



AUSTIN PORT AUTHORITY

500 Fourth Ave. NE
Austin, MN 55912-3773

www.ci.austin.mn.us

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

AGENDA
PORT AUTHORITY
TUESDAY, JUNE 15, 2021
CITY HALL – CONFERENCE ROOM B (MAIN FLOOR)
4:00 PM

1. Roll Call.
2. Approval of minutes of the April 28, 2021 special meeting.
3. Southern Minnesota Initiative Fund presentation (Tim Penny).
4. Plat approval – Nature’s Ridge Third Addition. (Craig Clark).
5. Extension of Due Diligence Period for property located at 11th Drive and 14th Street NE (Craig Clark).
6. Proposed development agreement with Stencil Group II, Inc. (Craig Clark).
7. Purchase agreement for 704 1st Drive NW (Craig Clark).
8. Executive Director Report. (Craig Clark).
9. Any other business.
10. Adjourn.

MINUTES
PORT AUTHORITY REGULAR MEETING
WEDNESDAY, APRIL 28, 2021
4:30 P.M.
LOWER-LEVEL CONFERENCE ROOM

Members Present: Commissioners Jerry McCarthy, Jeff Austin, Jason Baskin, Lee Bjorndal (via Zoom), Chuck Moline, and Jerry Mohrfeld.

Members Absent: Commissioner Michael Bednar

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

Others Present: Sally Baker and Sue Loch from the Austin Medical Center Foundation, Victor Baeten from Slaby and Associates.

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

Item #2. – Approval of minutes of the April 5, 2021 special meeting: Motion by Commissioner Moline, seconded by Commissioner Mohrfeld to approve the minutes of the April 5, 2021 special meeting. Carried 6-0.

Item #3. – 12/31/20 Draft audit report: Mr. Dankert noted Craig Popenhagen from CLA was here to present a preliminary audit report, but it is now final with the signing of the representation letter this evening. Mr. Popenhagen noted the following:

- On pages 1-3 we received an unqualified or clean opinion on our financial statements.
- Pages 4-9 are called the Management's Discussion and Analysis and are a good synopsis of what happened during the year in a more narrative form.
- Pages 10-11 are the Balance Sheets which indicate a decrease from \$27.3 million of assets down to \$26.3 million. Cash increased nearly \$56,000 to a total of \$2,951,254. Land Held for Resale decreased over \$300,000 to end at \$917,286. Capital assets remained the same, with only the depreciation charge reducing the net investment.
- On page 12 is the income statement that shows a change in net assets (decrease) of \$974,262. The depreciation expense of \$800,779 plus the land that the Port Authority "gave" away (Gold Cross Ambulance building to HRA and the 117 and 119 2nd Avenue NE buildings to HPW, LLC) were the prime drivers in this loss.
- On page 13, Mr. Popenhagen noted the cash flows have increased \$55,952 from 2019 operations and the ending cash balance now sits at over \$2.95 million.
- On pages 14-20 are the notes to the financial statements.
- On pages 21-28 are more detailed pages of the funds and their operations, broken down by activity.
- Finally, on pages 29-31 is the report indicating we complied with all of the state compliance requirements and internal controls.

Motion by Commissioner Austin, seconded by Commissioner Bjorndal approving the December 31, 2020 audited financial statements. Carried 6-0.

Item #4. – Mayo land donation in Creekside Business Park: Mr. Clark noted the Mayo Foundation would like to donate back to the Port Authority some land out in Creekside Business Park. President McCarthy noted this land was part of a trade many years ago for where the downtown justice center now sits. Mayo no longer has plans for this site and would like to donate it back to the Port Authority.

Motion by Commissioner Baskin, seconded by Commissioner Austin to accept the donated land. Carried 6-0.

Item #5. – Approve sprinkler loan agreement with HPW, LLC: Mr. Clark noted Terry Hall is continuing his development of the former Austin State Bank building and has requested a 0% sprinkler loan for the building. The estimated cost of the installation is \$62,850 and would include a payback to the Port Authority on a 240-month amortization schedule, with a balloon payment owed after the 120th (10th year) payment.

Commissioner Baskin questioned why we wouldn't just do a 240-month loan without the balloon payment. Mr. Dankert noted this is structured similar to other sprinkler loan agreements. The thought process back then might have centered around a balloon payment with the understanding that if the landlord wanted to, we could mutually agree to continue to accept monthly payments and would probably not require the balloon payment.

Motion by Commissioner Baskin, seconded by Commissioner Mohrfeld approving of the sprinkler loan agreement. Carried 5-0 (Commissioner Moline = Abstained).

Item #6. – Nu-Tek 1st Amendment to Contract for Private Redevelopment: Mr. Clark noted the Nu-Tek project has requested an extension to the closing date, asking to push it back a month to June 1, 2021.

Motion by Commissioner Baskin, seconded by Commissioner Austin to approve the contract amendment with Nu-Tek. Carried 6-0.

Item #7. – Closed meeting: Motion by Commissioner Austin, seconded by Commissioner Moline to close the meeting under Minnesota Statute § 13D.05, subd. 3(c) to develop or consider offers or counteroffers for the purchase or sale of real or personal property. The property to be considered are parcel numbers 34.521.0100 and 34.521.0120. Carried 6-0.

See DVD of closed meeting.

Motion by Commissioner Moline, seconded by Commissioner Austin to open the meeting at 6:00.

Item #8. – Executive Director Report: Mr. Clark noted the Port Authority is expected to be the entity buying the old YMCA and selling it to a developer, as we can claw it back if the development does not proceed. President McCarthy noted we are getting City funds to do this.

Item #9. – Any other business: None.

Item #10. Adjournment: With no further business, motion by Commissioner Austin, seconded by Commissioner Baskin to adjourn the meeting at 6:05 pm. Carried 6-0.

Approved: _____

President: _____

Secretary: _____

Your Gift ENABLED US TO RESPOND QUICKLY TO THE COVID-19 CRISIS

TOTAL IMPACT: MORE THAN \$12 MILLION



Community Foundation Relief Grants

SMIF provided \$101,218 in matching grants to 21 of our community foundations to support their localized relief efforts. By leveraging this opportunity, they were able to provide a total of \$121,050 to their communities, impacting more than 56,000 people.

Emergency Child Care Grants

SMIF provided \$254,950 in immediate financial support to licensed child care providers. 491 family providers and 34 centers were awarded with immediate funds, serving approximately 1,800 children in southern Minnesota.



Grow a Farmer Assistance Grants

SMIF awarded three organizations \$10,000 each through the Grow a Farmer Assistance Fund. They are working collaboratively to support at least 120 farmers in southern Minnesota through grants that help their businesses respond to new challenges.

Small Town Grants

SMIF awarded 22 organizations a total of \$192,500 to respond and recover from the hardships created by the crisis and the impact on their communities, all of which have populations of less than 10,000.



Small Business Relief Grants and Loans

SMIF distributed 1,024 MN DEED Small Business Relief Grants to southern Minnesota businesses for a total of \$10,240,000. The grants support businesses that have experienced financial hardship as a result of the crisis. Additionally, SMIF dispersed 50 MN DEED Small Business Emergency Loans for a total of \$1.2 million.

Early Care and Education Wrap Around Grants

SMIF approved 18 Early Care and Education Wrap Around Grants totaling \$180,000 in partnership with Minnesota Department of Education. This grant helped fund early care and education wrap around services for children birth to age eight from underserved populations impacted by the pandemic.



Learn how you can help!

To learn more about our **COVID-19 RESPONSE**, and the many partners and donors who have supported these efforts, visit smifoundation.org/covid-19. Making a gift to SMIF's general endowment supports these response efforts, including expenses related to the administration of these emergency funds and other essential response resources. Visit smifoundation.org/donate to make a gift.

Your Gift MADE AN IMPACT ON THEIR STORIES

“ In February 2020 when we were jumping-up-and-down-ecstatic to receive a Child Care Expansion Grant through SMIF, we didn't fully understand the true impact it would have on our ability to provide a safe, caring environment for children and families during one of the darkest times of our lives. Not only did the grant allow us to open an additional classroom during the pandemic so the children could learn safely in smaller group sizes, we also received critical support from the dedicated professionals at SMIF. Jeff Andrews helped us work through financial management and planning while John Katz went above and beyond to help us solve issues we were having with our online QuickBooks program. In this time of social distancing, it's this encouragement and generosity that helped our staff remain positive and know that their work was making a true difference in the lives of others. We cannot thank the donors and professionals of Southern Minnesota Initiative Foundation enough for your foresight, dedication and support throughout this pandemic.”



-CHRISTINA VALDEZ, DIRECTOR OF LISTOS PRESCHOOL AND CHILDCARE

“ I'm so grateful to Southern Minnesota Initiative Foundation for their Grow A Farmer Assistance Grant. We've so far distributed funds to our members for things as diverse as installing internet on their farm, getting drone photography, starting up a tea business, buying COVID safety and health equipment and supplies, setting up an online fiber sale site, and more than that. It's been really interesting to see what the farmers are doing with these funds. We're all really dependent on each other when we're small entrepreneurs like this and the more healthy our local economy is we all do better. We've kind of adopted that model for ourselves, 'We all do better when we all do better.' From everyone in the Cannon River Sustainable Farming Association to Southern Minnesota Initiative Foundation, a big thank you for supporting us in our Cannon Valley Grown Project.”



-GWEN ANDERSON, BOARD SECRETARY OF CANNON RIVER SUSTAINABLE FARMING ASSOCIATION

“ In April of 2020, Preston Area Community Foundation (PACF) discussed ways to help the local business community at the onset of the pandemic challenges. PACF reached out to the local EDA to develop a grant and loan program for local businesses to use for normal operating expenses. At this same time, SMIF made available a Community Foundation Relief Fund to be used by community foundations to address pandemic issues in their community. PACF reached out to the F & M Community Bank for support to take advantage of the \$5,000 SMIF matching grant and generously, the bank agreed to underwrite the entire \$5,000 PACF contribution. Thanks to SMIF and F & M Community Bank, the EDA loan and grant program funds increased to \$30,000. To date, over \$21,000 has been provided to local businesses with applications still being accepted. Preston area businesses have been so grateful to receive this support during these challenging times. Our community stepped up this year and we are proud of the work PACF accomplished with the help of local organizations and SMIF.”



- CHUCK AUG, BOARD MEMBER OF PRESTON AREA COMMUNITY FOUNDATION



SOUTHERN MINNESOTA
INITIATIVE FOUNDATION

Collaborating for Regional Vitality

Mower County Investments

We envision southern Minnesota as a prosperous and growing region with vibrant communities, innovative and successful economies, and engaged and valued citizens. To achieve this vision, Southern Minnesota Initiative Foundation, a regional development and philanthropic organization, fosters economic and community vitality in 20 counties of southern Minnesota through a culture of collaboration and partnership.

For every donation of
from Mower County

\$1

=

\$11

is invested back
into Mower County
communities.*

*Includes grants, loans & programming

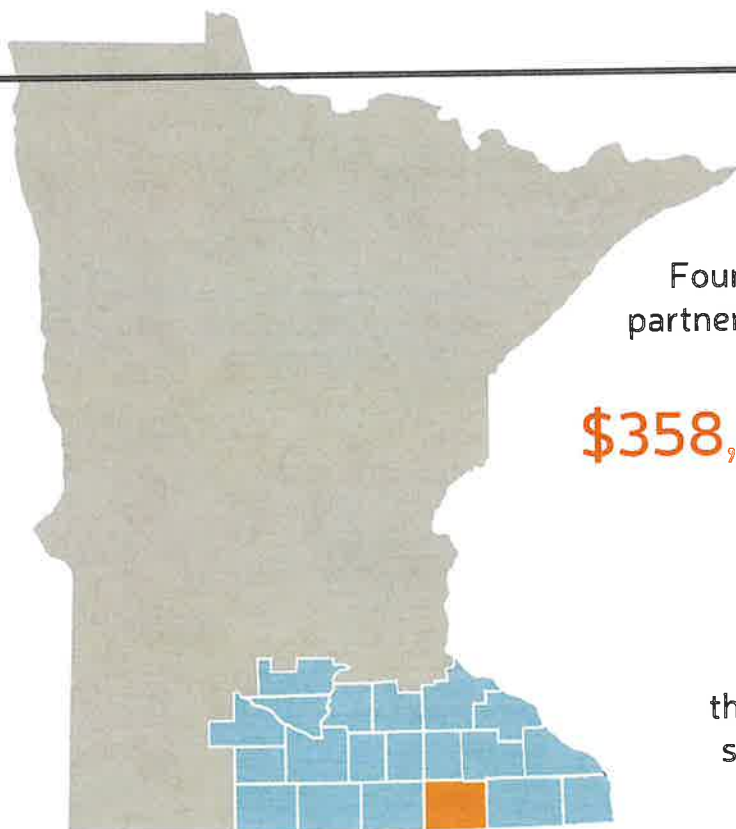
36 LOANS

\$1.1 million to Mower County entrepreneurs

162 GRANTS

\$906,000 to support community initiatives

***\$5 million invested annually to the 20 counties of
south central and southeastern Minnesota***



Since 1986, Southern Minnesota Initiative Foundation has leveraged local investments & partnerships to create a stronger **Mower County**:

\$358,000 in local donations to SMIF

\$4 million

invested by SMIF in Mower County
through grants, loans, and programming for
stronger kids, businesses and communities

Loans & Equity Investments* Supporting local entrepreneurs & creating jobs

Hill Concrete & Masonry L.L.C., Lyle	Concrete and masonry
Jessica's Daycare, Austin	Family child care
Auscon Inc, Austin	Electronic Manufacturing Services (EMS)
CanCure Laboratories LLC, Austin	Biotechnological company that develops an anticancer drug
Akkerman, Brownsdale	Develops, manufactures & supports pipe jacking & tunneling equip.
West Oakland Auto Repair, Austin	Mechanic and auto repair shop
Austin BioSciences LLC	Medical diagnostic company focused on cancer detection

*Southern Minnesota Initiative Foundation in partnership with CEDA and DEED hold the Comprehensive Economic Development Strategy for Region 10, allowing these counties to apply for Economic Development Administration funding at the Federal level

Grants Investments in economic development, early childhood and community vitality

AmeriCorps LEAP Initiative, Austin and Lyle	Members helping with social emotional skill development
A Chance to Grow, Austin	Continued S.M.A.R.T. training to prepare children for kindergarten
Riverland Community College Foundation, Austin	High Tech Farm & Agbio-Entrepreneur Camps for aspiring farmers
Southern MN Education Consortium, Adams	Hundreds of books awarded through multiple literacy grants
Austin Aspires	Parent training in multiple languages for kindergarten readiness
Parenting Resource Center Incorporated, Austin	Community workshop open to child care providers and preschools
Jacaranda LLC, Austin	Prosperity Initiative client
Austin Community Growth Ventures	Commercialization co-working space
Austin Early Childhood Initiative	Social emotional development project in child care settings
Leroy-Ostrander Public Schools Community Education	Awarded 275 books for library family event
Parenting Resource Center Inc	Awarded 250 books to help connect separated children & parents
Small Business Relief Grants	36 businesses received COVID-19 relief grants

Affiliate Funds Increasing rural philanthropy

Hormel CARE Fund (employee assistance fund)	Hirsh Family Foundation Fund
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Community Collaborations Bringing communities together for change

Austin Early Childhood Initiative (started in 2006)
Development Corp. of Austin, Biobusiness Community Growth Initiative
Austin (United Way of Mower County), Communities Addressing the Child Care Shortage

Making a Difference Financial relief for child care providers



In March 2020, the six Minnesota Initiative Foundations, including SMIF, created the Emergency Child Care Grant Program to provide immediate financial support to licensed child care providers in Greater Minnesota in response to the COVID-19 pandemic. In Mower County, SMIF awarded a total of \$11,900 to 22 family child care providers and two centers. This funding was essential in keeping child care facilities open when the state shut down in the early stages of the pandemic.

PURCHASE AGREEMENT

Austin, Minnesota
Date: April __, 2021

May 26th

The undersigned, _____, the _____ and _____, of **The Young Men's Christian Association of Austin, Minnesota**, a Minnesota corporation (hereinafter "Seller") hereby acknowledge receipt from **The Austin Port Authority**, a Minnesota public corporation (hereafter "Purchaser") good and valuable consideration sufficient to bind the parties to the terms contained herein for the purchase of property located at 704 1st Drive NW, Austin, Minnesota, situated in the County of Mower, State of Minnesota, and legally described as follows (hereafter "the Property"), to-wit:

Tax Parcels: 34.460.1040, 34.865.1541 and that parcel identified on the Mower County GIS map as "Description Overlap" located between Tax Parcel 34.460.1040 and Tax Parcel 34.460.1041. Formal legal descriptions to be determined as part of the title exam process, but these Tax Parcels and the "Description Overlap" are the basis for Purchaser's approval of this purchase.

all of which property the undersigned has this day sold to the Purchaser for the sum of Six Hundred Fifty Thousand Dollars (\$650,000.00), which the Purchaser agrees to pay as follows: Earnest money herein paid \$10,000.00; the balance of \$640,000.00 to be paid to Seller on the date of closing.

Subject to performance by the Purchaser, the Seller agrees to execute and deliver a Warranty Deed conveying marketable title to said premises subject to the following exceptions:

- (a) Building and zoning laws, ordinances, State and Federal regulations.
- (b) Restrictions relating to use or improvement of premises without effective forfeiture provision.
- (c) Reservation of any minerals or mineral rights to the State of Minnesota.
- (d) Utility and drainage easements which do not interfere with present improvements.

Payment of real estate taxes attributable to the premises, due and payable in 2021 and all prior years, shall be paid by Seller.

Seller covenants that buildings, if any, are entirely within the boundary lines of the property and agrees to remove all personal property not included herein and all debris from the premises prior to the possession date.

The Seller shall, within a reasonable time after approval of this Agreement furnish an abstract of title, or a Registered Property Certificate, to include proper searches covering bankruptcies, and State and Federal judgments and liens. The Purchaser shall be allowed 30 days after receipt thereof for examination of said title and the making of any objections thereto, said objections to be made in writing or deemed to be waived. If any objections are so made the Seller shall be allowed 120 days to make such title marketable. Pending correction of title the payments hereunder required shall be postponed, but upon correction of title and within 10 days after written notice to Purchaser, the parties shall perform this agreement according to its terms.

If said title is not marketable and is not made so within 120 days from the date of written objections thereto as above provided, this agreement shall be null and void, at option of the Purchaser, and neither principal shall be liable for damages hereunder to the other principal. If the title to said property be found marketable or be so made within said time, and said Purchaser shall default in any of the agreements, then, and in that case, the Seller may terminate this contract, and neither principal shall be liable for damages hereunder to the other principal. This provision shall not deprive Purchaser the right of enforcing the specific performance of this contract provided such contract shall not be terminated as aforesaid, and provided action to enforce such specific performance shall be commenced within six months after such right of action shall arise.

Purchaser shall pay, at its sole expense, any and all costs associated with review of title as above described, the costs of preparing the deed, and the costs of recording the deed.

Seller shall pay, at its sole expense, any and all broker fees, listing fees, or other fees arising out of any marketing of the property for sale; any and all costs associated with correcting any defect in title, if any; any costs associated with any reasonable request for a survey to confirm the legal description or location of boundaries; the costs of closing services, and the deed tax.

Should there be any other costs resulting from this transaction, said costs shall be allocated according to local custom.

Purchaser's performance under this agreement is conditioned and contingent upon the following (hereafter "Contingencies"):

- A. The provision to Purchaser of the sum of \$650,000 by the City of Austin to fund the purchase price under this agreement.
- B. The execution of a Contract for Private Redevelopment with a Developer for the redevelopment of the Property on terms acceptable to Purchaser.
- C. Approval and execution by the City of Austin and the Developer of a TIF Plan and Agreement satisfactory to both parties.
- D. A clean Phase I Environmental Study, or if the Phase I report recommends a Phase II Environmental Study, a clean Phase II Environmental Study. As used here, "clean" means no concerns are identified that would require additional investigation or remediation efforts. Proceeding with Environmental Study will be at Purchaser's discretion and expense. However, if either Environmental Study identifies circumstances requiring additional investigation or remediation efforts, Seller will reimburse Purchaser's costs in securing the Study and the parties are free to either terminate this agreement, with no further claim for damages by either party, or negotiate an adjustment in the purchase price to accommodate the additional investigation or remediation.

Said Contingencies must be met or waived in writing by Purchaser within six calendar months of the date of this agreement. Otherwise, this agreement shall be null and void and neither principal shall be liable for damages hereunder to the other principal. If Contingencies A, B, or C fail, Seller shall retain the earnest money. If Contingency D fails, the earnest money shall be promptly returned to Purchaser.

This contract contains the entire agreement between the parties, and neither party has relied upon any verbal or written representations, agreements, or understandings not set forth herein, whether made by any agent or party hereto.

The delivery of all papers and monies shall be made at the office of:

HOVERSTEN, JOHNSON, BECKMANN
& HOVEY, LLP
807 West Oakland Avenue
Austin, MN 55912
(507)-433-3483

The Seller affirmatively discloses that there are no wells on the premises.

The Seller affirmatively discloses that there are no individual septic systems on the premises.

The Seller affirmatively discloses that no methamphetamine production has occurred on the premises.

I, the undersigned, owner of the above land, do hereby approve the above agreement and the sale thereby made.

SELLER:

Young Men's Christian Association of Austin,
Minnesota.

June 2, 2021

By: Paul M. Baker

Its: CEO, YMCA of MN

June 2, 2021

By: Jessica Cabezon

Its: YMCA Board Chair

Purchaser hereby agrees to purchase the said property for the price and upon the terms above mentioned, and subject to all conditions herein expressed.

PURCHASER:

The Austin Port Authority

_____, 2021

By: _____

Its: _____

_____, 2021

By: _____

Its: _____

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 Board Members of the Port Authority

From: Craig D. Clark, Executive Director

RE: Former YMCA site for 91-unit Market Rate Apartment by Stencil Group

The City Council had considered two market rate housing options on the former YMCA site at 704 1st Drive NW on April 19th and approved a six-month due diligence period with the Stencil Group. The packet Council considered is included as Exhibit 1. At the time, the proposal was for between 80 and 90 units with a construction cost of at least \$16 million. The proposal provided concept plans which outlined a series of amenities including a dog park, sky lounge, underground parking and fitness rooms.

Subsequently the City Council considered transfer of \$650,000 to the Port Authority for the purchase of the former YMCA site on May 3rd. This action allowed us to ensure the terms of the YMCA of their required purchase price are met and that we have critical site control. Included in the packet is Exhibit 2, a Purchase Agreement with the YMCA, for terms on the property at 704 1st Drive NW.

This agreement has three primary conditions for the purchase to move forward and include the aforementioned City providing \$650,000, execution of a Development Agreement, approval and execution of a Redevelopment Tax Increment Financing (TIF) plan with the City of Austin and a clean Phase 1 and Phase II. The purchase agreement has a six-month provision for performance of the conditions. You will note the YMCA asked for the inclusion of \$10,000 in earnest money should the proposal not move forward. This affords the YMCA some compensation should another buyer come forward and they not be able to act on a purchase agreement from another party. If closing takes place the total price remains at \$650,000 with the application of the earnest money.

Should the Port Authority approve the agreement, we will move forward with the environmental reviews and blight test requirements of the TIF redevelopment plan. In order to utilize a redevelopment TIF blight must be established and evaluations taken. I have proposals from Chosen Valley Testing (environmental) and LHB (blight test) included at Exhibit 3, 4 and 5. These total an estimated \$13,900 and would be at the expense of the developer and a future TIF eligible expense.

This brings us to approval of the Development Agreement included as Exhibit 6. The Development Agreement stipulates the terms of what will be required of the developer, City of Austin and the Port Authority. As you may recall, the Statutory provision Minn. Stat. §469.065, subd. 5, which affords the Port a “claw-back” or reversionary interest in the property in the event of any default is a prime consideration of why the development agreement flows through the Port Authority as well as our interest in supporting economic development.

The Development Agreement provides the following primary considerations:

- Outline of minimum improvements as provided in Exhibit D (what the layout and interior and exterior finishes will look like);
- Port Authority will take ownership of the property for a short period of time and the developer commits to buying it from us with a closing date no later than November 1, 2021;
- Securing the \$650,000 from the City, clean environmental, City establishment of redevelopment TIF;
- Closing price to the developer of the property for \$1 (to be recovered by the City over the life of the TIF);
- Construction of 91-unit multifamily apartment complex with construction expenditures of no less than \$16 million and
- Several other boiler plate items for the protection of the Port Authority.

The subsequent steps will be the approval of the TIF Redevelopment Plan and the roughly 90-day process of a TIF approval. The developers hope is to start as soon as possible.

The proposed motions would be:

Port Authority approval the Development Agreement included as Exhibit 6 authorizing the President to sign Secretary attest the agreement.

Port Authority approval of the Purchase Agreement for 704 1st Drive NW included as Exhibit 2 along with formally accepting the transfer of funds from the City of Austin of \$650,000 for this cost. Authorization is for the President to sign and Secretary attest the agreement.



YMCA Site (Austin, MN)

Stencil Group is extremely excited about a potential second project in Austin to follow up our Flats on 21 project. (completed 2020) We feel that a project in the downtown zone would complement our existing building and bring a project to Austin to meet a need we feel is not currently being met. We are proposing to construct an 80 to 90-unit class A structure that will have a focus on high end architectural design and amenities not being offered in the current housing stock. To accomplish this, we will need to be aligned with the city on their vision. The project will need financial support in the form of TIF (tax increment financing) to make the project financially feasible.

The first step to creating this exciting project would be for use to have site control so we are able to confidently move forward through the approval process with the city. We feel confident that if we can start this process as soon as possible we could have everything in place to start the project in the early fall. Below I will list more details on the project as well as our thoughts on the purchase of the building.

Building Details

80-90 units consisting of Studio, One and Two Bed units

Project cost: \$15,000,0000 – \$16,000,000

Amenities: State of the art fitness rooms, high end lobby / lounge, Underground climate-controlled parking, Dog park, Sky lounge (indoor/outdoor) on the 4th floor overlooking Downtown and Mill Pond.

Renderings of similar size and quality buildings we have done or are in progress (attached)

Size / Rents:

Studios - (500-550 Sq. Ft.) \$900 - \$1025

One Bed – (675-750 Sq. Ft.) \$1100 - \$1250

Two Bed – (850-1100 Sq Ft.) \$1400 - \$1550


Building / Site Terms:

Purchase Price: \$1.00 with Stencil Group assuming the expense of hazardous material removal and demolition.

6 months due diligence so we can work through approvals. Closing on or before 11/1/21.

Thank you for your consideration. We look forward to your questions and feedback.

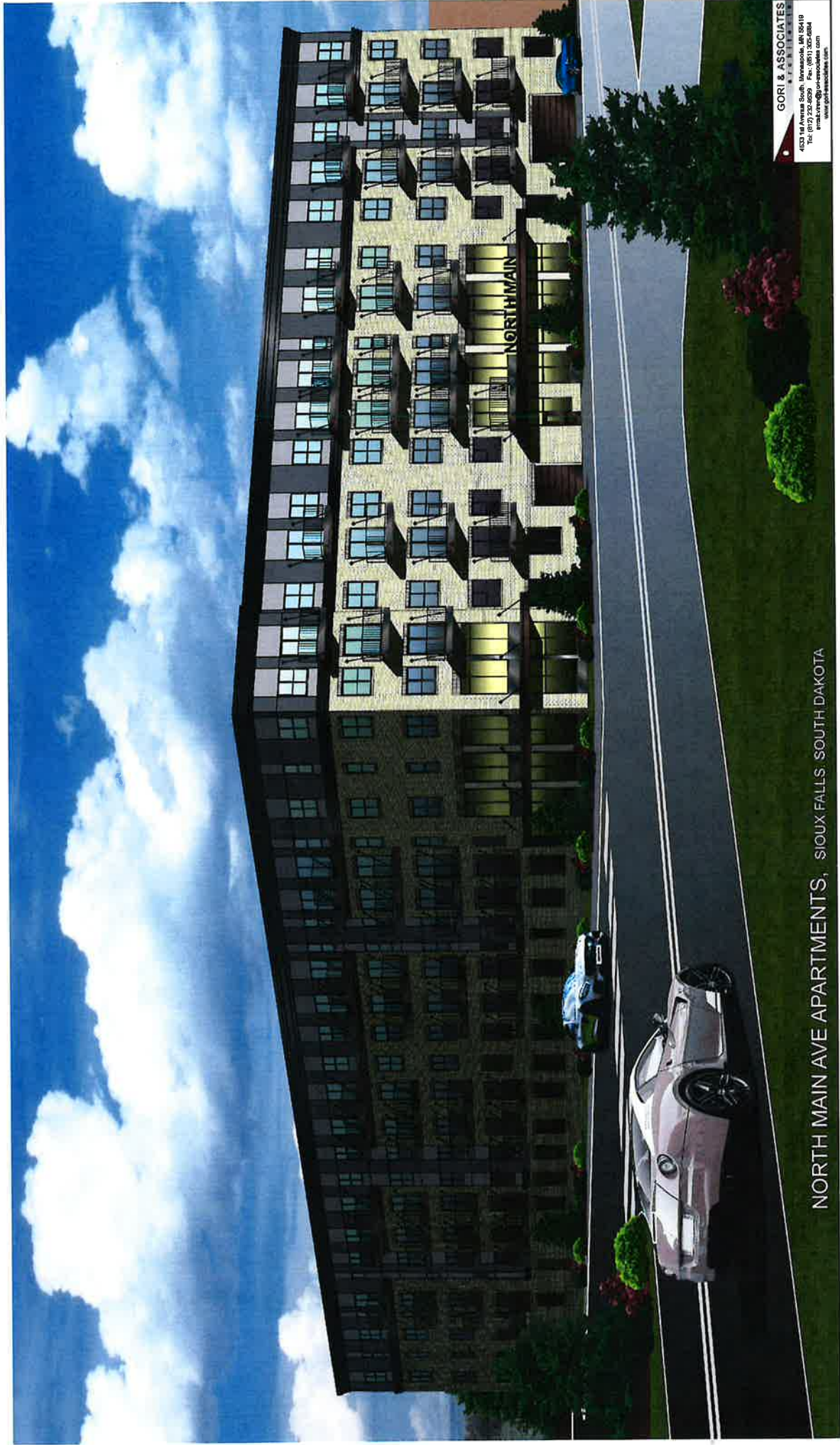
Sincerely,

A handwritten signature in black ink, appearing to read 'Nathan Stencil', written in a cursive style.

Nathan Stencil – Stencil Group







NORTH MAIN AVE APARTMENTS, SIOUX FALLS, SOUTH DAKOTA

GORI & ASSOCIATES
ARCHITECTS
4233 18 Avenue South, Sioux Falls, SD 57108
Tel: 605.336.1111
Fax: 605.336.1112
www.gori-associates.com

PURCHASE AGREEMENT

Austin, Minnesota
Date: April __, 2021

May 26th

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Purchaser shall pay, at its sole expense, any and all costs associated with review of title as above described, the costs of preparing the deed, and the costs of recording the deed.

Seller shall pay, at its sole expense, any and all broker fees, listing fees, or other fees arising out of any marketing of the property for sale; any and all costs associated with correcting any defect in title, if any; any costs associated with any reasonable request for a survey to confirm the legal description or location of boundaries; the costs of closing services, and the deed tax.

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- B. The execution of a Contract for Private Redevelopment with a Developer for the redevelopment of the Property on terms acceptable to Purchaser.
- C. Approval and execution by the City of Austin and the Developer of a TIF Plan and Agreement satisfactory to both parties.
- D. A clean Phase I Environmental Study, or if the Phase I report recommends a Phase II Environmental Study, a clean Phase II Environmental Study. As used here, "clean" means no concerns are identified that would require additional investigation or remediation efforts. Proceeding with Environmental Study will be at Purchaser's discretion and expense. However, if either Environmental Study identifies circumstances requiring additional investigation or remediation efforts, Seller will reimburse Purchaser's costs in securing the Study and the parties are free to either terminate this agreement, with no further claim for damages by either party, or negotiate an adjustment in the purchase price to accommodate the additional investigation or remediation.

Said Contingencies must be met or waived in writing by Purchaser within six calendar months of the date of this agreement. Otherwise, this agreement shall be null and void and neither principal shall be liable for damages hereunder to the other principal. If Contingencies A, B, or C fail, Seller shall retain the earnest money. If Contingency D fails, the earnest money shall be promptly returned to Purchaser.

This contract contains the entire agreement between the parties, and neither party has relied upon any verbal or written representations, agreements, or understandings not set forth herein, whether made by any agent or party hereto.

The delivery of all papers and monies shall be made at the office of:

HOVERSTEN, JOHNSON, BECKMANN
& HOVEY, LLP
807 West Oakland Avenue
Austin, MN 55912
(507)-433-3483

The Seller affirmatively discloses that there are no wells on the premises.

The Seller affirmatively discloses that there are no individual septic systems on the premises.

The Seller affirmatively discloses that no methamphetamine production has occurred on the premises.

I, the undersigned, owner of the above land, do hereby approve the above agreement and the sale thereby made.

SELLER:

Young Men's Christian Association of Austin,
Minnesota.



By: Name Baker

Its: CEO, YMCA of Austin



By: Jessica Carlson

Its: YMCA Board Chair

June 2, 2021

June 2, 2021

Purchaser hereby agrees to purchase the said property for the price and upon the terms above mentioned, and subject to all conditions herein expressed.

PURCHASER:

The Austin Port Authority

_____, 2021

By: _____

Its: _____

_____, 2021

By: _____

Its: _____

Chosen Valley Testing, Inc.

Geotechnical Engineering and Testing • 1410 Seventh Street NW • Rochester, MN 55901 • Telephone (507) 281-0968 • Fax (507) 289-2523

May 27th, 2021

Craig Clark
City of Austin
500 4th Avenue NE
Austin, MN 55912

**RE: Proposal – Phase I Environmental Site Assessment
Former YMCA Property
704 1st Drive NW
Austin, MN**

Dear Craig Clark:

INTRODUCTION

Chosen Valley Testing, Inc. (CVT) is pleased to present this proposal to complete an “All Appropriate Inquiry” Phase I Environmental Site Assessment (ESA) at the above referenced property in Austin, MN. The Phase I ESA will be conducted on the property referenced above which is approximately 3.6 acres in size and currently contains a building. The scope of work presented herein is based on information provided by Craig Clark and from readily available internet search results.

2.0 SCOPE OF WORK

The purpose of the Phase I ESA will be to obtain and review information regarding past and present land use practices and site operations to assess the use, storage, generation, manufacture, and disposal of hazardous substances and petroleum products at the above referenced property and evaluate the potential presence of soil and/or ground water contamination from on-site and off-site sources. This assessment will be accomplished by, and is limited to, a reconnaissance of the subject property and surrounding properties, and a review of current and readily available pertinent documentation regarding past and current land use which may have been associated with releases of petroleum products and/or hazardous materials/wastes.

The proposed scope of services for the ESA is intended to obtain the necessary information as outlined in the ASTM Standard Practice for a Phase I ESA (E 1527-13) and will include the following elements:

- Review of pertinent, readily available documents and maps regarding local geologic and hydrogeologic conditions;

- If available, review and interpretation of selected historical aerial photographs of the subject property and vicinity for selected years within at least the past 50 years, which are available through Envirosearch Corporation, EDR, Inc., or Firstsearch, and/or other readily available sources;
- If available, review and interpretation of historical topographic maps, historical land use maps (e.g., Sanborn Fire Insurance) and city directories for the subject property and vicinity for information regarding historical site land use for at least the past 50 years that could have involved the manufacture, generation, use, storage, and/or disposal of petroleum products or hazardous materials/wastes;
- Review of available documents regarding past and/or current property development provided by the current property owner. Potentially useful documents may include: title reports, maps, building construction plans, appraisals, tenant lists with addresses and nature of businesses, geotechnical reports, permits, maintenance records, prior environmental reports and agency correspondence pertaining to the property;
- Performance of a reconnaissance survey of the subject property and surrounding area to make visual observations of existing conditions and activities at the subject property and in the property vicinity. Appropriate photographs of the subject property will be taken;
- Interview of the owner, property manager, or other personnel identified as being knowledgeable of past tenants and environmental practices at the subject property involving petroleum products and hazardous materials/wastes;
- Review of county, state, and U.S. Environmental Protection Agency (EPA) lists of known or potential hazardous waste sites or landfills, and sites currently under investigation for environmental violations located in the site vicinity within the search radius specified in ASTM Standard E 1527-13, including, but not limited to:
 - Federal, state, and tribal NPL site lists
 - Federal, state, and tribal CERCLIS lists
 - Federal RCRA CORRACTS facilities list
 - Federal, state, and tribal institutional control/engineering control registries
 - Federal ERNS list
 - State and tribal landfill and/or solid waste disposal site lists
 - State and tribal leaking storage tank lists
 - State and tribal Brownfield sites
- Inquiries to applicable county and local agencies for information regarding environmental permits, violations, and other environmental records; and,
- Preparation of a report summarizing the scope of assessment, information obtained, and conclusions regarding recognized environmental conditions at the subject property.

Unless specifically requested and additional budget is authorized, any additional environmental sampling and analyses including assessment of wetlands, seismic hazards, lead paint, lead in drinking water, and structural/mechanical building conditions are not included in the scope. Asbestos and radon surveys are also not included in our proposed scope of work.

Based on the results of the Phase I ESAs, we will provide recommendations for additional research and/or soil, surface water, or ground water sampling and analysis, if requested. Catharine McCook, CVT, will serve as the project manager and will be responsible for conducting and managing the technical performance of the project.

4.0 SCHEDULE

CVT is prepared to mobilize for the field investigation immediately upon receipt of your authorization to proceed. We anticipate that the initial field investigation activities will be completed within one week, and the report documenting the results of the Phase I ESA will be completed within three weeks of authorization.

5.0 ESTIMATED FEE, TERMS AND CONDITIONS

CVT proposes to complete this scope of work on a lump sum basis. The proposed fee for the Phase I ESA is **\$2,000**.

The scope of work outlined in this proposal will be conducted in accordance with Chosen Valley Testing, Inc.'s standard General Conditions, a copy of which is provided as an attachment to, and made part of, this proposal. By signing this proposal, the client agrees to the attached General Conditions. CVT will maintain confidentiality of documents, materials, information, and reports collected or generated during the project. CVT's objective is to perform our work with care, exercising the customary thoroughness and competence of environmental and engineering consulting professionals in the relevant disciplines, in accordance with the standard for professional services for a consulting firm at the time those services are rendered. It is important to recognize that even the most comprehensive scope of services may fail to detect environmental liability on a particular site. Therefore, CVT cannot act as insurers and cannot "certify or underwrite" that a site is free of environmental contamination, and no expressed or implied representation or warranty is included or intended in our reports except that our work was performed, with the limits prescribed by our client, with the customary thoroughness and competence of our profession.

If you have any questions, please contact our office at 507-281-0968 or Catharine McCook's mobile phone at 507-601-8200.

Sincerely,
Chosen Valley Testing, Inc.

A handwritten signature in cursive script, reading "Catharine McCook".

Catharine McCook
Staff Geologist/Environmental Professional

A handwritten signature in cursive script, reading "James Reckinger".

James Reckinger
Staff Geologist

Authorization to Proceed



Proposal for Phase I ESA – Austin, MN

Project: **Former YMCA Property**
Former YMCA Property
704 1st Drive NW

Prepared by: Chosen Valley Testing, Inc.

Commencement of the above Project or Work Package, as outlined in the attached proposal document from Chosen Valley Testing, Inc., is hereby authorized.

Authorizing Person(s):

Signature

Name / Title

Date

GENERAL CONDITIONS

Payment - Payment shall be due within 30 days after date of invoice. Interest at the rate of 18% per annum from 30 days after date of invoice to date payment is received will be added to all amounts not paid within 30 days after date of invoice. In the event that any law limiting the amount of interest or other charges permitted to be collected is interpreted so that this charge violates such law for any reason, the interest charge is hereby reduced to the extent necessary to eliminate such violation. All attorney fees and expenses associated with collection of past due invoices will be paid by the Client.

Insurance – Chosen Valley Testing, Inc. (CVT) maintains Worker's Compensation and Employer's Liability Insurance in conformance with state law. In addition, we maintain Comprehensive General Liability Insurance and Automobile Liability Insurance with bodily injury limits of \$1,000,000 and \$500,000, respectively. CVT also carries \$2,000,000 Errors and Omission Professional Liability and Pollution Liability coverage. A certificate of insurance can be supplied evidencing such coverage which contains a clause providing that fifteen days written notice be given prior to cancellation.

Right-Of-Entry - Unless otherwise agreed, Client will furnish right-of-entry on the property for CVT to make planned borings, surveys, and/or explorations. CVT will take reasonable precautions to minimize damage to the property caused by its equipment and sampling procedures, but the cost of restoration or damage which may result from the planned operations is not included in the contracted amount. If Client desires to restore the property to its former condition, CVT will accomplish this and add the cost to its fee.

Sub-Contractor Markup – CVT shall markup all sub-contractor invoices up to 15% to cover overhead, time & materials, and labor.

Damage to Existing Man-made Objects - It shall be the responsibility of the Owner or his duly authorized representative to disclose the presence and accurate location of all hidden or obscure man-made objects relative to field tests, sampling, or boring locations. When cautioned, advised or given data in writing that reveal the presence or potential presence of underground or overground obstructions, such as utilities, CVT will give specific instructions to its field personnel. As evidenced by your acceptance of this proposal, Client agrees to indemnify and save harmless CVT from all claims, suits, losses, personal injuries, death and property liability resulting from unusual subsurface conditions or damages to subsurface structures owned by Client or third parties, occurring in the performance of the proposed work, whose presence and exact locations were not revealed to CVT in writing, and to reimburse CVT for expenses in connection with any such claims or suits, including reasonable attorney's fees.

Warranty and Limitation of Liability - CVT shall perform services for Client in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standard of competent consultants practicing in the same or a similar locality as the project. In the event any portion of the services fails to comply with this warranty obligation and CVT is promptly notified in writing prior to one year after completion of such portion of the services, CVT will re-perform such portion of the services, or if re-performance is impracticable, CVT will refund the amount of compensation paid to CVT for such portion of the services.

This warranty is in lieu of all other warranties. No other warranty, expressed or implied, including warranties of merchantability and fitness for a particular purpose is made or intended by the proposal for consulting services, by furnishing an oral response of the findings made or by any representations made regarding the services included in this agreement. In no event shall CVT be liable for any special, indirect, incidental or consequential loss or damages. The remedies set forth herein are exclusive and the total liability of consultant whether in contract, tort (including negligence whether sole or concurrent), or otherwise arising out of connected with or resulting from the services provided pursuant to this Agreement shall not exceed the total fees paid by Client or \$20,000, whichever is greater. At additional cost, Client may obtain a higher limit prior to commencement of services.

For services involving or relating to pollution, it is further agreed that the Client shall indemnify and hold harmless CVT and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct and indirect or consequential damages, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the performance of the work by CVT, or claims against CVT arising from the work of others. This indemnification provision extends to claims against CVT which arise out of, are related to, or are based upon, the disposal, discharge, escape, release or saturation of vapors, fumes, acids, alkalis, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollutant in or into the atmosphere or on, onto, upon, in or into the surface or subsurface.

Sampling or Testing Location - Unless specifically stated to the contrary, the unit fees included in this proposal do not include costs associated with professional land surveying of the site, or the accurate horizontal and vertical locations of tests. Field tests or boring locations described in our report or shown on our sketches are based on specific information furnished to us by others or estimates made in the field by our technicians. Such dimensions, depths or elevations shall be considered as approximations unless otherwise stated in the report.

Sample Handling and Retention - Generally test samples or specimens are consumed and/or substantially altered during the conduct of tests and CVT, at its sole discretion will dispose (subject to the following) of any remaining residue immediately upon completion of tests unless required in writing by the Client to store or otherwise handle the samples. (a) NON HAZARDOUS SAMPLES: At Client's written request, CVT will maintain preservable test samples and specimens or the residue therefrom for thirty (30) days after submission of CVT's report to Client free of storage charges. After the initial 30 days and upon written request, CVT will retain test specimens or samples for a mutually acceptable storage charge and period of time. (b) HAZARDOUS OR POTENTIALLY HAZARDOUS SAMPLES: In the event that samples contain substances or constituents hazardous or detrimental to human health, safety or the environment as defined by federal, state or local statutes, regulations or ordinances ("Hazardous Substances" and "Hazardous Constituents", respectively), CVT will, after completion of testing and at Client's expense: (i) return such samples to Client; (ii) using a manifest signed by Client as generator, will have such samples transported to a location selected by Client for final disposal. Client agrees to pay all costs associated with the storage, transport, and disposal of such samples. Client recognizes and agrees that CVT is acting as a bailee and at no time does CVT assume title of said waste.

Discovery of Unanticipated Hazardous Materials - Hazardous materials or certain types of hazardous materials may exist at a site where there is no reason to believe they could or should be present. CVT and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. CVT and Client also agree that the discovery of unanticipated hazardous materials may make it necessary for CVT to take immediate measures to protect health and safety. CVT agrees to notify Client as soon as practicable should unanticipated hazardous materials or suspected hazardous materials be encountered. Client encourages CVT to take any and all measures that, in CVT's professional opinion, are justified to preserve and protect the health and safety of CVT personnel and the public. Client agrees to compensate CVT for the additional cost of working to protect employee's and the public's health and safety. In addition, Client waives any claim against CVT, and agrees to defend, indemnify and save CVT harmless from any claim or liability for injury or loss arising from CVT's discovery of unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate CVT for any time spent and expenses incurred by CVT in defense of any such claim, with such compensation to be based upon CVT's prevailing fee schedule and expense reimbursement policy relative to recovery of direct project costs.

Joint and Several Liability - The concept of joint and several liability is basically this: When two or more parties are considered responsible for causing injury or damage, any of the parties may be made to provide compensation for as much as 100% of the damages assessed. When applied to hazardous materials projects, it is possible that the concept of joint and several liability could be construed to make CVT partly or wholly responsible for damages created directly or indirectly by the hazardous materials. Client agrees that it would be unfair for CVT to be exposed to such an action, because CVT had nothing whatsoever to do with the creation of the hazardous condition. Accordingly, Client waives any claim against CVT, and agrees to define, indemnify and save CVT harmless from any claim or liability for injury or loss arising from application of a joint and several liability concept that would, in any manner, hold or seek to hold CVT responsible for creating a hazardous condition or permitting one to exist. Client also agrees to compensate CVT for any time spent and expenses incurred by CVT in defense of any such claim, with such compensation to be based upon CVT's prevailing fee schedule and expense reimbursement policy relative to recovery of direct project costs.

Legal Jurisdiction - The parties agree that any actions brought to enforce any provision of the Agreement shall only be brought in a court of competent jurisdiction located in Rochester, Olmsted County, Minnesota.

Force Majeure - CVT shall not be held responsible for any delay or failure in performance of any part of the Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, acts of God, act or omission of subcontractors, client or other similar causes beyond its control.

Chosen Valley Testing, Inc.

Geotechnical Engineering and Testing • 1410 Seventh Street NW • Rochester, MN 55901 • Telephone (507) 281-0968 • Fax (507) 289-252

May 27th, 2021

Craig Clark
City of Austin
500 4th Avenue NE
Austin, MN 55912

**RE: Proposal – Phase II Environmental Site Assessment
Former YMCA Property
704 1st Drive NW
Austin, MN**

Dear Craig Clark:

INTRODUCTION

Chosen Valley Testing, Inc. (CVT) is pleased to present this proposal to provide a Phase II Environmental Site Assessment (ESA) at the above referenced property in Austin, Minnesota. The property, approximately 3.6 acres, currently contains an athletic center. This Phase II ESA proposal was requested by Craig Clark. The scope of work presented herein is based on typical contaminant analysis and the size of the property, and this proposal can be amended depending on the results of a proposed Phase I ESA of the property.

SCOPE OF WORK

CVT is proposing to advance five geoprobe borings (GP-1 through GP-5) to a depth of either 20-feet below ground surface (bgs) or to first groundwater, whichever is shallower, to assess soil and groundwater conditions beneath the site for detectable petroleum products. The borings will be advanced using a geoprobe push-probe drill rig to facilitate the collection of soil and groundwater beneath the site.

Geoprobe tubes will be advanced in 2-foot intervals from the ground surface to the terminus of the boring to collect soil samples. An onsite geologist will examine the soil samples for visual and olfactory signs of contamination and generate a boring log of the encountered soils. Samples from each interval will be screened onsite using a photoionization detector (PID) and a sample for laboratory analysis will be collected from the interval exhibiting the highest PID reading. If no samples in a boring exhibit field-detectable PID readings, a sample will be collected from the soil-water interface. The soil samples will be analyzed for diesel range organics (DRO), gasoline range organics (GRO) and petroleum volatile organic compounds (PVOCs). A total of five (5) soil samples will be collected for laboratory analysis. One (1) soil gas sample will be collected for laboratory analysis.

Upon completion of each boring, a slotted PVC screen will be inserted into the boring to create a temporary well. A grab sample of the groundwater within the boring will be collected using dedicated disposable tubing and a check valve. The groundwater samples will be analyzed for DRO, GRO and volatile organic compounds (VOC). A total of five (5) groundwater samples will be collected for laboratory analysis. Based on nearby publicly available MDH well logs, groundwater is estimated to be 5 to 15 feet below ground surface.

ESTIMATED FEE

The scope of work on a time and materials basis in accordance with the General Conditions, which are attached and are included as part of this proposal. The estimated fee for the outlined scope of work is **\$7,000**. A change of scope, which may alter the estimated fee, will be discussed with you prior to commencement of additional activities. Estimates for ground penetrating radar and private utility locates will be solicited after authorization, but approximate costs are included below. A breakdown of the costs is provided on attached standard bid form and summarized below.

CVT Services	<u>Costs</u>
Project Management (2.0 hr @\$100)	\$ 200
Geologist Field Activities (6 hrs @ \$85)	\$ 510
Travel (5.5 hours @ \$80)	\$ 440
Phase II ESA Report Preparation	\$ 750
Sample delivery	\$ 100
Utility Clearance	\$ 150
Expenses, Mileage, PID	\$ 345
 Geoprobe Drilling (Mob/Drilling/grout/permit) (5 borings to 20-ft)	 \$ 2,100
 Subcontracted Services	
Laboratory Sample Analysis	
5 groundwater samples VOC/GRO/DRO @ \$140/each	\$ 700
5 soil samples PVOC/GRO/DRO @ \$75/each	\$ 375
1 soil gas sample @ \$230	\$ 230
<i>Approximate</i> ground penetrating radar tank locate	\$ 750
<i>Approximate</i> private utility locate	\$ 350
 TOTAL	 \$ 7,000

If you have any questions or comments, please do not hesitate to contact us.

Sincerely,
Chosen Valley Testing, Inc.



Catharine McCook
Staff Geologist



James Reckinger
Staff Geologist

Authorization to Proceed



Project: **Phase II Environmental Site Assessment**
 Former YMCA Property
 704 1st Drive NW
 Austin, MN

Prepared by: Chosen Valley Testing, Inc.

Please sign to authorize Chosen Valley Testing, Inc., to assume your contract from CVT Environmental, Inc. and hereby authorize us to continue.

Authorizing Person(s):

Signature

Name / Title

Date

GENERAL CONDITIONS

Payment - Payment shall be due within 30 days after date of invoice. Interest at the rate of 18% per annum from 30 days after date of invoice to date payment is received will be added to all amounts not paid within 30 days after date of invoice. In the event that any law limiting the amount of interest or other charges permitted to be collected is interpreted so that this charge violates such law for any reason, the interest charge is hereby reduced to the extent necessary to eliminate such violation. All attorney fees and expenses associated with collection of past due invoices will be paid by the Client.

Insurance - Chosen Valley Testing, Inc. (CVT) maintains Worker's Compensation and Employer's Liability Insurance in conformance with state law. In addition, we maintain Comprehensive General Liability Insurance and Automobile Liability Insurance with bodily injury limits of \$1,000,000 and \$500,000, respectively. CVT also carries \$2,000,000 Errors and Omission Professional Liability and Pollution Liability coverage. A certificate of insurance can be supplied evidencing such coverage which contains a clause providing that fifteen days written notice be given prior to cancellation.

Right-Of-Entry - Unless otherwise agreed, Client will furnish right-of-entry on the property for CVT to make planned borings, surveys, and/or explorations. CVT will take reasonable precautions to minimize damage to the property caused by its equipment and sampling procedures, but the cost of restoration or damage which may result from the planned operations is not included in the contracted amount. If Client desires to restore the property to its former condition, CVT will accomplish this and add the cost to its fee.

Sub-Contractor Markup - CVT shall markup all sub-contractor invoices up to 15% to cover overhead, time & materials, and labor.

Damage to Existing Man-made Objects - It shall be the responsibility of the Owner or his duly authorized representative to disclose the presence and accurate location of all hidden or obscure man-made objects relative to field tests, sampling, or boring locations. When cautioned, advised or given data in writing that reveal the presence or potential presence of underground or overground obstructions, such as utilities, CVT will give specific instructions to its field personnel. As evidenced by your acceptance of this proposal, Client agrees to indemnify and save harmless CVT from all claims, suits, losses, personal injuries, death and property liability resulting from unusual subsurface conditions or damages to subsurface structures owned by Client or third parties, occurring in the performance of the proposed work, whose presence and exact locations were not revealed to CVT in writing, and to reimburse CVT for expenses in connection with any such claims or suits, including reasonable attorney's fees.

Warranty and Limitation of Liability - CVT shall perform services for Client in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standard of competent consultants practicing in the same or a similar locality as the project. In the event any portion of the services fails to comply with this warranty obligation and CVT is promptly notified in writing prior to one year after completion of such portion of the services, CVT will re-perform such portion of the services, or if re-performance is impracticable, CVT will refund the amount of compensation paid to CVT for such portion of the services.

This warranty is in lieu of all other warranties. No other warranty, expressed or implied, including warranties of merchantability and fitness for a particular purpose is made or intended by the proposal for consulting services, by furnishing an oral response of the findings made or by any representations made regarding the services included in this agreement. In no event shall CVT be liable for any special, indirect, incidental or consequential loss or damages. The remedies set forth herein are exclusive and the total liability of consultant whether in contract, tort (including negligence whether sole or concurrent), or otherwise arising out of connected with or resulting from the services provided pursuant to this Agreement shall not exceed the total fees paid by Client or \$20,000, whichever is greater. At additional cost, Client may obtain a higher limit prior to commencement of services.

For services involving or relating to pollution, it is further agreed that the Client shall indemnify and hold harmless CVT and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct and indirect or consequential damages, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the performance of the work by CVT, or claims against CVT arising from the work of others. This indemnification provision extends to claims against CVT which arise out of, are related to, or are based upon, the disposal, discharge, escape, release or saturation of vapors, fumes, acids, alkalis, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollutant in or into the atmosphere or on, onto, upon, in or into the surface or subsurface.

Sampling or Testing Location - Unless specifically stated to the contrary, the unit fees included in this proposal do not include costs associated with professional land surveying of the site, or the accurate horizontal and vertical locations of tests. Field tests or boring locations described in our report or shown on our sketches are based on specific information furnished to us by others or estimates made in the field by our technicians. Such dimensions, depths or elevations shall be considered as approximations unless otherwise stated in the report.

Sample Handling and Retention - Generally test samples or specimens are consumed and/or substantially altered during the conduct of tests and CVT, at its sole discretion will dispose (subject to the following) of any remaining residue immediately upon completion of tests unless required in writing by the Client to store or otherwise handle the samples. (a) NON HAZARDOUS SAMPLES: At Client's written request, CVT will maintain preservable test samples and specimens or the residue therefrom for thirty (30) days after submission of CVT's report to Client free of storage charges. After the initial 30 days and upon written request, CVT will retain test specimens or samples for a mutually acceptable storage charge and period of time. (b) HAZARDOUS OR POTENTIALLY HAZARDOUS SAMPLES: In the event that samples contain substances or constituents hazardous or detrimental to human health, safety or the environment as defined by federal, state or local statutes, regulations or ordinances ("Hazardous Substances" and "Hazardous Constituents", respectively), CVT will, after completion of testing and at Client's expense: (i) return such samples to Client; (ii) using a manifest signed by Client as generator, will have such samples transported to a location selected by Client for final disposal. Client agrees to pay all costs associated with the storage, transport, and disposal of such samples. Client recognizes and agrees that CVT is acting as a bailee and at no time does CVT assume title of said waste.

Discovery of Unanticipated Hazardous Materials - Hazardous materials or certain types of hazardous materials may exist at a site where there is no reason to believe they could or should be present. CVT and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. CVT and Client also agree that the discovery of unanticipated hazardous materials may make it necessary for CVT to take immediate measures to protect health and safety. CVT agrees to notify Client as soon as practicable should unanticipated hazardous materials or suspected hazardous materials be encountered. Client encourages CVT to take any and all measures that, in CVT's professional opinion, are justified to preserve and protect the health and safety of CVT personnel and the public. Client agrees to compensate CVT for the additional cost of working to protect employee's and the public's health and safety. In addition, Client waives any claim against CVT, and agrees to defend, indemnify and save CVT harmless from any claim or liability for injury or loss arising from CVT's discovery of unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate CVT for any time spent and expenses incurred by CVT in defense of any such claim, with such compensation to be based upon CVT's prevailing fee schedule and expense reimbursement policy relative to recovery of direct project costs.

Joint and Several Liability - The concept of joint and several liability is basically this: When two or more parties are considered responsible for causing injury or damage, any of the parties may be made to provide compensation for as much as 100% of the damages assessed. When applied to hazardous materials projects, it is possible that the concept of joint and several liability could be construed to make CVT partly or wholly responsible for damages created directly or indirectly by the hazardous materials. Client agrees that it would be unfair for CVT to be exposed to such an action, because CVT had nothing whatsoever to do with the creation of the hazardous condition. Accordingly, Client waives any claim against CVT, and agrees to define, indemnify and save CVT harmless from any claim or liability for injury or loss arising from application of a joint and several liability concept that would, in any manner, hold or seek to hold CVT responsible for creating a hazardous condition or permitting one to exist. Client also agrees to compensate CVT for any time spent and expenses incurred by CVT in defense of any such claim, with such compensation to be based upon CVT's prevailing fee schedule and expense reimbursement policy relative to recovery of direct project costs.

Legal Jurisdiction - The parties agree that any actions brought to enforce any provision of the Agreement shall only be brought in a court of competent jurisdiction located in Rochester, Olmsted County, Minnesota.

Force Majeure - CVT shall not be held responsible for any delay or failure in performance of any part of the Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, acts of God, act or omission of subcontractors, client or other similar causes beyond its control.



**PERFORMANCE
DRIVEN DESIGN.**
LHBcorp.com

May 28, 2021

Craig Clark, Executive Director
Austin Port Authority
500 4th Avenue NE
Austin, MN 55912

YMCA TIF ANALYSIS

Dear Craig,

Thank you for the opportunity to submit a proposal for the YMCA TIF analysis in Austin, Minnesota. LHB is a full-service architecture, planning and engineering firm with 260 employees in our Minneapolis, Duluth, Cambridge, and Superior, Wisconsin offices.

Our Government studio has extensive experience working with local governments on their planning, design, architectural and engineering needs. Having been personally involved on various city councils and planning commissions, I understand how cities function and the importance of maintaining the support of appointed and elected officials and community throughout the process.

PREVIOUS EXPERIENCE

LHB has significant experience with a variety of inspection and facility assessment projects, including the analysis of over 300 TIF Districts. Examples include:

- City of Columbia Heights TIF inspection services
- City of St. Paul TIF inspection services
- City of St. Anthony Village, NW Quadrant TIF inspection services
- City of St. Louis Park TIF District inspection services
- City of Mound TIF District "1-2" inspection services
- City of Osseo TIF inspection services
- City of New Richmond, WI TIF inspection services
- Minnesota State Colleges and Universities system facility assessments
- State of Minnesota Facility Assessments
- Property Condition Assessments for the St. Paul Department of Planning and Economic Development (Franklin/Emerald Neighborhood)
- Condition surveys for every DNR facility in the State of Minnesota, 2014

21 West Superior Street, Suite 500		Duluth, MN 55802		218.727.8446
701 Washington Avenue North, Suite 200		Minneapolis, MN 55401		612.338.2029
200 Third Avenue Northeast, Suite 100		Cambridge, MN 55008		763.689.4042
63 East Second Street, Suite 150		Superior, WI 54880		715.392.2902

TEAM CREDENTIALS

Michael A. Fischer, AIA, LEED AP - Project Principal/TIF Analyst

Michael has 34 years of experience as project principal, project manager, project designer and project architect on planning, urban design, educational, commercial, and governmental projects. He has become an expert on Tax Increment Finance District analysis assisting over 100 cities with strategic planning for TIF Districts. He is an Architectural Principal at LHB and currently leads the Minneapolis office.

Michael completed a two-year Bush Fellowship, studying at MIT and Harvard in 1999, earning master's degrees in City Planning and Real Estate Development from MIT. He has served on more than 50 committees, boards, and community task forces, including City Council President in Superior, Wisconsin, Chair of the Duluth/Superior Metropolitan Planning Organization, and Chair of the Edina, Minnesota Planning Commission. Most recently, he served as a member of the Edina city council and Secretary of the Edina HRA. Michael has also managed and designed several award-winning architectural projects and was one of four architects in the Country to receive the AIA Young Architects Citation in 1997.

Phil Waugh – Project Manager/TIF Analyst

Philip is a project manager with 13 years of experience in historic preservation, building investigations, material research, and construction methods. He previously worked as a historic preservationist and served as the preservation specialist at the St. Paul Heritage Preservation Commission. Currently, Phil sits on the Board of Directors for the Preservation Alliance of Minnesota. His current responsibilities include project management of historic preservation projects, performing building condition surveys and analysis, TIF analysis, writing preservation specifications, historic design reviews, writing Historic Preservation Tax Credit applications, preservation planning, and grant writing.

Jonathan Pettigrew, AIA – Inspector

Jonathan Pettigrew has worked in architecture and construction for the last twenty years in Minnesota, California and Washington. His experience includes a variety of commercial and residential project types and scales, from single-family homes to a 300,000 square foot multi-building office complex. He has significant experience in code reviews and building systems inspections and analysis. Jonathan received his Minnesota architect's license in 2004. He brings a strong interest in sustainability and an eye for detail to his work. He enjoys working with clients, consultants and contractors to bring projects together successfully.

Phil Fisher – Inspector

For 35 years, Phil Fisher worked in the field of Building Operations in Minnesota including White Bear Lake Area Schools. At the University of Minnesota, he earned his Bachelor of Science in Industrial Technology. He is a Certified Playground Safety Inspector, Certified Plant Engineer, and is trained in Minnesota Enterprise Real Properties (MERP) Facility Condition Assessment (FCA). His FCA training was recently applied to the Minnesota Department of Natural Resources Facilities Condition Assessment project involving over 2,000 buildings.

SCOPE OF SERVICES

LHB will provide the following services based upon the terms and conditions described below.

- 1. Survey the TIF District to determine if it meets applicable coverage test.**
 - A. To meet the coverage test, parcels consisting of 70 percent of the area of the district must be “occupied” by buildings, streets, utilities, or paved or gravel parking lots.
 - B. A parcel is not considered “occupied” unless at least 15% of its total area contains improvements.
- 2. Conduct a visual review of building(s) interior and exterior:**
 - A. Obtain property owner’s consent for inspection.
 - B. Document property conditions relative to Minnesota Statutes Section 469.174 Subdivision 10.
- 3. Estimate building(s) replacement cost:**
 - A. Replacement cost is the cost of constructing a new structure of the same square footage and type on the site.
 - B. A base cost will be calculated by establishing the building class, type and construction quality.
 - C. Identify amenities, which increase the value of the building over the standard construction quality level.
 - D. Review building permits for each parcel.
 - E. The base cost and cost of amenities will be totaled to determine the replacement cost for the property.
- 4. Evaluate building(s) existing condition:**
 - A. “Structurally substandard shall mean containing defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors, which defects or deficiencies are of sufficient total significance to justify substantial renovation or clearance.”
- 5. Determine Building(s) Code Deficiencies:**
 - A. Determine technical conditions, which are not in compliance with current building code applicable to new buildings.
 - B. Provide opinion of probable cost to correct identified deficiencies.
 - C. Compare cost of deficiency corrections to replacement value of building.
- 6. Prepare and deliver report:**
 - A. Prepare a written narrative analysis of the District describing why the property within the District does or does not meet the criteria as “structurally substandard” as established in Minnesota Statutes Section 469.174, subdivision 10.
 - B. Deliver final reports via email PDF.

ASSUMPTIONS

1. LHB will inspect one building on one city block. We will inspect both the interior and exterior of the building(s) and evaluate the coverage of the parcel(s). The Client will provide the following:
 - Available information regarding the condition of the structure(s), including past building permit information, and known code violations.

STANDARD OF CARE

LHB shall perform services consistent with the professional skill and care ordinarily provided by other professionals practicing in the same or similar locality under the same or similar circumstances.

Any report prepared by LHB represents a professional opinion based upon information available and arrived at in accordance with generally accepted professional standards. Other than as contained in the report, LHB makes no express or implied warranty.

Short of complete deconstruction to examine every element at every location, no assessment can reveal all conditions which may exist. Additional testing, assessment, or demolition may uncover conditions which would make it necessary to modify LHB's conclusions or recommendations.

Any report prepared for the purpose described in this Agreement is for the exclusive use by those to whom the report is addressed. LHB will not and cannot be held liable for the unauthorized reliance upon this report by any third party.

COMPENSATION

We propose to work on an hourly basis with the following key staff:

Project Principal, Michael Fischer (TIF analysis)	\$290/hour
Project Manager	\$165/hour
Project Architect/Inspector	\$145/hour
Project Administrator	\$95/hour

We will work on an hourly basis not to exceed Four Thousand Nine Hundred dollars (\$4,900) including reimbursable expenses for the inspection of the properties, including a full TIF report.

Payments are due and payable upon receipt of our invoice. Unpaid balances 60-days after invoice date shall bear interest at the rate of 8% annually.

Failure to make timely payment to LHB is a material breach of this Agreement and may, at LHB's sole discretion, result in a suspension or termination of services, and may, at LHB's sole discretion, result in the termination of the Client's limited license authorization to use LHB's copyrighted Instruments of Service.

ADDITIONAL SERVICES

If there is a material change in the circumstances or conditions that affect the scope of work, schedule, allocation of risks or other material terms, LHB shall notify the Client. The Client and LHB shall promptly and in good faith enter negotiation to address the changed conditions including equitable adjustment to compensation. The fees and costs for any additional services will be based upon LHB's Standard Hourly Rates and Standard Reimbursable Schedule.

SCHEDULE

The final report typically requires 30-45 days to complete from the time we are authorized to start. We can make preliminary conclusions prior to our full report being completed if necessary, to allow other consultants and the client to begin their work.

CONSEQUENTIAL DAMAGES

LHB and Client waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement.

LIMIT OF LIABILITY

To the maximum extent permitted by law, the Client agrees to limit LHB's liability for the Client's damages to the sum of Ten Thousand Dollars (\$10,000) or the amount of fee paid to LHB, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

USE OF LHB'S DOCUMENTS

The documents prepared by LHB are solely for use with respect to this project. All documents prepared by LHB pursuant to this Agreement are the instruments of services to the Project and LHB shall retain all common law, statutory and other reserved rights, including copyright. LHB grants to Client a nonexclusive limited license solely for the purposes of evaluating and executing the Project. The Client shall not assign, delegate, sublicense, or otherwise transfer any license granted herein to another party.

To the extent the documents are transferred or are modified, supplemented or otherwise altered by the Client, subsequent design professional, or any other party, the Client agrees to indemnify, defend and hold LHB harmless for any claims, demands, damages or causes of action arising out of such transfer or modification, supplementation or alteration.

OTHER CONDITIONS

The laws of the State of Minnesota shall govern this Agreement. Any provision of this agreement later held to violate a law or regulation shall be deemed void. All remaining provisions shall continue in force.

The Client recognizes that materials prepared by others may be subject to copyright protection and warrants to LHB that any documents provided by the Client do not infringe upon the copyright held by another.

Unless the parties mutually agree otherwise, the parties shall endeavor to settle disputes by mediation. A demand for mediation shall be filed, in writing, within a reasonable period after a claim, dispute or other matter in question has arisen.

If the terms and conditions of this Agreement are acceptable, please sign and return a copy to LHB.

CLIENT NAME

LHB, INC.

By: _____

(Signature)

By:

MA Fischer
(Signature)

Its: _____

(Title)

Its: Principal

(Title)

Name: _____

(Printed Name)

Name: Michael A. Fischer, AIA

(Printed Name)

COPY

CONTRACT

FOR

PRIVATE DEVELOPMENT

By and Between

THE AUSTIN PORT AUTHORITY

And

STENCIL GROUP II, INC.

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 _____, 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 NJS Development LLC, a South Dakota Limited Liability Company having its principle office located at 1507 East 69th Street, Sioux Falls, South Dakota 57108 (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 market-rate rental units; 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 the Project will result in redevelopment of the Development Property and that the Development Property is presently occupied by buildings, structures, improvements, and paved surfaces that are structurally substandard to a degree that requires substantial renovation or clearance ("structurally substandard" means containing defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors, which are of sufficient total significance to justify substantial renovation or clearance). See, (Minnesota Statutes Section 469.174, subd. 10); 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 Redevelopment 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 Redevelopment Tax Increment Financing District may not have a term that exceeds twenty-five years from the date of receipt of the first increment (Minnesota Statutes Section 469.176, Subd. 1b); and

WHEREAS, revenues derived from tax increments from a Redevelopment 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.

“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 NJS Development LLC, a South Dakota Limited Liability Company with its principle office located at 6245 S. Pinnacle, #203, Sioux Falls, South Dakota 57108.

“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 multi-floor multifamily rental housing facility (hereafter “Structure”). The Structure shall include no less than the following:

- a) A permanent structure with 91 units including studio, one, and two bedroom units, 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.

“Port” means the Austin Port Authority, a public corporation under the laws of the State of Minnesota, having its principal offices at 500 4th Avenue NE, Austin, Minnesota 55912

“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, and to indemnify and hold The Port harmless from any such contaminants including performing any mitigation or remediation required by any state or federal agency.

(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 South Dakota 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 Port securing funding through a grant from the City in the amount of \$650,000.00 to be used by the Port for acquisition of the Project Property from its current owner.
- (b) The completion of a Phase I, and if recommended a Phase II environmental study of the Project Property, all at Developer's expense, and the Port's ability to negotiate price reductions for its acquisition of the property sufficient to allow an escrow of the costs for mitigating any identified contaminants according to legal requirements. The Port shall escrow an amount equal to the price reductions so negotiated for such purpose and such funds will be payable to Developer for costs directly related to such environmental mitigation as and when such costs are incurred. Decisions about the estimation of costs for mitigation shall be made by Developer and communicated to the Port for use in its negotiations on the purchase price. The ultimate decision to proceed to closing, in light of the environmental concerns, shall be made solely by Developer, shall be final at closing, and following closing Developer shall indemnify and hold the Port harmless from any further costs related to environmental mitigation, whether identified in the environmental studies or discovered during construction. This provision shall survive closing.

- (c) The Port closing on the acquisition of the Project Property from the current owner pursuant to a binding Purchase Agreement with said owner under which the purchase price is \$650,000 (or such reduced price as described in the preceding paragraph), Seller pays taxes through 2021, and Seller provides reasonable assurances and protections from any existing environmental conditions located in or around the Project Property (as required under the preceding paragraph). Said determination of reasonable assurances shall be made cooperatively by Developer and the Port, at Developer's expense and direction. However, once approved, those assurances shall be binding on Developer and shall not be a basis for Developer's refusal to accept the Development Property as otherwise provided herein.
- (d) The City establishing a Tax Increment Financing District and TIF Plan related to this project providing a minimum of \$3,000,000.00 in revenues over its twenty-five year term to be applied to TIF eligible expenses. Any costs related to establishing the Project Property as satisfying the "blight test" (See Minn.Stat. § 469.174, subd. 10, shall be at Developer's sole cost and expense, payable in advance. TIF eligible expenses will include, to the extent such inclusion is lawful, reimbursement of The Port's actual costs in acquiring the Development Property (including amounts escrowed and disbursed for environmental mitigation), and reimbursement of Developer's actual costs of environmental mitigation above such amount as is disbursed from said escrowed funds, clearing the site of all existing structures and improvements, preparing the site for development, and such other construction costs as are allowed under the Statute. Such TIF Plan shall include a minimum assessment agreement.
- (c) 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.
- (d) 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 revert 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 (transfer 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 \$1.00, due and payable in full at closing.

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 November 1, 2021, or such other date upon which the parties mutually agree (the "Closing Date").
- (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 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 within 30 days of the Date of Closing, 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 April 1, 2023. 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 of 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 and substantially complete construction of the Minimum Improvements pursuant to the terms, conditions and limitations of Article IV of this Agreement (including but not limited to the deadlines found therein).
- (b) Failure by Developer to provide any material or substantial statements or information as required to be provided under this Agreement.
- (c) 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

NJS DEVELOPMENT LLC

By _____
Jerry McCarthy, Its President

By  _____
Its: President

By _____
Tom Dankert, Its Secretary

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 8 day of June, 2021,
by Nathan Stencil, the President of NJS Development LLC, a limited liability
company under the laws of the State of South Dakota, on behalf of NJS Development LLC.

(SEAL)

Rachel Waits
Notary Public



EXHIBIT A
Description of Development Property

Tax Parcels: 34.579.0010, 34.460.1040, 34.865.1541 and that parcel identified on the Mower County GIS map as "Description Overlap" located between Tax Parcel 34.460.1040 and Tax Parcel 34.460.1041. Formal legal descriptions to be determined as part of the title exam process, but these Tax Parcels and the "Description Overlap" are intended to be included in the "Description of the Development Property."

THE PARTIES AGREE TO SUBSTITUTE A NEW "EXHIBIT A" WITH THE FINAL LEGAL DESCRIPTIONS FOR THIS "EXHIBIT A" AT THE TIME OF RECORDING THIS AGREEMENT.

THE AUSTIN PORT AUTHORITY

NJS DEVELOPMENT LLC

By _____
Jerry McCarthy, Its President

By  _____
Its: President

By _____
Tom Dankert, Its Secretary

By _____
Its: _____

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 NJS Development 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 revert in the Grantor or its assigns, or successors in interest, which right of re-entry, possession and reversion 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 NJS Development LLC, a South Dakota 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 President

By _____
Its Secretary

EXHIBIT D

Project Layout, Floor Plans, and Interior and Exterior Finishes

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 Board Members of the Port Authority

From: Craig D. Clark, Executive Director

RE: Request from Patriot Development on Port Authority 13 and 25 acre parcel on 11th Drive and 14th Street NE

As you may recall the Port Authority granted a 90-day due diligence period to Patriot Development at our March 10th meeting. This was to support development for transit related services in this area. I've included his first letter of request to the Port Authority as Exhibit 1.

As we approached the expiration of this due diligence period Mr. Johnson has submitted an additional request for a 60-day extension of the first due diligence period. Port Authority members will note that we have had interest expressed from another party to utilize part of the 13-acre site. I mentioned that to Mr. Johnson and as you will see in his letter, he is willing to work with them to accommodate their interest in the 13 acre property. We should continue to manage this through the Port Authority if there is a willingness to accommodate another 60-day extension.

Port Authority direction is requested. I am hopeful there can be progress made and do appreciate development projects do take time. Mr. Johnson, and other representatives plan to be at the Port meeting to add additional perspectives and updates while answering any of your questions.

Port Authority should approve, deny or modify the requested 60-day extension for due diligence.

PATRIOT

LAND & CONSTRUCTION CO. LLC

June 4, 2021

Mr. Craig Clark
Austin Port Authority - City of Austin
500 4th Avenue Northeast
Austin, MN 55912

Re: Letter of Site Control – Sixty (60) Day Extension

Dear Mr. Clark,

Pursuant to our most recent conversation, we respectfully request an extension of the original "Site Control" letter for a period of sixty (60) days from June 10, 2021, under the same terms and conditions, so that we may continue our due diligence, primarily to negotiate financing for the project, which would include an offer to purchase the subject property from the Port Authority.

Furthermore, please forward to us the party that is interested in the 13 acres parcel so that we may discuss with them our project and how we can integrate them into the project.

Also, please advise if this request can be accomplished administratively, or if you wish for us to have a representative present at the meeting?

Again, we thank you very much for your consideration and we are very optimistic about the potential of the Austin Truck Plaza.

Sincerely,



Curt Johnson
Chief Manager

Acknowledged and Accepted:

Austin Port Authority

By: _____

Craig Clark

Dated: _____

Its: Executive Director

PATRIOT

LAND & CONSTRUCTION CO. LLC

March 1, 2021

Mr. Craig Clark
Austin Port Authority - City of Austin
500 4th Avenue Northeast
Austin, MN 55912

Re: Letter of Site Control

Dear Mr. Clark,

On behalf of Mr. Dean Goette and myself, we thank you for the numerous conversations related to the potential development of a "State of the Art" Commercial Truck Wash Facility to be developed in the City of Austin.

Pursuant to our most recent conversation, we are interested in the property that is situated near a Kwik Trip Convenience Store, located on the southeast corner of the intersection of 14th Avenue North and 11th Drive, near I90 and that is owned and controlled by the City of Austin, MN and is comprised of two (2) parcels, approximately 1.5 acres in size.

It is with this letter that we respectfully request up to a ninety (90) day period, granting us "site control" and furthermore, for us to conduct due diligence on the prospects and aspects of such a development, including but not limited to the following:

- i) Site Planning and Project Cost Estimation;
- ii) Discussions with prospective Operators/Tenants;
- iii) Review of the proposed project for available Economic Subsidies;
- iv) Preliminary negotiations to determine the scope of a request to the Port Authority for a disposition/acquisition cost for the property;

This ninety (90) day "Site Control" period would consist of three (3) phases;

- Phase i) Initial period for Site Planning, Project Cost Estimation and Feasibility Analysis;
- Phase ii) Canvassing of Potential Tenant Operators and Project Principals;
- phase iii) Financial Review and Analysis for Project Feasibility and Identification of any and all applicable Local, State and Federal Economic incentives.

The likely schedule of “due diligence and deliverables” for the project is as follows:

- i) Any site plans, building plans, construction cost estimation, surveys of record and/or sketches related to site planning;
- ii) Any documentation related to the feasibility of the project;
- iii) Any draft documentation related to the ownership and any prospective tenants considered for the project;
- iv) Any original and/or executed documentation related to the ownership, tenancy and/or financing of the project;
- v) Any other project due diligence in the form of financial projections and historical financial information related to the marketplace for the project.
- vi) A list of all parties and associated contact information relevant to any information and consultation provided for the project accordingly;

This “Site Control” period will commence upon the acceptance of this request by the Port Authority and the consideration proposed by us would be one dollar (\$1.00) and other valuable consideration during this due diligence period. We will also advise the Port Authority in each “phase” that we have completed, or in the case that we have determined that the proposed project does not appear to be feasible, or we give notice of the intent to acquire the property. In the case of the former, all of the due diligence created to that point would become available to the Port Authority. In no case will we engage outside contractors or other parties that would create an encumbrance upon the property and we will indemnify and hold the Port Authority harmless through this “site control” period and furthermore surviving any termination on our part.

We Thank You in advance and please advise if you have any questions or concerns.

Sincerely,

Acknowledged and Accepted:

Austin Port Authority

Curt Johnson
Chief Manager

By: _____
Craig Clark

Dated: _____

Its: Executive Director

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 Board Members of the Port Authority

From: Craig D. Clark, Executive Director

RE: Plat Approval for Nature Ridge 3 adjoining property to 25 acre Port Property on 14th Street NE

Included in the packet is Exhibit 1 which is the staff's Planning Commission packet memo for the extension of a 23 lot preliminary and final plat approval for Nature Ridge 3. You also have a copy of the plat included as Exhibit 2 and the Council meeting memo as Exhibit 3.

As this plat abuts the Port Authority property, on what would be an extended 17th St. NE, the Port Authority would have to dedicate part of our property for the roadway right of way as well as having financial exposure for our half of the road improvement. The estimated cost of the roadway is \$150,000 for both parties. The project will be bid with the road extension within the new subdivision and paid by the Port Authority on a lineal feet basis. The President of the Port would sign the plat on behalf of the Port Authority.

Holly Wallace, Planning and Zoning Director, will be at the meeting to answer any questions you might have.

Port Authority board action is requested to approve the plat and dedication of the right-of-way as indicated on Exhibit 2 authorizing the President to sign the plat on behalf of the Port Authority. (This action obligates the Port to our relative share of the roadway improvements.)

Petitioner: Nature Ridge Properties of Austin Co.
300 1st St NW, Austin MN 55912

Location of Property: North of 14th Avenue NE and West of 18th Dr NE, Austin MN 55912

Legal Description: See plat.

Requested

Action: The petitioner is requesting approval of a preliminary plat of Nature Ridge Third Subdivision.

Present Land Use: Undeveloped/Agricultural.

Surrounding Land Use: North (outside city limits), West (I-1, light industrial), South and East (R-1, single family)

REQUESTED

ACTION: The petitioner is requesting approval of a preliminary plat for 26 new single family residential lots.

REASON FOR

REQUEST: Residential subdivision

SITE SUMMARY:

- Gross Area: 11.5 acres
- The area is the third phase of a multi-phase subdivision plan. The second phase (13 lots, all sold) was approved in 2019.

Analysis and Conditions of Approval:

1. Comprehensive Plan:

Future land use map: This area is designated as “Suburban Low Density Residential Neighborhood” defined as “...densities that generally range from two to four units per acre. Areas classified as Suburban Residential will be predominately single-family detached homes on ½ to ¼ acre lots with the potential for some twin homes and other low density attached homes. Overall density between 2-5 units/acre.”

Housing goals and policies: (see pg. 38 for complete text)

Goal – Identify the most appropriate locations for development and redevelopment.

Policies -

-Promote controlled and orderly growth consistent with the Comprehensive Plan and Zoning Ordinance.

-Encourage traditional patterns and practices of urban design and preserve Austin’s identity and sense of place through quality building, site and infrastructure design.

2. This preliminary plat has been reviewed by city staff (engineering, stormwater; fire; building, planning and zoning), Austin Utilities and communication entities. The following recommendations were made.
 - A. Lots 12 and 15 must be 5 feet wider than interior lots.
 - B. Buildable area shown in lots 20 and 1 due to their irregular shapes (see attached).
 - C. 17th Street will span Port Authority property and Nature Ridge Third to accommodate both properties.
 - D. Changes in ROW and utility easements (see attached).
 - E. Changes in sidewalk location and other items noted in the civil plans.
3. A development agreement shall accompany the final plat (possibly June meeting).

Staff Recommendations:

The preliminary plat is consistent with applicable provisions of Chapter 13, Subdivision Regulation, in part, and could be compatible with the topography and adjacent property. Should the Planning Commission recommend approval of this preliminary plat, staff recommends the following conditions before approving a final plat, which would allow lots to be sold:

1. Approval by city staff of changes regarding ROW, street location, utility easements and lot widths prior to submission of the final plat.
2. That a development agreement and civil engineering drawings detailing utilities and minimum subdivision standards, required for the pending project, be submitted along with the final plat.
3. The final plat shall be submitted and approved within six months of approval of the preliminary plat.
4. All applicable provisions of the Subdivision code and permitting agencies shall be met.

Suggested Motion to Approve:

"I move the Planning Commission recommend approval of the preliminary plat request for a 26 lot single family residential subdivision, commonly known as Nature Ridge Third, subject to the conditions listed in the staff report."

Attachments: Preliminary Plat (proposed and revised)
 Civil drawings
 Aerial

APPLICATION FOR CONSIDERATION OF PLANNING REQUEST

(This form should be filled out in duplicate by typing or printing in ink)

CITY OF AUSTIN

Street Location of Property: North of 14th Ave NE and West of 18th Drive NE

Legal Description of Property: See plat

Owner: Name Nature Ridge Properties of Austin Co. Phone 508-433-7394

Address 300 First Street NW

City Austin State MN Zip 55912

Type of Request: Variance CUP IUP Rezone XX Other Plat

Applicable to Section _____ of the Austin City Zoning Ordinance, as amended

Description of Request Residential subdivision plat approval

Reason for Request Residential subdivision plat approval

Present Zoning Classification R-1 single family residential

Existing Use of the Property Vacant

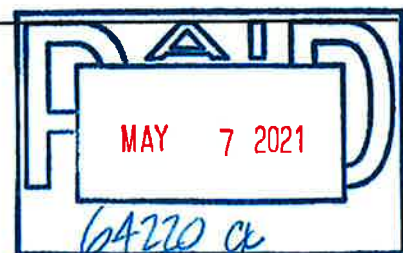
Has a request for a rezoning, variance, or conditional use permit on the subject site or any part thereof been previously sought? No When?

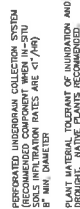
Signature of Applicant  Date May 7, 2021

Approved _____ Denied _____ by the Planning Commission on _____ (date)

Approved _____ Denied _____ by the Common Council

Comments _____





NOTE: THE SEDIMENT CONTROL BARRIER SHALL BE A METAL OR PLASTIC/POLYETHYLENE RISER SIZED TO FIT INSIDE THE CATCH BASIN/MANHOLE; HAVE PERFORATIONS TO ALLOW FOR WATER INFILTRATION; HAVE AN OVERFLOW OPENING, FLANGES AND A LID/COVER.



NON-WOVEN GEOTEXTILE (N-90 DOT TYPE 1)
OVER GRAVEL BLANKET - EXTENDING 1'-2'
FROM UNDERDRAIN PIPE SIDES

UNDERDRAIN GRAVEL BLANKET
1'-1.5' DOUBLE WASHED STONE OR
N-90 WASHED RIVER RUN PEA GRAVEL

PERFORMED UNDERDRAIN OUTLET PIPE
8" MIN. DIAMETER TO STORM SEWER OR
STRAIN WATER POND

NOTES:

- PLACE BOTTOM EDGE OF FENCE INTO 5" (125 mm) DEEP POSTS SHALL BE:
- 4" (102 mm) ON CENTER
- 2" (50.8 mm) X 2" (50.8 mm) HARDWOOD, PINE OR STEEL FENCE POSTS
- DRIVEN 2' (0.61 m) INTO THE GROUND.

COPIRIGHT:
by JONES, HAUG & SMITH INC.
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of this drawing and format is strictly prohibited
without the written consent
of Jones, Haug & Smith Inc.

JONES, HAUGH & SMITH INC.
CONSULTING ENGINEERS & LAND SURVEYORS
PH. 507-373-4876
515 SOUTH WASHINGTON, AVENUE
ALBERT LEA, MINNESOTA 56007

CONSUMER STATE ONE-CALL 1-800-252-1165

2

DESIGNED:	JCS
DRAWN:	JCS
CHECKED:	BU
DATE:	1/28/71

I hereby certify that the person named above is a duly Licensed Professional Engineer under the laws of the State of Wisconsin.
 Date 1/14/01
 William J. Horvath
 License No. 42716

CITY OF AUSTIN, MN
NATURE RIDGE - PHASE 3
& UNDERGROUND UTILITIES MAP
SWPPP NOTES

3 OF 9

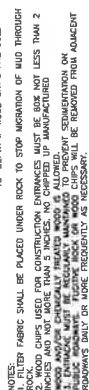
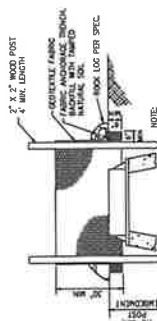
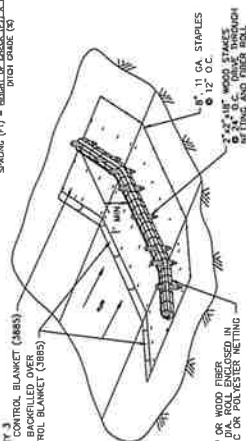


Diagram of a rectangular biofilter unit. The unit consists of an outer frame made of 2' x 2' wood posts, held together by 6' maximum post spacing. Inside the frame is a layer of rock, with a rock log per side. The rock is covered by a filter fabric. A central inlet opening is shown with a 6' diameter.



MIN/DOY 2573 5-5.50

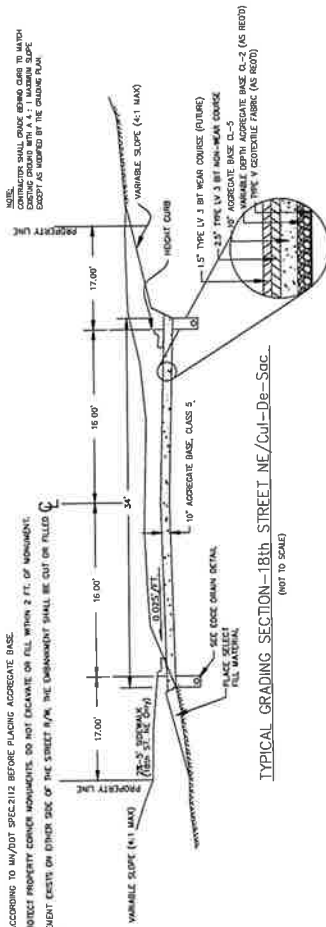
SPACING OF CHECKS:

$$\text{SPACING (FT)} = \frac{\text{HEIGHT OF CHECK (FT)} \times 100}{\text{DITCH GRADE (\%)}}$$


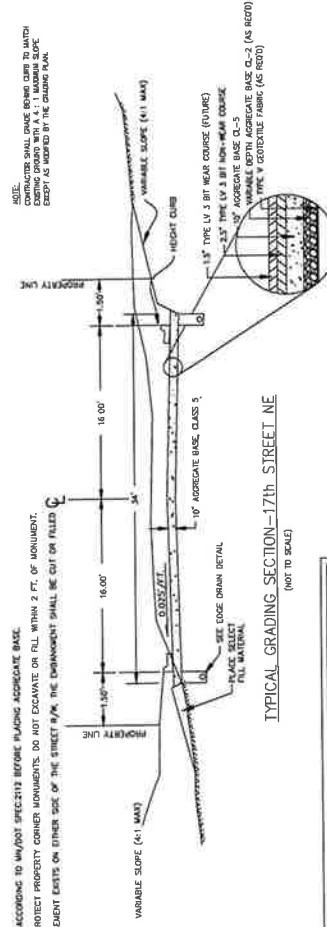
CATEGORY 3

EHUSUN CONTROL BLANKET (3883) —
5'-4" TRENCH BACKFILL ED OVER

1. PREPARE SUB GRADE ACCORDING TO UN/NOT SPEC.212 BEFORE PLACING AGGREGATE BASE.
2. CONTRACTOR SHALL PROTECT PROPERTY CORNER MONUMENTS. DO NOT EXCAVATE OR FILL WITHIN 2 FT. OF MONUMENT.
3. WHEN A FRONTAL EASEMENT EXISTS ON EITHER SIDE OF THE STREET R/W, THE EMBANKMENT SHALL BE CUT OR FILLED TO THE EASEMENT LINE.

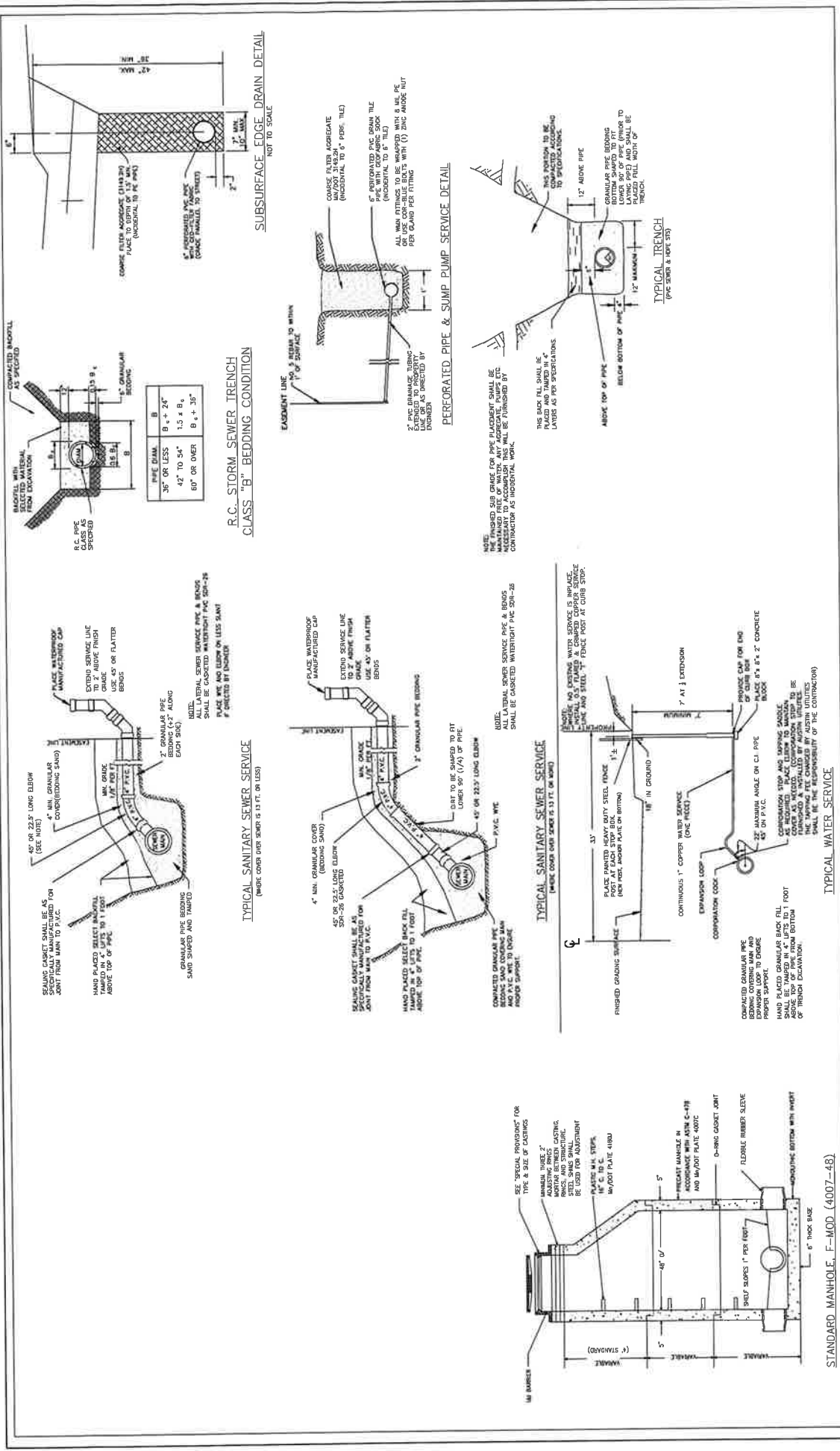


1. PREPARE SUB GRADE ACCORDING TO UN/NOT SPEC.212 BEFORE PLACING AGGREGATE BASE.
2. CONTRACTOR SHALL PROTECT PROPERTY CORNER MONUMENTS. DO NOT EXCAVATE OR FILL WITHIN 2 FT. OF MONUMENT.
3. WHEN A FRONTAL EASEMENT EXISTS ON EITHER SIDE OF THE STREET R/W, THE EMBANKMENT SHALL BE CUT OR FILLED TO THE EASEMENT LINE.



NO.	R/W	INVERT EL.	DEPTH	DESIGN			REMARKS
				A	B	C	
1	1217.42	1205.14	12.28	X			MANHOLE 1550 CONCRETE RICE
2	1217.35	1205.08	12.27	X			MANHOLE 1550 CONCRETE RICE
3	1217.28	1205.01	12.27	X			MANHOLE 1550 CONCRETE RICE
4	1217.21	1204.94	12.27	X			MANHOLE 1550 CONCRETE RICE
5	1217.14	1204.87	12.27	X			MANHOLE 1550 CONCRETE RICE
6	1217.07	1204.80	12.27	X			MANHOLE 1550 CONCRETE RICE
7	1217.00	1204.73	12.27	X			MANHOLE 1550 CONCRETE RICE
8	1216.93	1204.66	12.27	X			MANHOLE 1550 CONCRETE RICE
9	1216.86	1204.59	12.27	X			MANHOLE 1550 CONCRETE RICE
10	1216.79	1204.52	12.27	X			MANHOLE 1550 CONCRETE RICE
11	1216.72	1204.45	12.27	X			MANHOLE 1550 CONCRETE RICE
12	1216.65	1204.38	12.27	X			MANHOLE 1550 CONCRETE RICE
13	1216.58	1204.31	12.27	X			MANHOLE 1550 CONCRETE RICE
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16	1216.37	1204.10	12.27	X			MANHOLE 1550 CONCRETE RICE
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18	1216.23	1203.96	12.27	X			MANHOLE 1550 CONCRETE RICE
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21	1216.02	1203.75	12.27	X			MANHOLE 1550 CONCRETE RICE
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23	1215.88	1203.61	12.27	X			MANHOLE 1550 CONCRETE RICE
24	1215.81	1203.54	12.27	X			MANHOLE 1550 CONCRETE RICE
25	1215.74	1203.47	12.27	X			MANHOLE 1550 CONCRETE RICE
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36	1214.97	1202.70	12.27	X			MANHOLE 1550 CONCRETE RICE
37	1214.90	1202.63	12.27	X			MANHOLE 1550 CONCRETE RICE
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92	1211.05	1198.78	12.27	X			MANHOLE 1550 CONCRETE RICE
93	1210.98	1198.71	12.27	X			MANHOLE 1550 CONCRETE RICE
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97	1210.70	1198.43	12.27	X			MANHOLE 1550 CONCRETE RICE
98	1210.63	1198.36	12.27	X			MANHOLE 1550 CONCRETE RICE
99	1210.56	1198.29	12.27	X			MANHOLE 1550 CONCRETE RICE
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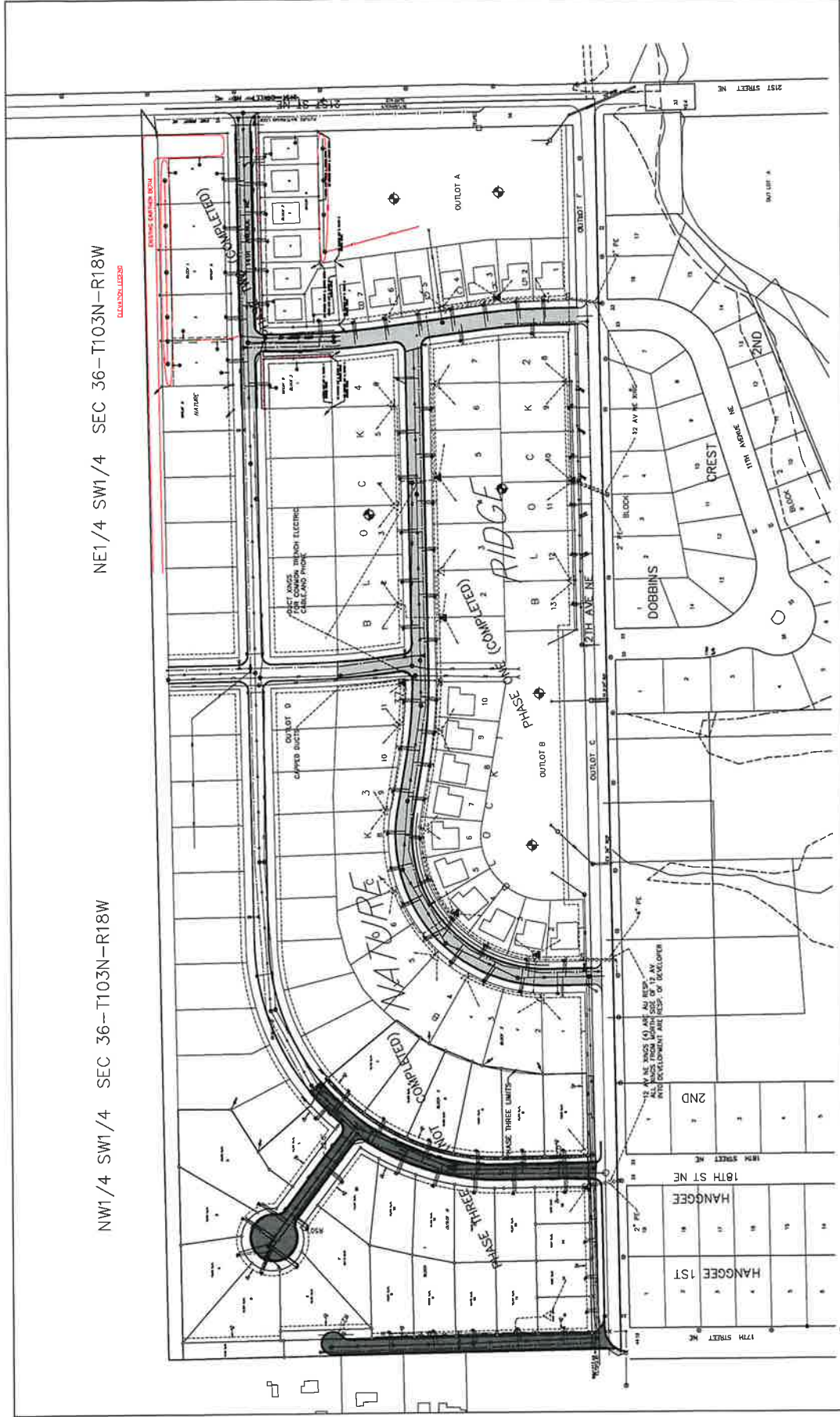
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5	1217.14	1204.87	12.27	X			MANHOLE 1550 CONCRETE RICE
6	1217.07	1204.80	12.27	X			MANHOLE 1550 CONCRETE RICE
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11	1216.72	1204.45	12.27	X			MANHOLE 1550 CONCRETE RICE
12	1216.65	1204.38	12.27	X			MANHOLE 1550 CONCRETE RICE
13	1216.58	1204.31	12.27	X			MANHOLE 1550 CONCRETE RICE
14	1216.51	1204.24	12.27	X			MANHOLE 1550 CONCRETE RICE
15	1216.44	1204.17	12.27	X			MANHOLE 1550 CONCRETE RICE
16	1216.37	1204.10	12.27	X			MANHOLE 1550 CONCRETE RICE
17	1216.30	1204.03	12.27	X			MANHOLE 1550 CONCRETE RICE
18	1216.23	1203.96	12.27	X			MANHOLE 1550 CONCRETE RICE
19	1216.16	1203.89	12.27	X			MANHOLE 1550 CONCRETE RICE
20	1216.09	1203.82	12.27	X			MANHOLE 1550 CONCRETE RICE
21	1216.02	1203.75	12.27	X			MANHOLE 1550 CONCRETE RICE
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27	1215.60	1203.33	12.27	X			MANHOLE 1550 CONCRETE RICE
28	1215.53	1203.26	12.27	X			MANHOLE 1550 CONCRETE RICE
29	1215.46	1203.19	12.27	X			MANHOLE 1550 CONCRETE RICE
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31	1215.32	1203.05	12.27	X			MANHOLE 1550 CONCRETE



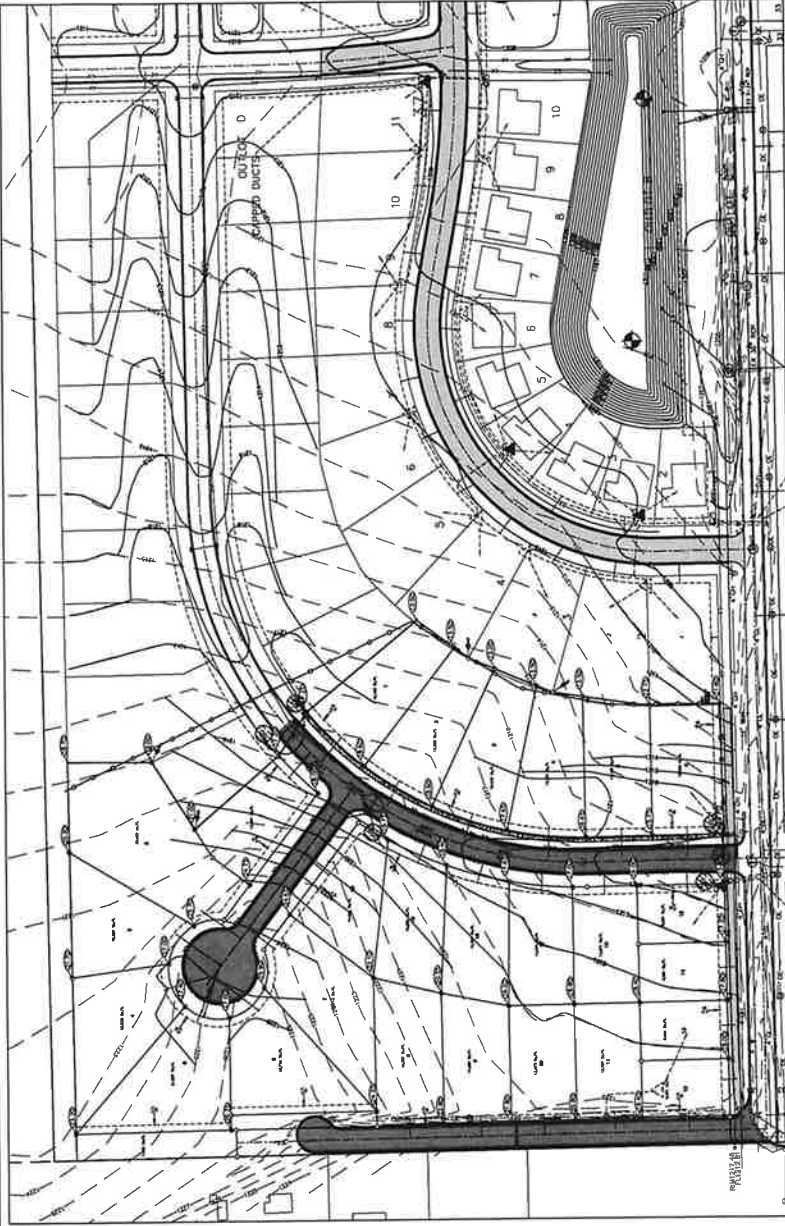
CITY OF AUSTIN, MN NATURE RIDGE - PHASE 3 2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS				SHEET 5 OF 9			
JONES, HAUGH & SMITH INC CONSULTING ENGINEERS & LAND SURVEYORS PH. 507-374-4076 515 SOUTH WASHINGTON AVENUE ALBERT LEA, MINNESOTA 56007				RECORDS: ALL DRAWN: JWS CHECKED: JWS DATE: 1/2/21 DATE: 1/2/21 DATE: 1/2/21			
No responsibility is accepted for the locations of utilities shown herein. Verification of actual locations shall be the responsibility of the contractor. The construction or the taking of any other action relying on the actual locations of utilities shown herein shall be the responsibility of the contractor.				COPYRIGHT This plan is the property of Jones, Haugh & Smith Inc. and is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the written consent and permission of Jones, Haugh & Smith Inc.			

NE1/4 SW1/4 SEC 36-T103N-R18W
 T103N-L1836

NW1/4 SW1/4 SEC 36-T103N-R18W



<div>100 0 100 FEET HORIZ. SCALE</div>		<div>COPYRIGHT This drawing is the property of J.H. Jones, Haugh & Smith, Inc. and is not to be reproduced or used in any way without the written consent of J.H. Jones, Haugh & Smith, Inc. The user of this drawing assumes all liability for any errors or omissions and for any consequences resulting from the use of this drawing.</div>		<div>NO RESPONSIBILITY No responsibility is accepted for the location of any structures or utilities shown on this drawing unless they are specifically indicated as such by the engineer. The user of this drawing assumes all liability for any errors or omissions and for any consequences resulting from the use of this drawing.</div>		<div>REV. BY DATE</div>		<div>JONES, HAUGH & SMITH INC CONSULTING ENGINEERS & LAND SURVEYORS PH: 507-373-4876 FAX: 507-373-4877 315 SOUTH WASHINGTON ALBERT LEA, MINNESOTA 56007</div>		<div>DESIGNED BY J.H.S CHECKED BY J.H.S DRAWN BY J.H.S</div>		<div>I hereby certify that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.</div>		<div>CITY OF AUSTIN, MN NATURE RIDGE - PHASE 2 2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS UTILITY PLAN</div>		<div>SHEET 6 OF 9</div>	
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- QUANTITY**
- 1 EA
 - 5 EA
 - 1200 LF
 - 0 CY
- SWPPP LEGEND**
- ⊞ = ROCK CONSTRUCTION ENTRANCE
 - ⊞ = INLET PROTECTION
 - ⊞ = BUILT FENCE
 - ⊞ = TEMPORARY SEDIMENT/DEWATERING BASIN
 - ⊞ = RAPID STABILIZATION (MVDOT METHOD 1)
 - ⊞ = RAPID STABILIZATION (MVDOT METHOD 4)
 - ⊞ = TEMPORARY DIVERSION MOUND
 - ⊞ = DITCH CHECKS
 - ⊞ = BIRAP ENERGY DISSIPATION

EARTHWORK NOTES:

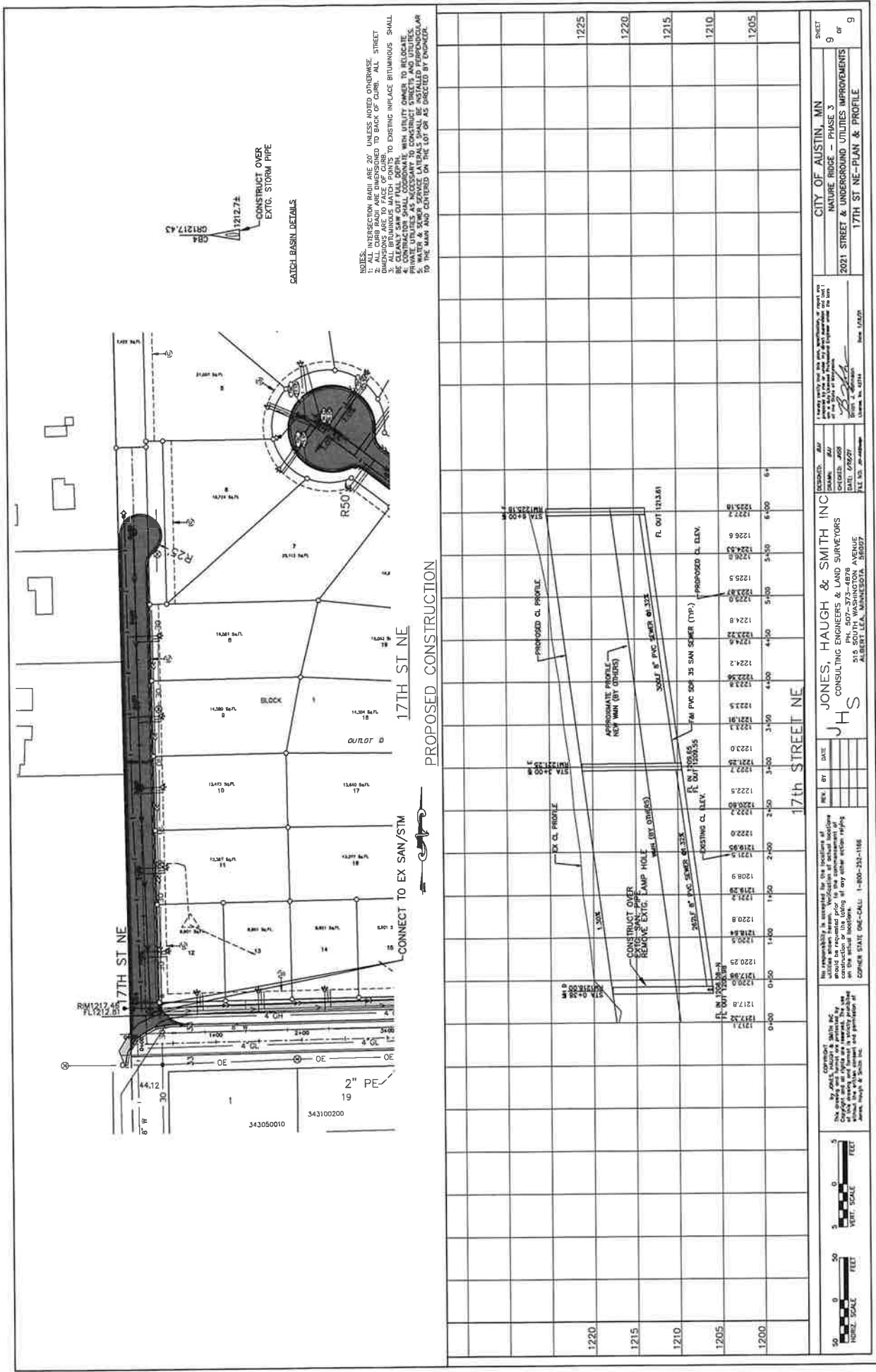
CONTRACTOR TO FURNISH ON SITE GEOTECHNICAL CONSULTING ENGINEER AS REQUIRED. THE PROPOSED CONCRETE & ASPHALTIC PAVEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, REMOVAL OF ALL TOPSOIL AND VISIBLY ORGANIC FILL MATERIAL. CONSULTING GEOTECHNICAL ENGINEER TO COORDINATE SOIL CORRECTIONS UNDER PAVEMENTS. THE SITE SHALL BE GRADED TO THE CONTOURS SHOWN AND TO PROVIDE THE DRAINAGE PATTERN SHOWN.

***STRIP TOPSOIL
BELOW AREAS OF FILL**

UTILIZE PERMANENT STORM POND FOR SEDIMENT CONTROL DURING CONSTRUCTION. THE PERMANENT STORM POND IS USED FOR TEMPORARY SEDIMENTATION. THE SEDIMENT TRAPPED DURING CONSTRUCTION SHALL BE DISPOSED OF ON-SITE (WATERWALL) PRIOR TO FINAL ACCEPTANCE.

THIS PLAN IS MEANT AND PROVIDED AS A GUIDE IN THE PROVISION OF SEDIMENT AND EROSION CONTROL MEASURES. ALTHOUGH NOT SHOWN HERE, MAY BE REQUIRED TO COMPLY WITH THE SWPPP. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF EDC BMP'S IS INCIDENTAL TO THE UNIT PROVIDED. BIDDING AND CONSTRUCTION SHALL BE MADE FOR ADDITIONAL EROSION CONTROL BMP'S AS REQUIRED BY THE INSPECTOR.

CITY OF AUSTIN, MN NATURE RIDGE - PHASE 3 2021 STREET & UNDERGROUND UTILITIES IMPROVEMENTS SWPPP & GRADING PLAN		SHEET 7 OF 9
JONES, HAUGH & SMITH INC. CONSULTING ENGINEERS & LAND SURVEYORS 315 SOUTH WASHINGTON AVENUE ALBERT LEA, MINNESOTA 56007		DESIGNED: JHS DRAWN: JHS CHECKED: JHS DATE: 12/22/21 ALL RIGHTS RESERVED
No responsibility is assumed for the accuracy of the information shown herein. Verification of actual location and depth of existing utilities shall be the responsibility of the contractor at the time of any other action relying on the actual information.		Gopher State One-Call: 1-800-222-1166
This plan was prepared by JONES, HAUGH & SMITH INC. and is the property of JONES, HAUGH & SMITH INC. All rights are reserved. No part of this plan may be reproduced without the written consent and participation of JONES, HAUGH & SMITH INC.		80 0 80 HORIZ. SCALE FEET



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



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

Memorandum

To: Mayor & City Council
From: Austin Planning Commission
Date: May 11, 2021
Re: Preliminary Plat Approval of Nature Ridge Third Subdivision

During the May 11, 2021, meeting of the Austin Planning Commission, the commission reviewed the Nature Ridge Third Preliminary Plat. This area consists of 26 lots covering approximately 11.5 acres located between West of the Hormel Nature Center.

After review, with seven Planning Commission members present, voted unanimously, 7 ayes and 0 nays, to approve the preliminary plat as proposed with the following conditions:

1. Approval by city staff of changes regarding ROW, street location, utility easements and lot widths prior to submission of the final plat.
2. That a development agreement and civil engineering drawings detailing utilities and minimum subdivision standards, required for the pending project, be submitted along with the final plat.
3. The final plat shall be submitted and approved within six months of approval of the preliminary plat.
4. All applicable provisions of the Subdivision code and permitting agencies shall be met.

The Petitioner hopes to have the final plat and development agreement ready for the June Planning meeting.

Please let me know if you have any questions. Holly Wallace, Planning and Zoning Administrator, 507-437-9952.