job Creation Fund program, jobs considered must be non-contract, non-seasonal, permanent full-time positions working at least 2080 hours per year to qualify.*

**** Only eligible non-mandated benefits to the employee. Social security tax, unemployment insurance, workers compensation insurance and other benefits mandated by law must be excluded.**

*** Total compensation including base wage and benefits must be at least 110% of the federal poverty income level for a family of four (verify current wage levels with DEED at the time of application).

SECTION 3 – Required Information

Information from the items listed below will be used to evaluate the potential award and rebate for a business requesting JCF designation. Please be thorough in addressing the requested information and clearly identify responses to each item separately by number.

PART A – Business Description

Describe the business and its major activities.

1. Business overview and company history – include description of company's products or services, organizational structure, parent company and any affiliates
2. Product or industry outlook for the JCF business and project site (if different)
3. Total projected sales for the JCF project both inside and outside of Minnesota
4. Estimated sales to Minnesota customers that replace purchases from outside of Minnesota
5. Markets for the Business (local, statewide, national, international) along with their respective percentage to total sales & the customers served
6. Philanthropic or other ways in which the business contributes or will contribute to Minnesota

PART B – Project Description

Describe the project for which JCF funds are being requested.

7. Provide details for the project for which JCF funds are being requested. Discuss topics such as acquisition, new construction, renovations, or proposed leasehold improvement that are real property, ownership versus lease, square footage, etc.
8. If the JCF project is a lease scenario, explain how the Business will be paying for the tenant improvements, including the amount, timing, and if they are upfront expenses versus lease payments. For more information, please see the [Job Creation Fund Benefits Explained](#).
9. Explain why JCF funding is necessary for this project to move forward (e.g., financing gaps, lack of collateral, potential non-Minnesota locations). If available, please provide further documentation that demonstrates these reasons.
10. Describe how the JCF project will strengthen and/or diversify the local or Minnesota economy.

PART C – Business Competitors

Identify the competitors of the business with the local community (city and county), the adjacent counties, and in the state of Minnesota.

11. Name of each major competitor in Minnesota and the location of each competitor by city.
12. How do the applicant's products or services differ from these competitors?
13. How do the applicant's markets differ from these competitors?

PART D – Required Attachments

- Two (2) years historical financials (i.e., profit & loss, balance sheet, income statement, cash flow statement) and financial projections. If available, audited or reviewed financials are preferred.
- Line-item construction cost estimates for real property improvements for the JCF project.
- Commitment letter from each external financing source (if applicable)
- Commitment letter for any business equity, including amount.
- Unemployment Insurance returns for the last four (4) quarters. The report must include the number of employees employed in Minnesota during each quarter. Not applicable for startups or employers without Minnesota employees.

SECTION 4 – Business Acknowledgement and Certifications

Data Privacy Acknowledgement:

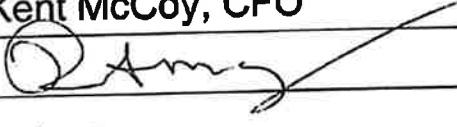
Tennessee Warning Notice: per MN Statutes 13.04, Subd.2, this data is being requested from you to determine if you are eligible for assistance from the Minnesota Department of Employment and Economic Development. You are not required to provide the requested information, but failure to do so may result in the department's inability to determine your eligibility for assistance. The data you provide that is classified as private or non-public and will not be shared without your permission except as specified in state and federal laws.

Data Privacy Notice: per MN Statutes 13.591, Subdivision 1, certain data provided in this Application is private or non-public data; this includes financial information about the business, including credit reports, financial statements, net worth calculations, business plans; income and expense projections; balance sheets; customer lists; income tax returns; and design, market, and feasibility studies not paid for with public funds. Per MN Statutes 116J.401, Subd. 3., certain data provided in this application is private data; this includes data collected on individuals pursuant to the operation of business finance programs.

Business Certification:

Financial Assistance Certification: I hereby certify that the Job Creation Fund program is necessary to my business start-up or expansion and that without the Job Creation Fund my business start-up or expansion project would not happen to the extent outlined in the Job Creation Fund Application. I certify that I will not count any existing positions or employees moved or relocated from another of Minnesota facility where my business conducts operations as new permanent full-time employees for the purposes of fulfilling requirements of the Job Creation Fund program. I certify I will not terminate, lay-off, or reduce the working hours of an employee for the purpose of hiring an individual to fulfill the requirements of the Job Creation Fund program. I certify that I will pay prevailing wages as required under the laws of the State of Minnesota if applicable. I certify I will enlist the services of DEED's Employment and Training staff and will sign a Job Listing Agreement as a condition to receiving funds in excess of \$200,000 from the Minnesota Department of Employment and Economic Development.

I have read the above statements and I agree to supply the information requested to the Minnesota Department of Employment and Economic Development, Office of Business Finance with full knowledge of the information provided herein. I certify that all information provided herein is true and accurate and that the official signing this form has authorization to do so.

Name/Title of Business Official: Kent McCoy, CFO
Signature of Business Official:  Date: 1/12/2021

Local Government Certification:

I hereby certify that as the local government contact for the proposed Job Creation Fund project, I have reviewed the application and business information. I agree to work with the Job Creation Fund program business applicant to supply the information requested to the Minnesota Department of Employment and Economic Development, Office of Business Finance.

Name/Title of Local Government Contact: Craig Clark, Chief Administrative Officer
Signature of Local Government Contact: _____ Date: _____

Conflict of Interest Disclosure Form

This form gives Recipients an opportunity to disclose any actual or potential conflicts of interest that may exist when receiving a benefit. It is the recipient's obligation to be familiar with the Office of Grants Management (OGM) [Grants Policy 08-01 Conflict of Interest Policy for State Grant-Making \(August 2020 Effective Date 1/1/21\)](#) and to disclose any conflicts of interest accordingly. All Recipients must complete and sign a conflict of interest disclosure form.

I or my organization do NOT have an ACTUAL or POTENTIAL conflict of interest.

If at any time after submission of this form, I or my organization discover any conflict of interest(s), I or my organization will disclose that conflict immediately to the appropriate agency or program personnel.

I or my organization have an ACTUAL or POTENTIAL conflict of interest. (Please describe below):

If at any time after submission of this form, I or my organization discover any additional conflict of interest(s), I or my organization will disclose that conflict immediately to the appropriate agency or program personnel.

Nu-Tek BioSciences, LLC

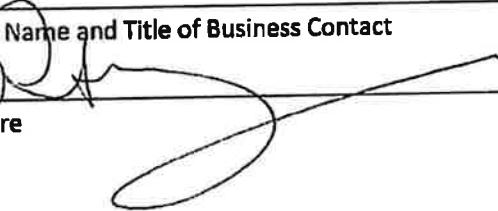
Organization

Kent S. McCoy

952-936-3602

Printed Name and Title of Business Contact

Phone


Signature

1/12/2021

Date

Job Listing Notice

A business receiving financial assistance from the State of Minnesota in an amount in excess of \$200,000 for a single project shall work with DEEDs Employment and Training staff to list any vacant or new positions related to the project on www.minnesotaworks.net per Minn. Stat. 116L.66. The employer is also encouraged to enlist the services of DEED's Employment and Training staff to recruit and refer job candidates.

The Job Listing requirements follow these easy steps:

1. At the time of financing award, DEED's Business Finance Office will provide written notification of the award to DEED's Employment and Training staff. This notification will include the business name, address and phone number (as well as for the contact person) and the number and type of jobs to be created as a result of the DEED assistance.
2. The Employment and Training representative will contact the business to schedule a meeting to sign a Job Listing Agreement that details how positions will be posted on www.minnesotaworks.net. The employer is required to list only those job openings that are part of the project DEED is assisting.
3. Managerial positions, positions that require unusual skills, knowledge, abilities and/or experience not common to the labor market, and job openings to be filled by internal promotion will not subject to the Agreement and need not be listed on www.minnesotaworks.net.
4. The business will notify the Employment and Training staff of job openings and will ensure that job vacancies are entered into www.minnesotaworks.net at least 15 days prior to the anticipated hiring date. Employment and Training staff may refer the employer to free services that can expedite the job order entry.
5. Applicants will follow instructions on www.minnesotaworks.net to apply for open positions. However, the business will make all decisions on which candidates they will interview and hire.
6. The employer may continue to use other recruitment and job referral services in addition to www.minnesotaworks.net and may fill positions prior to meeting with Employment and Training staff and signing the Job Listing Agreement.

The Job Listing Notice is designed to help businesses recruit and hire qualified candidates. If you have questions about using www.minnesotaworks.net, please contact your local Employment and Training staff at <https://mn.gov/deed/business/help/workforce-assistance/wf-strategy.jsp> or the www.minnesotaworks.net Help Desk Specialist at (651) 259-7500.

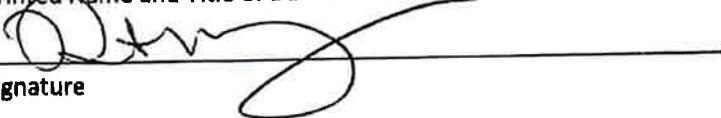
Certification

I have read the above information and understand that as a recipient of state financial assistance in excess of \$200,000, a representative shall meet with DEED Employment and Training staff and agree to sign a job listing agreement and post project-related jobs on www.minnesotaworks.net following the meeting.

Kent McCoy, CFO

Printed Name and Title of Business Contact

Signature



952-936-3602

Phone

1/12/2021

Date

Consent to Release Private Business Employment and Wage Data

Collected and Maintained by the Minnesota Unemployment Insurance Program

To qualify for financial assistance from the DEED Office of Business Finance, your business must agree to create or retain a minimum number of jobs within a specific period of time. These jobs must also pay at or above specified wage levels.

To verify that these requirements have been met, the Office of Business Finance uses quarterly wage records submitted by businesses to the Minnesota Unemployment Insurance Program.

Because Unemployment Insurance records are private, we need your permission to access records about your business. The records we seek to access include:

- Aggregate Minnesota employment levels for your business
- Aggregate Minnesota employment levels at the relevant project site
- Information about your compliance with Unemployment Insurance tax and reporting requirements

It is important to note that we will not receive the names or social security numbers of your employees.

If you sign this form, your records will be securely transmitted by Unemployment Insurance Program staff to the Office of Business Finance. The Office of Business Finance will receive your Unemployment Insurance records on an ongoing basis until your business subsidy agreement expires or is terminated. We will not release any data from your Unemployment Insurance records to any other parties.

You are not legally required to grant us access to your Unemployment Insurance records. You also have the right to withdraw your permission at any time. Please note, however, that refusal to grant access to your Unemployment Insurance records may limit your eligibility for financial assistance.

If you have questions about this form, please contact Bob Isaacson, Executive Director, Office of Business Finance at 651-259-7458 or bob.isaacson@state.mn.us.

I give my permission for the Unemployment Insurance Program to release the records about my business (as described in this form) to the DEED Office of Business Finance. I understand that these records will be used by the Office of Business Finance to verify the satisfaction of requirements associated with my business subsidy agreement.



Nu-Tek BioSciences, LLC

Signature of Business Official

Business Name

Date

Kent McCoy

CFO

Printed Name of Business Official

Position

kmccoy@nu-tekbioscience.com 952-936-3602

E-mail

Phone

26-4312445

Employer Identification Number (EIN) Used for Project Site

Other Employer Identification Numbers (EINs) Used by Business

Notice: Accurately Reporting Business Units to the Minnesota Unemployment Insurance Program

This notice is a reminder that Minn. Stat. § 268.044 requires your business to submit quarterly wage records to the Minnesota Unemployment Insurance Program by "reporting unit".

You have the option to split reporting units for your business by physical location, financial centers, division of labor, or user security requirements. For the purposes of monitoring job creation and wage level performance per your business subsidy agreement, the Office of Business Finance strongly recommends creating a specific reporting unit for the relevant project site.

Reporting units can be added or modified as follows:

To add a reporting unit:

1. Log in to your account at www.uimn.org
2. On My Home Page, click Account Maintenance.
3. Click Maintain Reporting Units.
4. Click Add New Reporting Unit.
5. Enter reporting unit information.
6. Click Next. The Address Validation page opens.
7. Confirm the address, and then click Next.
8. Verify the reporting unit information.
9. Click Submit.

To Inactivate a reporting unit:

1. Log in to your account at www.uimn.org
2. On My Home Page, click Account Maintenance.
3. Click Maintain Reporting Units.
4. Under Active Reporting Units, click the reporting unit link.
5. Under Inactivate Reporting Unit, check the checkbox Inactivate Reporting Unit.
6. Enter the date of last covered wages for this reporting unit.
7. Select the reason for inactivating this reporting unit from the drop down menu, and then click Next.
8. Verify the reporting unit information and benefit account mailing address.
9. Click Save.

If you have any questions about reporting units or other aspects of the Unemployment Insurance wage detail submission process, contact Aaron Tell, Unemployment Insurance Outreach Specialist, at 651-259-7567 / aaron.tell@state.mn.us.


Signature of Business Official

Nu-Tek BioSciences, LLC

1/12/2021

Company

Date

Kent McCoy

CFO

Printed Name of Business Official

Position

kmccoy@nu-tekbioscience.com

952-936-3602

E-mail

Phone

Targeted Population Designation Characteristics

In order to qualify for Targeted Population Designation, the business must be majority (at least 51%) owned by persons who meet certain qualifying characteristics. One or more individuals may be included when determining eligibility. Please provide information regarding qualifying characteristics of the owner(s). Check all that apply:

Minority

Minority group members are citizens (or lawfully admitted permanent residents) of the United States who belong to one or more of the following groups:

- a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- e) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

Woman

Veteran

Veteran means a citizen of the United States or a resident alien who has been separated under honorable conditions from any branch of the armed forces of the United States after having served on active duty for 181 consecutive days or by reason of disability incurred while serving on active duty, or who has met the minimum active duty requirement as defined by Code of Federal Regulations, title 38, section 3.12a, or who has active military service certified under section 401, Public Law 95-202. The active military service must be certified by the United States secretary of defense as active military service and a discharge under honorable conditions must be issued by the secretary.

Person(s) with disabilities

The term "disability" is defined under the Americans with Disabilities Act and means, with respect to an individual:

- a) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- b) a record of such an impairment; or
- c) being regarded as having such an impairment.

I certify that the business is at least 51% owned by person(s) who are representative of one or more of the qualifying groups.

Kent McCoy, CFO

Printed Name and Title of Business Contact

Signature

952-936-3602

Phone

Date

Local Government Resolution Example

This resolution must be adopted prior to submission of the Minnesota Job Creation Fund program application. The resolution shall be adopted by the City Council, County Board, Town Board or Tribal Government where the project will occur. A resolution of support from the local Economic Development Authority, Housing & Redevelopment Authority or Port Authority does not satisfy program requirements.

CITY OF <<City Name>>, MINNESOTA

RESOLUTION NO. <<INSERT>>

RESOLUTION REGARDING THE SUPPORT OF A JOB CREATION FUND APPLICATION IN CONNECTION WITH <<BUSINESS NAME>>

WHEREAS, the City of <<City Name>>, Minnesota (the "City"), desires to assist <<Business Name>>, a <<company type>>, which is proposing to construct a facility in the City; and,

WHEREAS, the City of <<City Name>> understands that <<Business Name>>, through and with the support of the City, intends to submit to the Minnesota Department of Employment and Economic Development an application for an award and/or rebate from the Job Creation Fund Program; and,

WHEREAS, the City of <<City Name>> held a city council meeting on <<date>>, to consider this matter.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF <<City Name>>, Minnesota, that, after due consideration, the Mayor and <<Authorized Official>> of the City of <<City Name>>, Minnesota, hereby adopts the following findings of fact related to the project proposed by <<Business Name>> and its application for an award and/or rebate from the Job Creation Fund Program and express their approval.

The City Council hereby finds and adopts the reasons and facts supporting the following findings of fact for the approval of the Job Creation Fund Program application:

1. Finding that the project is in the public interest because it will encourage the growth of commerce and industry, prevent the movement of current or future operations to locations outside Minnesota, result in increased employment in Minnesota, and preserve or enhance the state and local tax base

List reasons and facts supporting this particular finding for the project.

2. Finding that the proposed project, in the opinion of the City Council, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future.

List reasons and facts supporting this particular finding for the project.

3. Finding that the proposed project conforms to the general plan for the development or redevelopment of the City as a whole.

List reasons and facts supporting this particular finding for the project.

4. Finding that the proposed project will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the redevelopment or development of the project by private enterprise.

List reasons and facts supporting this particular finding for the project.

Sworn and Executed Under My Hand this ____ day of _____, 2019.

M I N U T E S
PORT AUTHORITY SPECIAL MEETING
TUESDAY, SEPTEMBER 7, 2021
4:30 P.M.
LOWER-LEVEL CONFERENCE ROOM A

Members Present: **Commissioners Jerry McCarthy, Jeff Austin, Michaell Bednar, Lee BJORNDAL, Jason Baskin, and Tim Ruzek.**

Members Absent: **Commissioner Chuck Moline.**

Staff Present: **Port Authority Attorney Craig Byram, Port Authority Executive Director Craig Clark and Port Authority Secretary Tom Dankert.**

Others Present: **Curt Johnson (Patriot Land and Construction Co. LLC.).**

President McCarthy called the meeting to order at 4:30 p.m.

Item #2. – Approval of minutes of the June 15, 2021 regular meeting: Motion by Commissioner Bednar, seconded by Commissioner Ruzek to approve the minutes of the June 15, 2021 regular meeting. Carried 6-0.

Item #3. – Approve sale of property for PIN 34.460.1040, 34.865.0541, 34.865.0610, and 34.579.0010: Executive Director Craig Clark discussed the proposed sale of the four parcels known as the former YMCA to Nate Stencil for a proposed 91-unit apartment complex. Public advertising of this public hearing has been done with the 10 days advance notice, and if the sale is approved by the Port Authority Board, then we can have a closing 20 days after this meeting, assuming that nobody files a petition in court to stop the sale. Mr. Clark stated the only thing that is holding this up at this point is the title work. Port Authority Attorney Craig Byram noted that we are giving a quit claim deed to Stencil, but happy that their title company in Rochester is doing the title search as there are some complicated parcels within this proposed sale.

Commissioner Bednar questioned what direction the building would sit. Mr. Clark noted it would face the Mill Pond.

After further discussion, motion by Commissioner Baskin, seconded by Commissioner BJORNDAL to approve the sale of property to Nate Stencil. Carried 6-0. We will now wait the required 20-day holding period before a closing can occur.

Item #4. – Creekside Business Park infrastructure grant opportunity: Mr. Clark discussed the potential to receive a grant for Creekside Business Park to help expand the physical infrastructure at the Port Authority owned facility. Total estimated costs would be \$2,350,000 for the Port Authority/City extensions plus another \$721,000 in extensions (for Austin Utilities) and another \$660,000 to loop the systems together (for Austin Utilities). This brings the total cost to \$3,731,000. The federal grant provides a 50/50 matching requirement, however due to Covid the federal/local match could be 80/20.

The City would propose to use existing fund balance for our match if successful. Additionally, the Port Authority will need to expend around \$10,000 for help with submission of the grant, for which Austin Utilities has been asked to pay 50% of those costs.

Commissioner Bjorndal confirmed that the Port Authority then would not be responsible for the infrastructure costs (only the \$10,000 submission costs). Commissioner Baskin confirmed that the infrastructure improvements are contingent upon getting the grant.

This item is for informational purposes only.

Item #5. – Review purchase agreement with Patriot Land & Construction Co. LLC for property along 14th Street NE: Mr. Clark noted he has continued to work with Patriot Land & Construction Co. on the development along 14th Street NE for a new truck wash out facility. Mr. Clark noted the updated purchase agreement has some tweaks from the one in the packet, notably the purchase price of \$319,220 includes the \$63,000 estimated cost of the new road.

Curt Johnson of Patriot noted he is working with Jeff Gross at US Bank and will probably be using an SBA loan, combined with hopefully some S.M.I.F. funds. Mr. Johnson noted they wanted first right of refusal on the outlots as since they have announced this potential project, they have been contacted by others including towing companies and repair shops that might want to co-locate with them, so the size of the facility is a work-in-progress. Mr. Johnson noted they need roughly 11 acres, but would like the cost to be changed to reflect a cost per square foot, and would equate to around \$0.67 per square foot based on whatever survey comes out for the final footprint needed.

Commissioner Ruzek questioned how much bigger this facility would be compared to the current G&R Truck Wash. Mr. Johnson noted G&R Truck Wash is approximately 18,000 square feet, and this proposed facility would be closer to 50,000 square feet. Additionally, if this went though then the current G&R Truck Wash facility would be repurposed.

Commissioner Ruzek questioned how far this would be from Natures Ridge. Mr. Johnson estimated around 800 feet. Mr. Ruzek noted his concern for nice homes being built in Natures Ridge and that this facility might be better suited for a different location. This site has a better potential for some other use noted Commissioner Ruzek. Mr. Johnson noted this will be a state-of-the-art facility and will control any smell that emits from the site.

Commissioner Baskin stated this is a net positive gain for the community. Mr. Clark noted there is not much job growth here, but there is an increase in the tax value. Commissioner Bjorndal noted the current G&R Truck Wash is not in a good location. Commissioner Bjorndal also noted people in Natures Ridge will be impacted by this.

Commissioner Bednar noted that Natures Ridge is already one road away from an industrial zone as is. Mr. Clark agreed, noting buyer beware of lots in Natures Ridge.

Motion by Commissioner Baskin, seconded by Commissioner Bednar to move forward with publications and a public hearing to officially sell the land. Carried 6-0. Mr. Johnson noted he would work with the City to send out notices to property owners in the area.

Item #6. – Update on 17th Street NE street project: Mr. Clark briefly updated the board noting our cost will be around \$63,000 for which we are working with Patriot Land and Construction to cover this cost as part of the development proposal.

Item #7. – Executive Director Report: None.

Item #8. – Any other business: None.

Item #9. Adjournment: With no further business, motion by Commissioner Austin, seconded by Commissioner Bjorndal to adjourn the meeting at 5:25 pm. Carried 6-0.

Approved: _____

President: _____

Secretary: _____

Claims for Payment

Check #	Date	Amount	Supplier / Explanation	PO#	Doc No	Inv No	BU	Obj	Sub	Subledger	Account Description	BU Description
71103	2/18/2021	1,299.80	100642 HARTY MECHANICAL INC								Repair and Maint. - Structur	Port Authority Walker Bui
		13,745.00	WALKER BLDG BOILER	00102018	114494	1011231	46560	6402				66000 115
71208	3/4/2021	6.73	100160 AUSTIN UTILITIES								Utilities	Port Authority General
		6.73	19383-0117 AVE NW SIGN		114811	FEBRUARY 2021	46510	6386				66000 115
71220	3/4/2021	39.99	102509 CHARTER COMMUNICATIONS								Communications	Port Authority Walker Bui
		39.99	Internet/phones	00102883	114658	0013045021721	46560	6321				66000 115
71224	3/4/2021	6.54	100263 CRC INC								Repair and Maint. - Structur	Port Authority Walker Bui
		6.54	CENTRAL STATION SECURITY		114649	129354	46560	6402				66000 115
71245	3/4/2021	1,156.25	100675 HOVERSTEN JOHNSON BECKMAN HOVEY								Legal Fees	Port Authority General
		1,156.25	Port Authority legal rep		114668	181628 PORT	46510	6304				66000 115
71268	3/4/2021	46.00	101102 MOWER COUNTY RECORDERS OFFICE								Professional Services	Port Authority General
		46.00	record lot combination Nu-Teck	00101115	114676	RECORD LOT COMBINATION	46510	6309				66000 115
71340	3/18/2021	35.00	100760 AUSTIN, JEFFREY								Personnel Services	Port Authority General
		35.00	MARCH 2021 PORT AUTH MEET		114947	MARCH 2021	46510	6306				66000 115
71345	3/18/2021	35.00	10535 BASKIN, JASON								Personnel Services	Port Authority General
		35.00	MARCH 2021 PORT AUTH MEET		114951	MARCH 2021	46510	6306				66000 115
71347	3/18/2021	35.00	10994 BEDNAR, MICHAEL								Personnel Services	Port Authority General
		35.00	MARCH 2021 PORT AUTH MEET		114952	MARCH 2021	46510	6306				66000 115
71404	3/18/2021	35.00	109763 MCCARTHY, JERRY								Personnel Services	Port Authority General
		35.00	MARCH 2021 PORT AUTH MEET		114966	MARCH 2021	46510	6306				66000 115
71416	3/18/2021	35.00	100764 MOHRFIELD, JERRY								Personnel Services	Port Authority General
		35.00	MARCH 2021 PORT AUTH MEET		114968	MARCH 2021	46510	6306				66000 115
71418	3/18/2021	35.00	110010 MOLINE, CHUCK								Personnel Services	Port Authority General
		35.00	MARCH 2021 HOTEL MOTEL TAX Port meeting		114975	MARCH 2021	46510	6306				66000 115

Council Check Summary

1/8/2021 - 1/6/2022

Check #	Date	Amount	Supplier / Explanation	PO#	Doc No	Inv No	BU	Obj	Sub	Subledger	Account Description	BU Description	Port Authority General	Co Dept D
		35.00	APRIL 2021 PORT AUTH MEET		115609	APRIL 2021	46510	6306			Personnel Services	35.00	66000 115	

101108 MOWER COUNTY TREASURER

71686 4/15/2021	20.00	COOK FARM 2021 DITCH MAINT 00103223	115611	34.0120010	46510	6309					Professional Services	Port Authority General	66000 115
	10.00	COOK FARM 2021 DITCH MAINT 00103223	115612	34.156.0020	46510	6309					Professional Services	Port Authority General	66000 115
	10.00	COOK FARM 2021 DITCH MAINT 00103223	115613	34.156.0030	46510	6309					Professional Services	Port Authority General	66000 115
	10.00	COOK FARM 2021 DITCH MAINT 00103223	115614	34.156.0050	46510	6309					Professional Services	Port Authority General	66000 115
	10.00	COOK FARM 2021 DITCH MAINT 00103223	115615	34.156.0060	46510	6309					Professional Services	Port Authority General	66000 115
	22.00	COOK FARM 2021 DITCH MAINT 00103223	115616	34.156.0070	46510	6309					Professional Services	Port Authority General	66000 115
	40.00	COOK FARM 2021 DITCH MAINT 00103223	115617	34.156.0090	46510	6309					Professional Services	Port Authority General	66000 115
	104.00	COOK FARM 2021 DITCH MAINT 00103223	115618	34.156.0100	46510	6309					Professional Services	Port Authority General	66000 115
	104.00	COOK FARM 2021 DITCH MAINT 00103223	115619	34.156.0110	46510	6309					Professional Services	Port Authority General	66000 115
	98.00	DITCH MAINT 2021	00103225	34.000.0010	46510	6390					Property Taxes	Port Authority General	66000 115
	2.00	DITCH MAINT 2021	00103225	34.156.0080	46510	6390					Property Taxes	Port Authority General	66000 115
	16.00	DITCH MAINT 2021	00103225	34.414.0100	46510	6390					Property Taxes	Port Authority General	66000 115
	6.00	DITCH MAINT 2021	00103225	34.463.0360	46510	6390					Property Taxes	Port Authority General	66000 115
	10,464.00	WALKD BLDG 2021 TAXES	00103225	34.009.0080	46560	6390					Property Taxes	Port Authority Walker Bui	10,916.00

71784 4/29/2021 102509 CHARTER COMMUNICATIONS

00103700	39.99	WALKER BLDG	39.99		46560	6321					Communications	Port Authority Walker Bui	66000 115
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Check #	Date	Amount	Supplier / Explanation	PO#	Doc No	Inv No	BU	Obj	Sub	Subledger	Account Description	BU Description	Co Dept	D
72461	6/24/2021	35.00	103347 RUZEK, TIM JUNE 2021 PORT AUTH MEET		117087	JUNE 2021	46510	6306			Personnel Services	Port Authority General	66000	115
72541	7/8/2021	35.00	100263 CRC INC CENTRAL STATION SECURITY		117369	131858	46560	6402			Repair and Maint. - Structur	Port Authority Walker Bui	66000	115
72545	7/8/2021	6.54	101531 DANKERT, THOMAS PORT AUTH TAXES-MAYO LAND 00103260		117370	REIMBURSEMENT	46510	6390			Property Taxes	Port Authority General	66000	115
72606	7/8/2021	896.72	101181 OLYMPIC FIRE PROTECTION ANNUAL INSPECTION	00104911	117389	68720	46560	6402			Repair and Maint. - Structur	Port Authority Walker Bui	66000	115
72640	7/8/2021	185.00	100160 AUSTIN UTILITIES		117571	JUNE 2021	46510	6386			Utilities	Port Authority General	66000	115
72675	7/22/2021	6.73	102509 CHARTER COMMUNICATIONS WALKER BLDG	00105200	117737	0013045071721	46560	6321			Communications	Port Authority Walker Bui	66000	115
72704	7/22/2021	39.99	110958 HPW LLC 401 N MAIN	00103277	117739	DRAW #1F	46520	6520			Buildings	Port Authority Downtown R	66000	115
		15,000.00	EASEMENT REMODEL-VILLE/PARADISE	00103278	117740	DRAW #1 EASEMENT	46520	6520			Buildings	Port Authority Downtown R	66000	115
72803	8/5/2021	98,132.00	100160 AUSTIN UTILITIES		118087	JULY 2021	46510	6386			Utilities	Port Authority General	66000	115
72819	8/5/2021	6.73	100263 CRC INC CENTRAL STATION SECURITY		118091	132442	46560	6402			Repair and Maint. - Structur	Port Authority Walker Bui	66000	115
72939	8/19/2021	6.73	102509 CHARTER COMMUNICATIONS WALKER BLDG	00105490	118391	0013045081721	46560	6321			Communications	Port Authority General	66000	115
73093	9/2/2021	39.99	100160 AUSTIN UTILITIES		118727	AUGUST 2021	46510	6386			Utilities	Port Authority Walker Bui	66000	115
73110	9/2/2021	6.73	100263 CRC INC CENTRAL STATION SECURITY		118729	01303039	46560	6402			Repair and Maint. - Structur	Port Authority Walker Bui	66000	115

Council Check Summary

1/8/2021 - 1/6/2022

Payment amount may not reflect the actual amount due to data sequencing and/or data selection.

Council Check Summary

1/8/2021 - 1/6/2022

Check #	Date	Amount	Supplier / Explanation	PO#	Doc No	Inv No	BU	Obj	Sub	Subledger	Account Description	BU Description	Co	Dept	D
		6.54													
73235	9/16/2021	35.00	100760 AUSTIN, JEFFREY SEPTEMBER 2021 PORT AUTH MEET		118921	SEPTEMBER 2021	46510	6306			Personnel Services	Port Authority General	66000	115	
73238	9/16/2021	35.00	108535 BASKIN, JASON SEPTEMBER 2021 PORT AUTH MEET		118923	SEPTEMBER 2021	46510	6306			Personnel Services	Port Authority General	66000	115	
73242	9/16/2021	35.00	100894 BEDNAR, MICHAEL SEPTEMBER 2021 PORT AUTH MEET		118924	SEPTEMBER 2021	46510	6306			Personnel Services	Port Authority General	66000	115	
73243	9/16/2021	35.00	104907 BJORNDAHL, LEE SEPTEMBER 2021 PORT AUTH MEET		118925	SEPTEMBER 2021	46510	6306			Personnel Services	Port Authority General	66000	115	
73278	9/16/2021	650,000.00	100676 HOVERSTEN JOHNSON TRUST ACCT YMCA PURCHASE	00103294	119094 YMCA		46510	6530			Improvements Other Than Buil	Port Authority General	66000	115	
		10,000.00-	LESS EARNEST MONEY	00103294	119094 YMCA		46510	6530			Improvements Other Than Buil	Port Authority General	66000	115	
		640,000.00													
73300	9/16/2021	35.00	100763 MCCARTHY, JERRY SEPTEMBER 2021 PORT AUTH MEET		118942	SEPTEMBER 2021	46510	6306			Personnel Services	Port Authority General	66000	115	
73334	9/16/2021	35.00	103347 RUZEK, TIM SEPTEMBER 2021 PORT AUTH MEET		118949	SEPTEMBER 2021	46510	6306			Personnel Services	Port Authority General	66000	115	
73394	9/30/2021	6.73	100160 AUSTIN UTILITIES 19383-001 1300 27TH AVE NW		119349	SEPTEMBER 2021	46510	6386			Utilities	Port Authority General	66000	115	
		6.73													
73405	9/30/2021	39.99	102569 CHARTER COMMUNICATIONS WALKER BLDG	00105770	119270 0013045091721		46560	6321			Communications	Port Authority Walker Bui	66000	115	
		39.99													
73440	9/30/2021	62,850.00	110958 HPW LLC STATE BANK BLDG-SPRINKLER D00000303		119296 SPRINKLER		66000	1290	60		Loan - State Bank \$62,850	Fund 66	66000	115	
		62,850.00													
73544	10/14/2021	6.54	100263 CRC INC CENTRAL STATION SECURITY		119471 133639		46560	6402			Repair and Maint. - Structur	Port Authority Walker Bui	66000	115	
		6.54													
73594	10/14/2021	68,645.43	111303 NATURE RIDGE PROPERTIES OF AUSTIN CO PORT	00105544	119629 NATURE RIDGE		46510	6530			Improvements Other Than Buil	Port Authority General	66000	115	

Page - 7

Council Check Summary

1/8/2021 - 1/6/2022

Check #	Date	Amount	Supplier / Explanation	PO#	Doc No	Inv No	BU	Obj	Sub	Subledger	Account Description	BU Description	Co Dept D	
		68,645.43												
73678	10/28/2021	39.99	WALKER BLDG	102509 CHARTER COMMUNICATIONS	00106153	119938 0013045101721	46560	6321			Communications	Port Authority Walker Bui	66000 115	
73829	11/10/2021	39.99		100160 AUSTIN UTILITIES								Port Authority General	66000 115	
73841	11/10/2021	6.73	19383-001 1300 27 AVE NE SIGNA			120216 OCTOBER 2021	46510	6386			Utilities	Port Authority General	66000 115	
73902	11/10/2021	6.54	CENTRAL STATION SECURITY	109406 CINTAS CORPORATION		120082 134246	46560	6402			Repair and Maint. - Structur	Port Authority Walker Bui	66000 115	
73951	11/24/2021	39.99		106638 RUNNING SUPPLY INC	7.48 ADAPTOR	00105764 120096 2866884	46560	6402			Repair and Maint. - Structur	Port Authority Walker Bui	66000 115	
74077	12/9/2021	6.73	9.64 ADAPTOR/PLUG/NIPPLE	102509 CHARTER COMMUNICATIONS	00105764 120097 2866570		46560	6402			Repair and Maint. - Structur	Port Authority Walker Bui	66000 115	
74093	12/9/2021	39.99	39.99	100160 AUSTIN UTILITIES	100263 CRC INC	120355 0013045111721	46560	6321			Communications	Port Authority General	66000 115	
74120	12/9/2021	6.73	714.00 YMCA CLOSING	100675 HOVERSTEN JOHNSON BECKMAN HOVEY	6.54 CENTRAL STATION SECURITY	120789 NOVEMBER 2021	46510	6386			Utilities	Port Authority General	66000 115	
74222	12/23/2021	39.99	714.00	102509 CHARTER COMMUNICATIONS	100263 CRC INC	120560 135060	46560	6402			Repair and Maint. - Structur	Port Authority General	66000 115	
74227	12/23/2021	39.99	39.99	100160 AUSTIN UTILITIES	100263 CRC INC	120791 211358 YMCA	46510	6530			Improvements Other Than Buil	Port Authority General	66000 115	
74341	1/6/2022	6.73	6.73	100263 CRC INC	6.54 CENTRAL STATION SECURITY	121035 134246	46560	6321			Communications	Port Authority Walker Bui	66000 115	
74357	1/6/2022	6.54	6.54	100160 AUSTIN UTILITIES	100263 CRC INC	121321 DECEMBER 2021	46510	6386			Utilities	Port Authority General	66000 115	
												Repair and Maint. - Structur	Port Authority Walker Bui	66000 115
												Repair and Maint. - Structur	Port Authority Walker Bui	66000 115

