



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
MONDAY, APRIL 11, 2022
CITY HALL – COUNCIL CHAMBERS
4:30 PM

1. Roll Call
2. Approval of minutes of the January 26, 2022 meeting
3. Approval of claims for payment January 7, 2022 to March 31, 2022 (Tom Dankert)
4. Funding Request for property at 117 and 119 2nd Avenue NE
5. Development of Port Authority 25 acres I-90 Business Park.
6. Signage for 209 4th Avenue NE related to Port Authority Easement on the Façade
7. Executive Director Report (Craig Clark)
8. Any other business
9. Adjourn

Claims for Payment

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

Council Check Summary

1/7/2022 - 3/31/2022

Check #	Date	Amount	Supplier / Explanation	PO#	Doc No	Inv No	BU	Obj	Sub	Subledger	Account Description	BU Description	Co	Dept	D
		35.00	JANUARY 2022 PORT AUTH MEET		121857	JANUARY 2022	46510	6306			Personnel Services	Port Authority General	66000	115	
		35.00													
74801	2/17/2022		110958 HPW LLC												
		7,213.50	DRAW #4B 50% EASEMENT	00106290	122100	4B	46520	6520			Buildings	Port Authority Downtown R	66000	115	
		16,923.94	DRAW #5 GENERAL LOAN	00106306	122290	DRAW #5 LOAN	66000	1290	58		Loan - HPW \$185,000 Ville	Fund 66	66000	115	
		39,269.50	DRAW #4A GENERAL LOAN	00106290	122099	4A	66000	1290	58		Loan - HPW \$185,000 Ville	Fund 66	66000	115	
		63,406.94													
74893	3/3/2022		100160 AUSTIN UTILITIES												
		6.73	19383-001 1300 27 AV NW SIGNAL		122556	FEBRUARY 2022	46510	6386			Utilities	Port Authority General	66000	115	
		6.73													
74906	3/3/2022		102509 CHARTER COMMUNICATIONS												
		39.99	WALKER BUILDING	00108156	122557	0013045021722	46560	6321			Communications	Port Authority Walker Bui	66000	115	
		39.99													
74913	3/3/2022		100263 CRC INC												
		6.54	CENTRAL STATION SECURITY		122500	137099	46560	6402			Repair and Maint. - Structur	Port Authority Walker Bui	66000	115	
		6.54													
74983	3/3/2022		101187 OVERHEAD DOOR OF ALBERT LEA INC												
		480.00	REMOVE DAMAGED DOOR	00107014	122405	69519-000	66000	1151	01		Accounts Receivable - Manu	Fund 66	66000	115	
		480.00													
75082	3/17/2022		110958 HPW LLC												
		26,103.98	DRAW #6F GENERAL LOAN	00106318	122850	DRAW #6F GENERAL	66000	1290	58		Loan - HPW \$185,000 Ville	Fund 66	66000	115	
		26,103.98													
75176	3/31/2022		100160 AUSTIN UTILITIES												
		6.73	169383-011 1300 27 AVE SW SIGN		123157	MARCH 2022	46510	6386			Utilities	Port Authority General	66000	115	
		6.73													
75187	3/31/2022		102509 CHARTER COMMUNICATIONS												
		39.99	WALKER BLDG	00108273	122981	0013045031722	46560	6321			Communications	Port Authority Walker Bui	66000	115	
		39.99													
75192	3/31/2022		100263 CRC INC												
		6.54	CENTRAL STATION SECURITY	00005004	123159	137695	46560	6402			Repair and Maint. - Structur	Port Authority Walker Bui	66000	115	
		6.54													
75275	3/31/2022		101513 THE INITIATIVE FUND												
		6,000.00	PORT AUTH 2022 PLEDGE	00106331	123150	2022 PLEDGE	46510	6309			Professional Services	Port Authority General	66000	115	
		6,000.00													



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April 4, 2022

To: President and Members of the Port Authority Board
From: Craig Clark, Executive Director of the Austin Port Authority
RE: Request from Terry Hall in relation to 117 and 119 2nd Avenue NE

As you will recall the Port Authority entered into an agreement with Terry Hall doing business as HPW, LLC a Washington Limited Liability Company for property at 117 and 119 2nd Avenue NE. Due to inflationary cost increases and other costs to bring the building up to code (utility service and sprinkler) as well as additional requirements precipitated by adding a restaurant Mr. Hall has cost increases of \$650,500 to contend with to complete the project. As a result, he is asking for further support in terms of adding Port Authority contribution to the construction loan amount.

Our previous accommodations for the property included sale of the property for \$100, reimbursement/grant for a roof replacement of \$70,000, exterior easement grant of a 50% contribution of \$142,500, a \$60,000 fire sprinkler loan to cover installation as well as a personal guaranty of a 0% with 1/240th of the amount paid monthly and balloon payment at 10 years in the amount of \$185,000 in a construction loan.

We would like to discuss with you your willingness to help Mr. Hall with the unexpected cost overruns on the project by providing additional funds under the same terms as the first construction loan. I've included a copy of the original PowerPoint that was presented to the Port Authority (Exhibit 1). I also have the outline of his revenues and investments (Exhibit 2) which request up to \$650,500.

Understanding that the Port Authority would likely be interested in sharing the risk on the added costs we have proposed extending an additional \$250,000 towards this shortfall. Mr. Hall said he would appreciate any accommodation the Port Authority could make towards the continuation of this project. Terms would be modeled after the construction loan documents previously approved by the Port Authority.

Port Authority direction is requested.



117/119 BUILDING PROJECT PROPOSAL AND ESTIMATE DETAILS

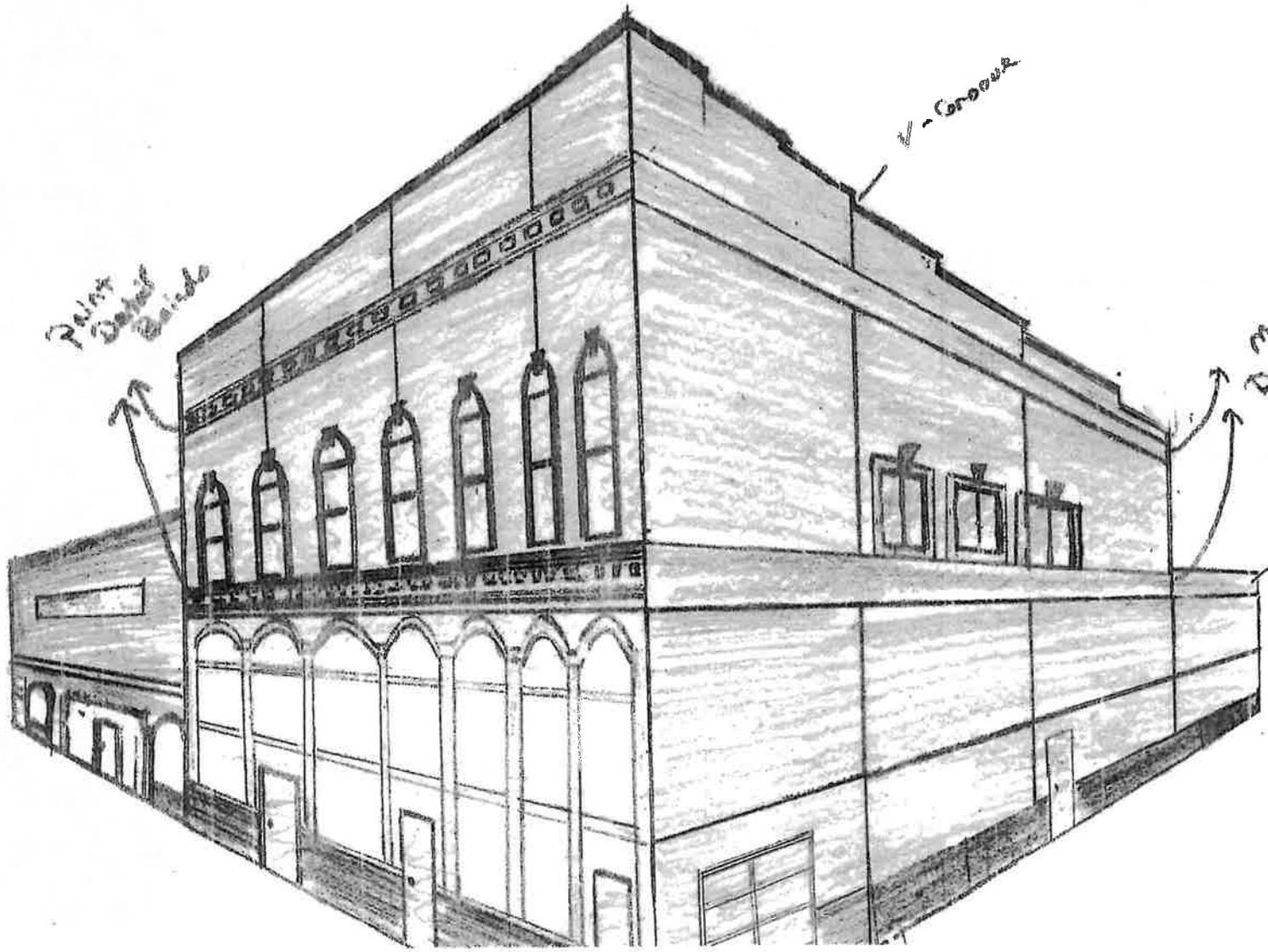
117/119 2nd Ave NE Austin MN

Former Margaritaville and Paradise Island

August 19, 2020



The
Bakery Luncheon



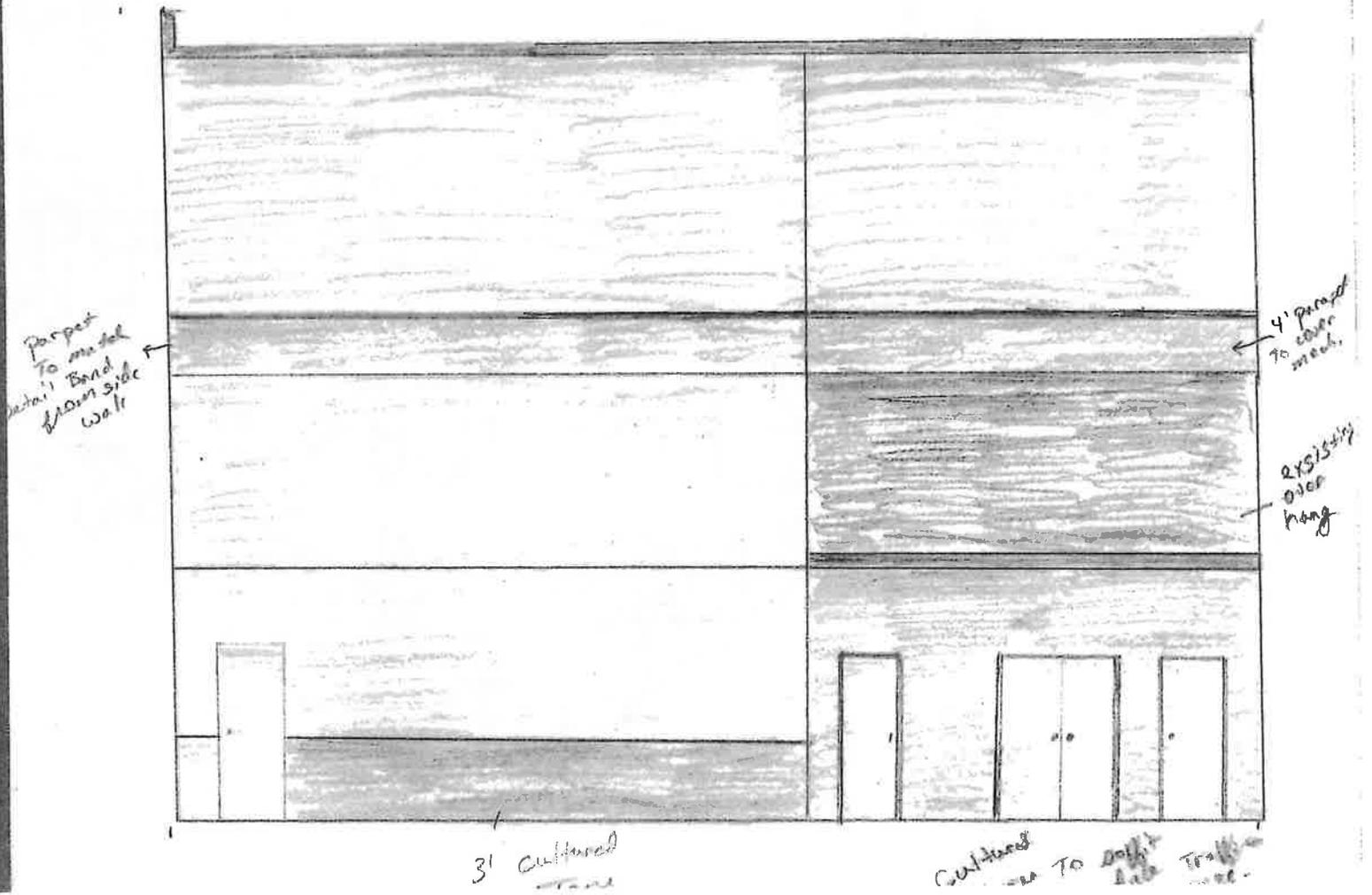
Paint
Detail
Outside

V-Corner

Metal front
Detail
with
Eifs

Parapet to hide
mechanical.

South Elevation





Project Summary

Completion of this project will result in

- Improved exterior
- 4 luxury apartments 2nd floor
- Approximately 4200 sq. ft office / retail / rental space main floor
 - Exterior dimensions ~51.67 X 82.5
- Building systems updates as needed
- Building to be sprinkled
- Disclaimer
 - This proposal lays out the basic plan for building restoration. Since It is difficult to predict all internal and external influences involved in completion of the project, results and schedule are subject to change. The buyer commits to provide best effort to deliver the agreed intent as described in this document. Both buyer and seller have significant financial interest in successful completion of the project and thus the project should be considered a partnership effort which includes a reasonable level of flexibility in results. If seller / financier are dissatisfied with progress per contract details, buyer has the right to pay off loans and maintain ownership of the property.

Terms and Contingencies



Terms

Purchase price \$100

Seller to provide \$245,000 in loans at 0% interest for building improvements

- \$185,000 for building repairs
- \$60,000 for sprinkler system
- Seller to pay \$70,000 toward new roof
- 20-year amortization
- 10-year balloon
- Loan proceeds available upon closing
- Loan payments begin month following distribution



Contingencies

City approval for residential occupancy for entire 2nd floor

Green Space area to the east will be exchanged with parking lot to the north in future

Exterior improvements – 50% reimbursement to occur in intervals

Flexibility in application of budget spending

Seller Cost Summary

- Buyer to accept building improvement project with the following terms and conditions – seller responsible for details in **bold red**
- Summary
 - Seller to pay for new roofing, buyer to manage contractor and installation
 - **Cost to seller up to \$70,000**
 - Seller to pay 50% of all exterior improvements – funding in exchange for easement
 - Estimated cost \$285,000
 - **Cost to seller up to \$142,500**
 - Reimbursement to be distributed in negotiated phases due to high cost
 - Seller to provide 0% interest loan for building sprinkler system
 - **Cost to seller \$60,000**
 - Seller to provide 0% interest loan for General Construction
 - **Cost to seller \$185,000**
- **Total estimated cost to seller \$457,500 less \$245,000 to be repaid = \$212,500**



Buyer Cost Summary

- Buyer to complete all additional work at buyer's expense
 - Balance of roof cost \$5,000 assuming Adam Meyer proposal
 - Estimated cost of exterior improvements \$142,500
 - Estimated cost of interior improvements \$414,600
 - **Estimated total cost to buyer \$562,100**

**General Construction Loan \$185,000
to be applied to the following work statement**

Environmental	EPS	\$42,000.00	Clean building of asbestos per bid dated 7/23/2020
Environmental management	Environmental Assurance		
Architect	Atura	\$7,500.00	Drawings for code review and apartment dwellings
Structural Repairs and Floor Leveling	ZRT Estimate	\$40,000.00	Includes structural reinforcement of 2nd floor center hallway crown and repair of roof structure
Demo / Disposal Est 13 roll-offs	Adam Meyer Construction	\$10,000.00	Includes entire 2nd floor demolition up to roof structure to allow for structural repairs and provisioning of new roof
HVAC	G&G	\$45,000.00	Includes repairs to existing furnaces in basements of both buildings and new furnace units and ducting in each apartment
Plumbing	TBD	\$10,000.00	Update building plumbing to provision main floor for tenant buildouts and 2nd floor for apartments
Electrical	Matyas	\$15,000.00	Update building electrical to provision main floor for tenant buildouts and 2nd floor for apartments
Main floor buildout (min to prep space for tenants)	Adam Meyer Construction and Total Drywall	\$20,000.00	Includes remaining demo (post environmental) and disposal to expose original ceiling, exterior wall studs, floors and interior walls as needed to prep for commercial tenant buildouts. Repair and replacement of original ceilings as needed
TOTAL INTERIOR		\$189,500.00	

Exterior Improvements

- **New roofing**
 - **Cost to seller not to exceed \$70,000**
 - Buyer to manage contractor and installation
 - Buyer to pay cost exceeding \$70,000
- **Doors / Windows**
 - Estimated cost \$110,650
 - Seller to pay 50% of actual in exchange for easement
- **Exterior Surfaces (EFIS, Tuck-Pointing, Restoration)**
 - Proposed exterior architecture to compliment other 2nd Ave NE buildings to the west (Art Center and Bakery) see photos
 - Estimated cost \$154,000
 - Seller to pay 50% of actual in exchange for easement
- **Miscellaneous: covered patio solution / parapet walls / other**
 - Estimated cost \$20,350
 - Seller to pay 50% of actual in exchange for easement

Exterior Doors
and Windows
Estimate
\$110,650

ADAM MEYER
Construction

Includes
additional
roof estimate ref only

Adam Meyer Construction, LLC

Adam Meyer
2907 17th St SE
Austin, MN 55912
507-438-3467
adammeyer302@yahoo.com
Lic. # 20593010

7/14/2020

117 2nd Ave NE

Austin, Mn 55912

This bid is for budgetary purposes only. Actual prices will vary as material price fluctuates in weekly increments.

1. Remove all layers of roofing on upper, mid, and lower flat roof to expose deck. Deck repair as needed up to 25% of area coverage. Build knee wall on east side to encompass plan. Install new R30 insulation to deck per code. Install new rubber roof to provide new seal on roof, parapet walls, and roof penetrations. Install new gutter on North side as necessary, downspouts not included. \$75,000.00
2. Provide two new storefronts as requested with arch top windows and entry doors with emergency hardware. (\$35,000 each) \$70,000.00
3. New entry glass and doors to upper level \$5,500.00
4. Replace 7 upper windows on front of building with double hung (\$1,500 each) \$10,500.00
5. Replace all 7 windows in upper floor in 7 existing openings \$15,000.00
6. Exterior doors – 1 up and 1 down (\$1,850 each) \$3,700.00
7. 2 glass rear entrance doors (\$3,500 each) \$7,000.00
8. Side entry – glass walk door \$3,500.00 with porch delete
9. Double doors to basement \$3,450.00

Exterior Surfaces

Estimate

\$154,000

Includes banding
upgrade on east
side of building

**TOTAL
DRYWALL**

Terry,

I have a few pricing options for you.

Materials have increased since my last estimate of \$121,000.00 to Curtis. The price would be **\$129,000.00** with this increase included.

If you decided to go with the stone on the bottom 3 foot of the building It would be a **\$8500.00** increase.

If you want the bands on the east side to match the detail on the south side, I will have to do **some figuring**. I Drew it up just to throw it out there but would defiantly add some time and cost. If it is something you want to consider I can come up with an additional price for it.

I did look over the original estimate and take off, I do not currently have the west side over the roof (over Rubes) included for EIFS. I do not have the exact measurements, but It would be in the range of **\$20,000.00** to complete that also.

You will need a new roof cap after EIFS is completed to cover the top of the wall, I would assume that will be included in your new roof. If the roofer beats my work, we need to decide on a foam thickness and have the cap large enough to accommodate the foam for my system.

We can work out whatever you choose to do. these prices are not set in stone either, just a starting point for your meetings.

Thanks Eric Bell

Interior Improvements

- Structural repairs and floor leveling
 - Estimated cost \$40,000
 - Paid by buyer
- Environmental (Asbestos Removal)
 - Estimated cost \$42,000
 - Paid by buyer
- Architect
 - Estimated cost \$7,500
 - Paid by buyer
- HVAC
 - 2nd floor apartments estimated cost \$40,000
 - HVAC main floor estimated cost \$5,000
 - Paid by buyer

Interior Improvements continued

- ▶ Plumbing
 - ▶ Estimated cost \$10,000
 - ▶ Work and cost paid by buyer
- ▶ Demo / disposal
 - ▶ Estimated cost \$10,000
 - ▶ Work and cost paid by buyer
- ▶ Apartment buildout 4 units 2nd floor
 - ▶ Estimated cost \$160,000
 - ▶ Work and cost paid by buyer
- ▶ Sprinkle – 0% interest loan
 - ▶ **Seller to pay up to \$60,000**
 - ▶ Work and loan payback paid by buyer
- ▶ Updated electrical as needed
 - ▶ Estimated cost \$15,000
 - ▶ Work and cost paid by buyer



Zenk • Read • Trygstad & ASSOCIATES, INC.

Engineers/Architects

January 17, 2018

Structural
\$40,000

ZRT

The roof framing structure of the 119 Building, while similar, is framed with lighter members (2 x 8 versus 2 x 10 roof joists) and has three large skylight wells that are framed inadequately. Combine this with moisture infiltration over the years, and approximately 40 percent of this structure needs to be replaced.

In summary, the 117 Building, while not meeting today's framing standards, is in overall fair condition, with the exception of the roof truss loading onto the second floor wood joists. It is recommended that a supplemental beam and column line be added at roof truss bearing to pick up this load (\$15,000 to \$20,000). It was also observed that the north exterior delivery stairs' west foundation wall is cracked and offset approximately three inches. The short wall appears static, but should be repaired at some point in time.

The 119 Building should have a similar beam line added to support the roof truss bearing. The shared north lean-to structure also shows evidence of moisture infiltration and deterioration and should be replaced or removed.

2046 Sorensen Road, P.O. Box 1143, Albert Lea, MN 56007
Phone: 507.373.0689 • Fax: 507.373.0716 • e-mail: zrt@zrt.org

Environmental

\$42,000

Includes \$2,000 for
management

ENVIRONMENTAL
ASSURANCE

HPW, LLC – 117-119 Second Ave NE, Austin

BID OPENING

Bid Opening Date: July 23, 2020

	<u>EPS</u>	<u>MAVO SYSTEMS</u>	<u>STERLING SYSTEMS</u>
<i>BASE BID:</i> Contractor shall furnish all labor, material, equipment, including necessary scaffolding, framing, small tools, etc. necessary for the removal of asbestos-containing material to include; approximately 179 lineal feet of TSI-HARD RUNS, approximately 32 square feet of SINKLINER MATERIAL, approximately 2,516 square feet of TAPING COMPOUND, approximately 32 lineal feet of BUILDING CAULK, approximately 25 square feet of FLOOR TILE/MASTIC, approximately 56 square feet of VINYL FLOORING, approximately 36 square feet of TRANSITE PANELS, approximately 126 lineal feet of WINDOW GLAZING, approximately 375 square feet of FLOOR MASTIC and approximately 890 square feet of WALL/CEILING TEXTURE from designated areas of the buildings located at 117-119 Second Avenue NE, Austin, Minnesota.	\$ 38,800.00	\$ 53,650.00	\$ 39,801.00
→ ALTERNATE BID #1 (Containment #6) ALTERNATE BID #1: Contractor shall remove approximately 890 square feet of asbestos-containing WALL/CEILING TEXTURE to include the demolition of the wall and ceiling substrate (plaster/sheetrock).	\$ 40,000.00	\$ 53,650.00	\$ 40,901.00

Architect and
Engineer
\$7,500

ATURA



912 North 13th Street
Clear Lake, IA 50428
641.357.1923
info@aturaarchitecture.com

August 19, 2020

Terry Hall, Owner
HPW LLC
2ND Ave. NE
Austin, MN

SUBJECT: 2ND AVENUE NE RENOVATIONS
& CODE REVIEW
AUSTIN, MN

Terry,

We, ATURA architecture, appreciate the opportunity to provide architectural services for the prospective properties on 2nd Avenue NE. It is our understanding that you are closing on the property and are looking for architectural services to renovate the interior and exterior of the building. The upstairs would remain apartments and the ground level would consist of two commercial spaces. The vision for these spaces would be a upscale restaurant with indoor/outdoor seating and the other would be a bar and lounge space.

Scope of Services: Included in this project is to look at the exterior envelope and design of the existing architecture as well as bring and updated modern look to the appropriate places. Next would be to reorganize the 6 upstairs dwelling units into 4-5 larger units, with a possible mezzanine living space, and outdoor commons area. The last space would be the reconfiguration and design of the two downstairs commercial spaces. One of which has a prospective lease and the other would need the necessary vision and design for a prospective owner. During this process we will conduct a code review to ensure the building addition meets all code requirements. At the conclusion of our

Sprinkler System
\$70,100

OLYMPIC FIRE
PROTECTION



Olympic Fire
Protection
Corp.

Date: July 2, 2020

To: Mr. Terry Hall

RE: Austin Existing Buildings – Fire Suppression System

We wish to submit the following proposal for the fire sprinkler installation and the contents of this proposal.

DESIGN CRITERIA / SCOPE: The new sprinkler system will be designed per NFPA 13 *Standard for The Installation of Sprinkler Systems* (2016 edition) that includes the following:

- One wet sprinkler system that the Basement Level (2 buildings), Main Level (2 buildings) and the upper level which is based on a phone call with Terry Hall will be a residential space. *It should be noted that without drawings of what the spaces will look like, this proposal assumed the Basement and Main Levels will remain typical to what they currently are and the Upstairs will have all ceilings and the middle layer of lath and plaster removed making it one large open space. This space will be heated as no dry pipe sprinkler system is proposed.*

WORKING CONDITIONS: This proposal is based upon all work being performed during regular working hours / days.

GUARANTEE: Olympic Fire Protection will repair or replace any new defective system component for a period of one year. This guarantee does not cover vandalism or owners misuse.

PRICE: \$70,100.00

*This proposal may be withdrawn if not accepted within 30 days.

*Terms are net 30.

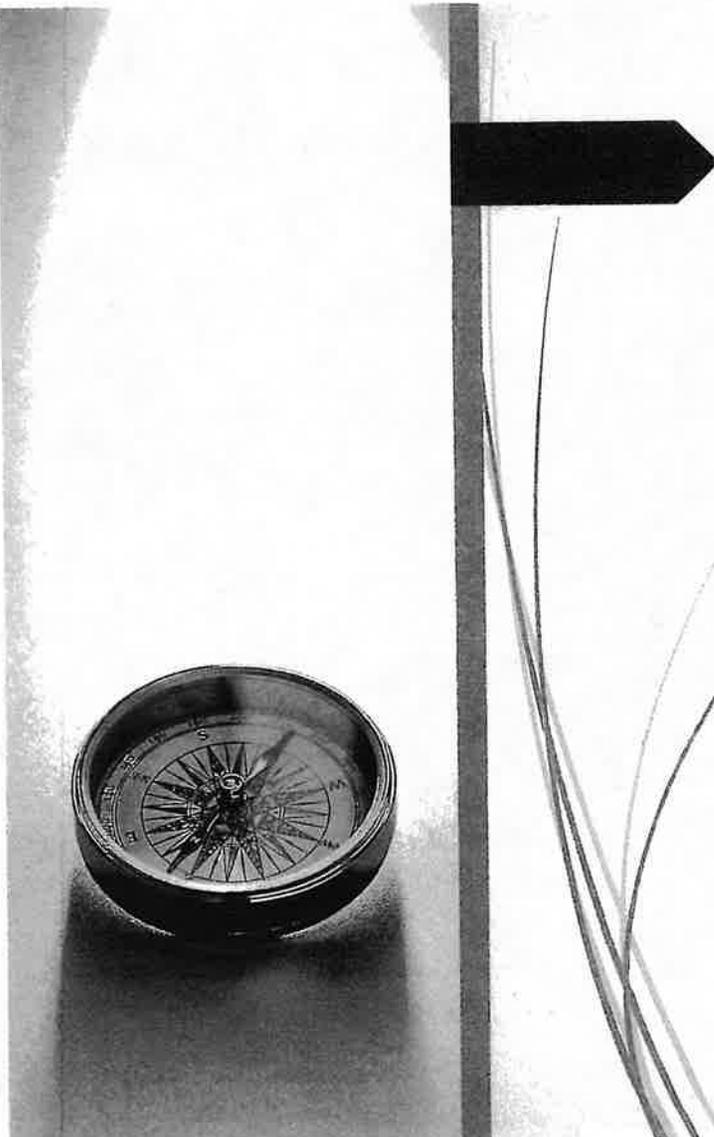
*Credit Card Payments Are Not Accepted.

Sincerely,

Brody Jensen

Brody Jensen
Olympic Fire Protection Corporation

If this proposal is acceptable, please fill in the information below and send back via email, fax, mail, or in person.



Notional Schedule

- Sign Contract 3Q 2020
- Environmental 3Q 2020
- Architect and Engineer 3Q/4Q 2020
- Demo 2nd floor interior 4Q 2020
- Repair/replace roof framing and prepare for new roofs 1Q 2021
- Repair center hallway crown and structural creep issue 1Q 2021
- Install new roofing 2Q 2021 (weather permitting)
- Exterior doors, windows, storefronts and systems provisions etc. 2Q/3Q 2021
- Demo / Clean / Prep main floor for tenancy 2Q/3Q 2021
- HVAC, Electrical, Plumbing and Sprinkle provisions 2Q/3Q 2021
- Exterior EIFS, Tuck-pointing, Fire Escape, Patio Roof 2Q/3Q 2021
- Apartment build-out 1Q 2022
- Main floor build-out 1Q 2022

Next Steps

- ▶ Submit contract proposal to Port Authority for approval
August TBD, 2020
- ▶ Public notice ASAP
- ▶ Insurance – Dave Thompson working
 - ▶ Will need building access prior to closing to instate policy
- ▶ Close sale early-September 2020

Risk

- ▶ Requirements for new services Electric, Gas, Water etc..
- ▶ Other unknown regulatory requirements
- ▶ Post pandemic commercial market
- ▶ Schedule – concern with availability of contractors
- ▶ Construction material shortages

To-Do List

- Provide building wi-fi for security cameras
- Larger parapet
- Roof patios
- East and north cement / backfill
- Optional overhead doors for east side of building
- Complete green space and north property line details post closing
- Parking spots for disabled?
- Central garbage collection area?
- Determine requirements and scope for building systems – gas, water, sewer, electrical, other
- Solicit input on building overall aesthetics and configuration
 - Consideration to building history and aesthetics
 - Main floor ceilings and crown moldings
 - 2nd floor exterior brick and keystone details, arched windows etc.

233 County Hwy 45

Austin, Minnesota

Google

Street View



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ta

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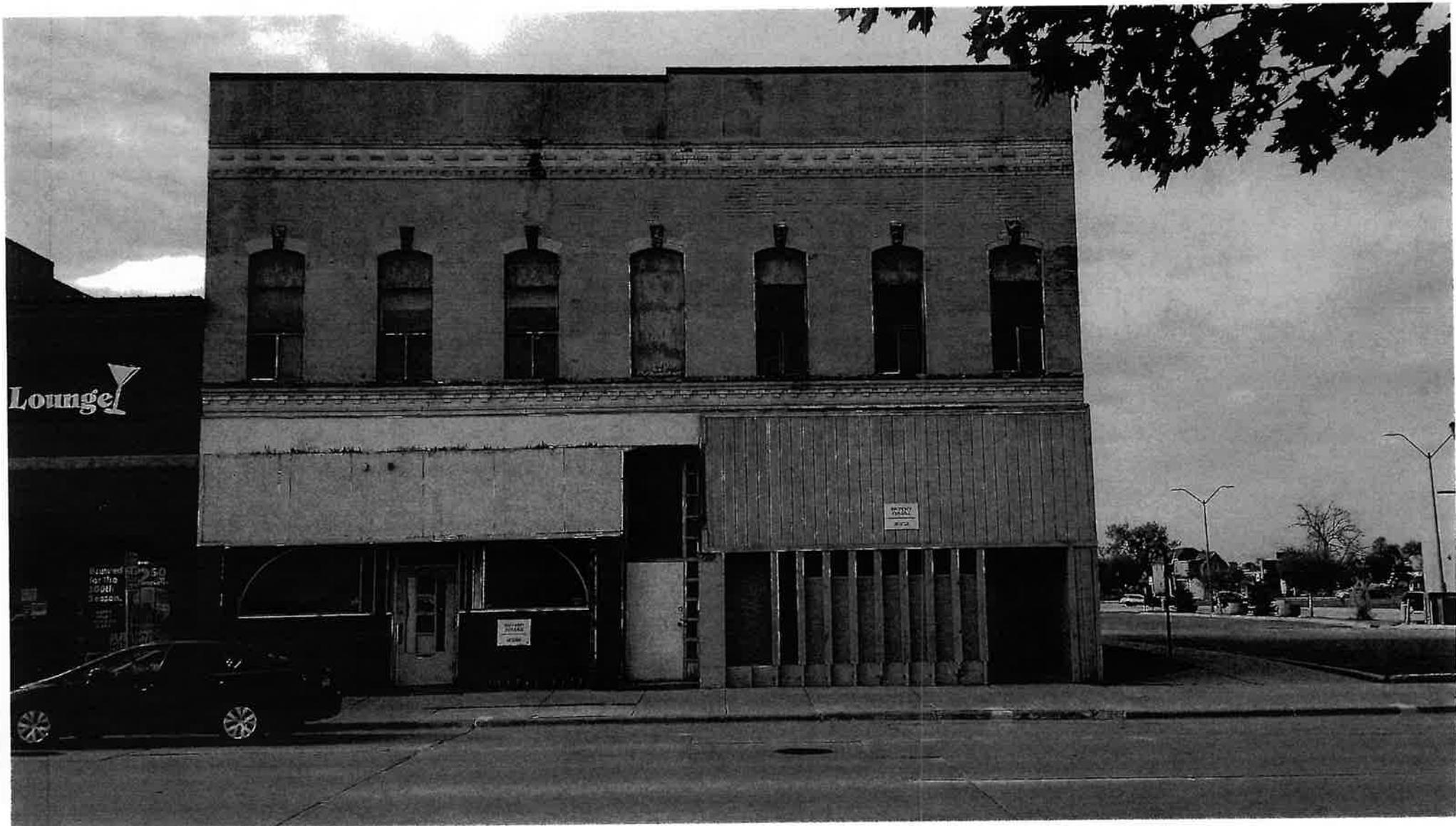


4th Ave NE
Riverside Arena
2nd Ave NE

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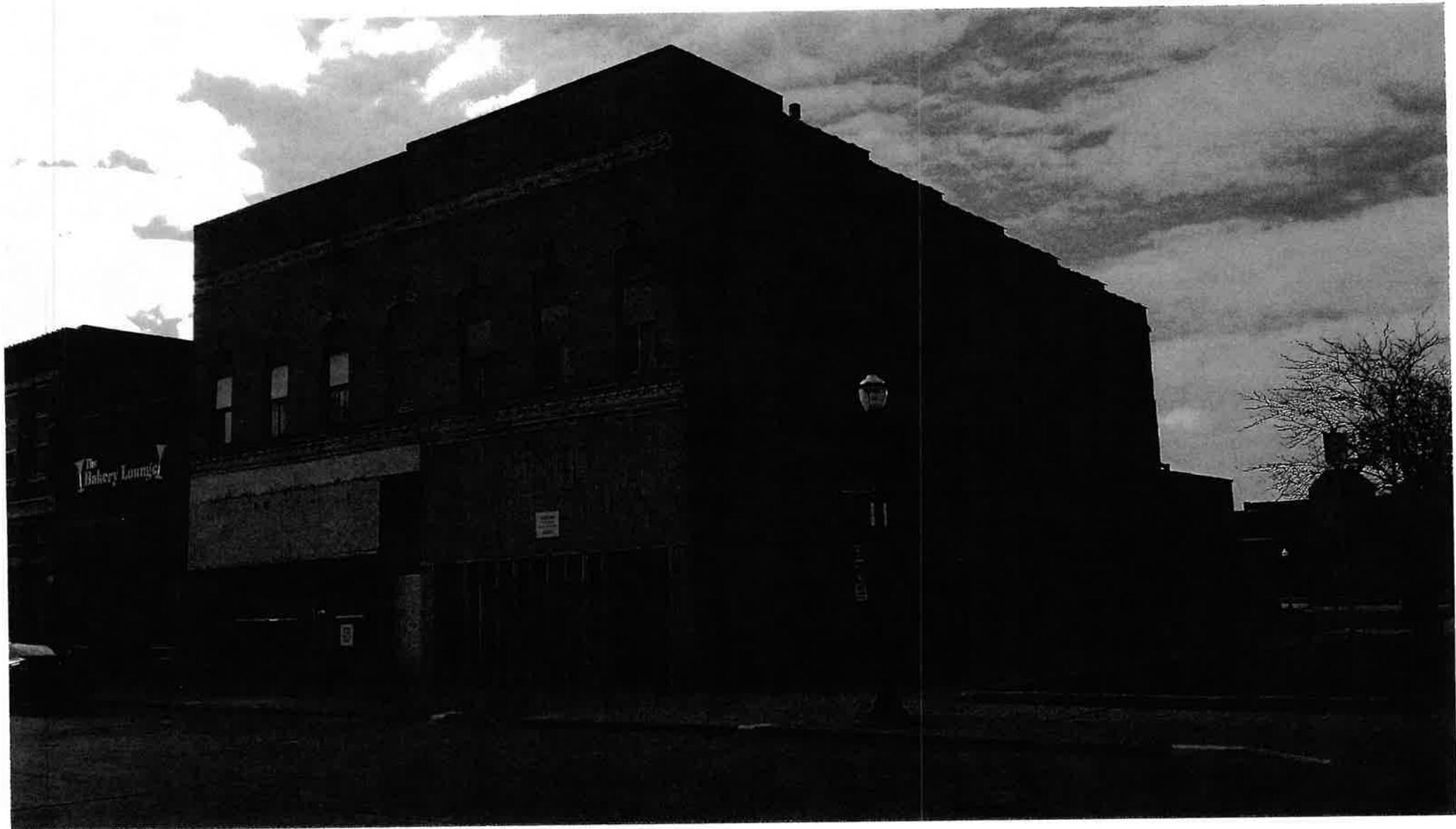


Lounge

Leathered for the 100th season

PUNNY PUNNY

PUNNY PUNNY



The Bakery Lounge

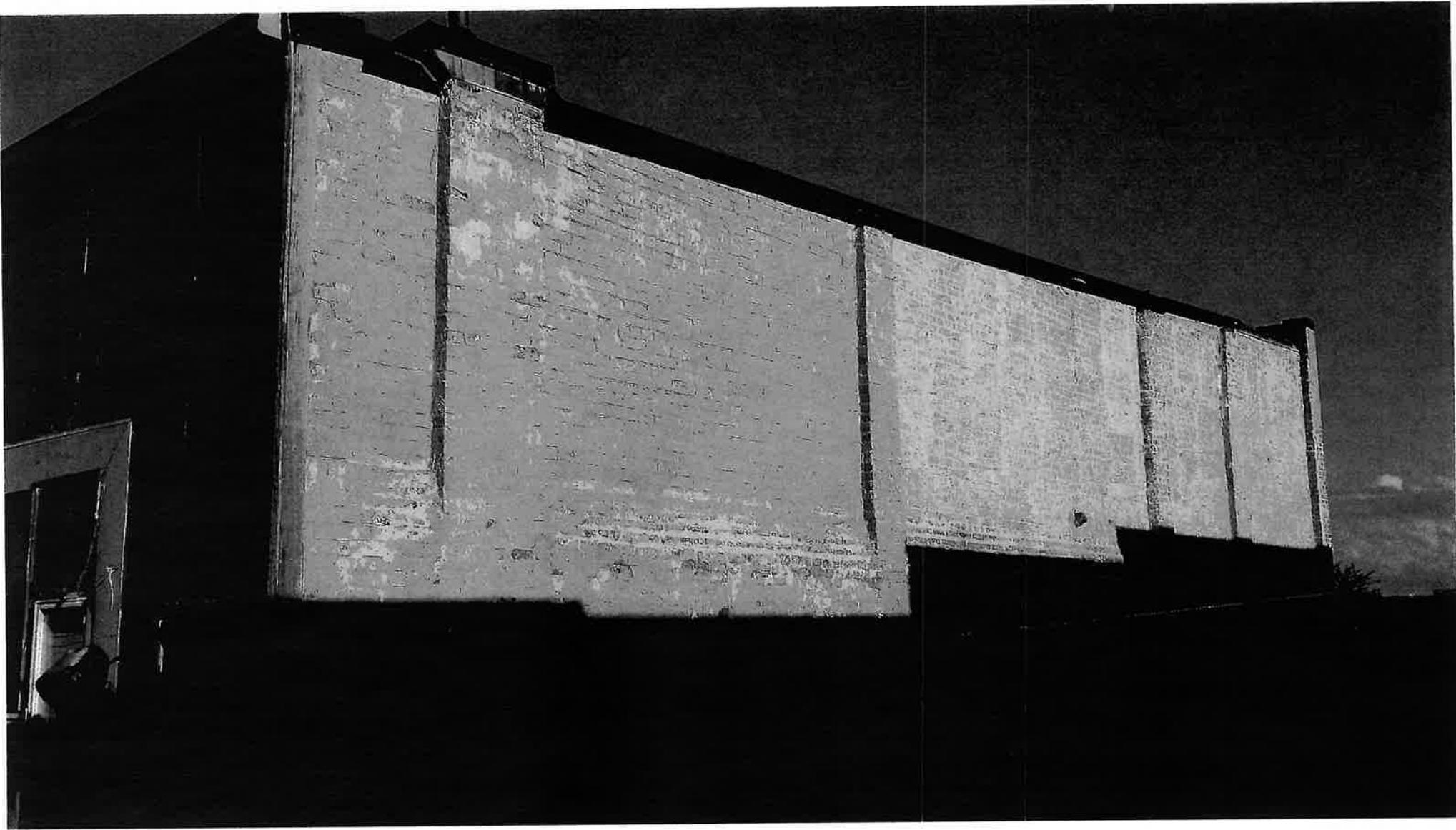


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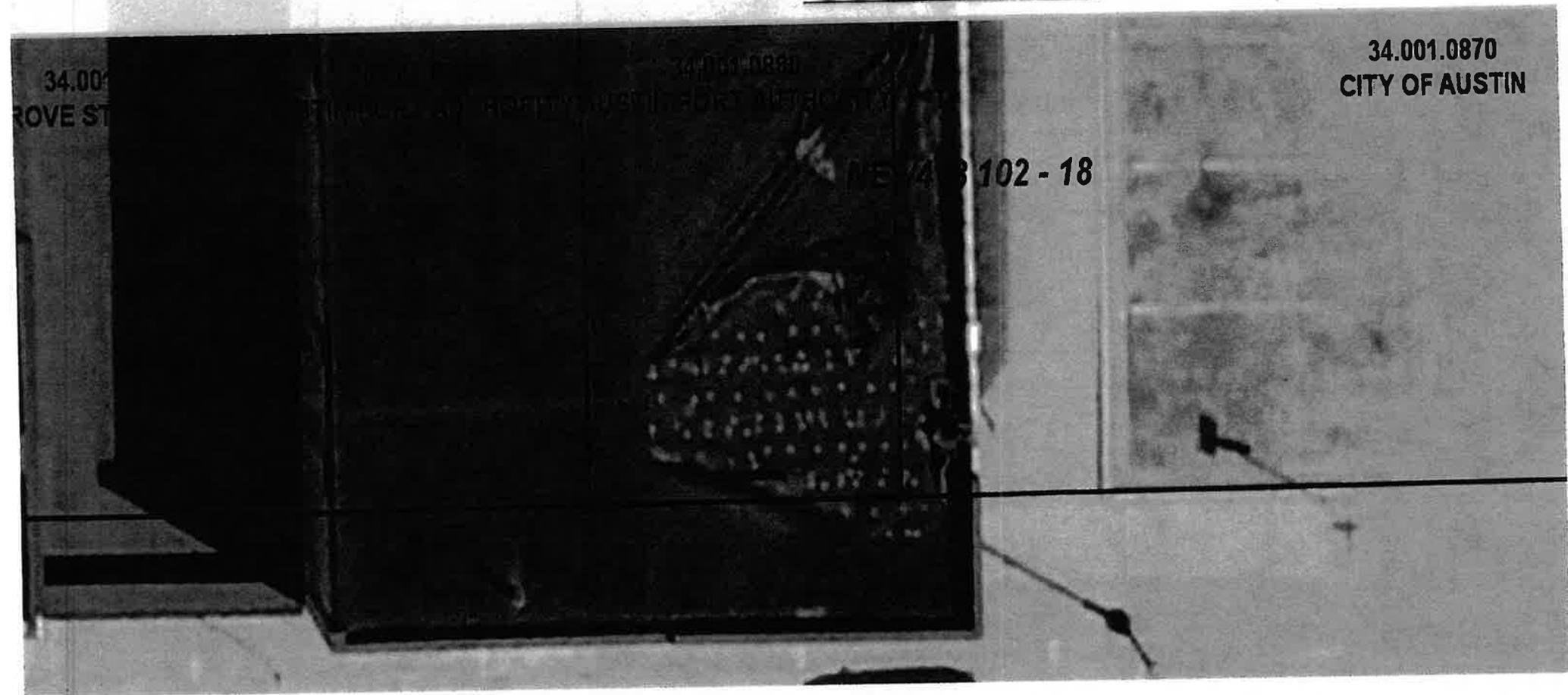
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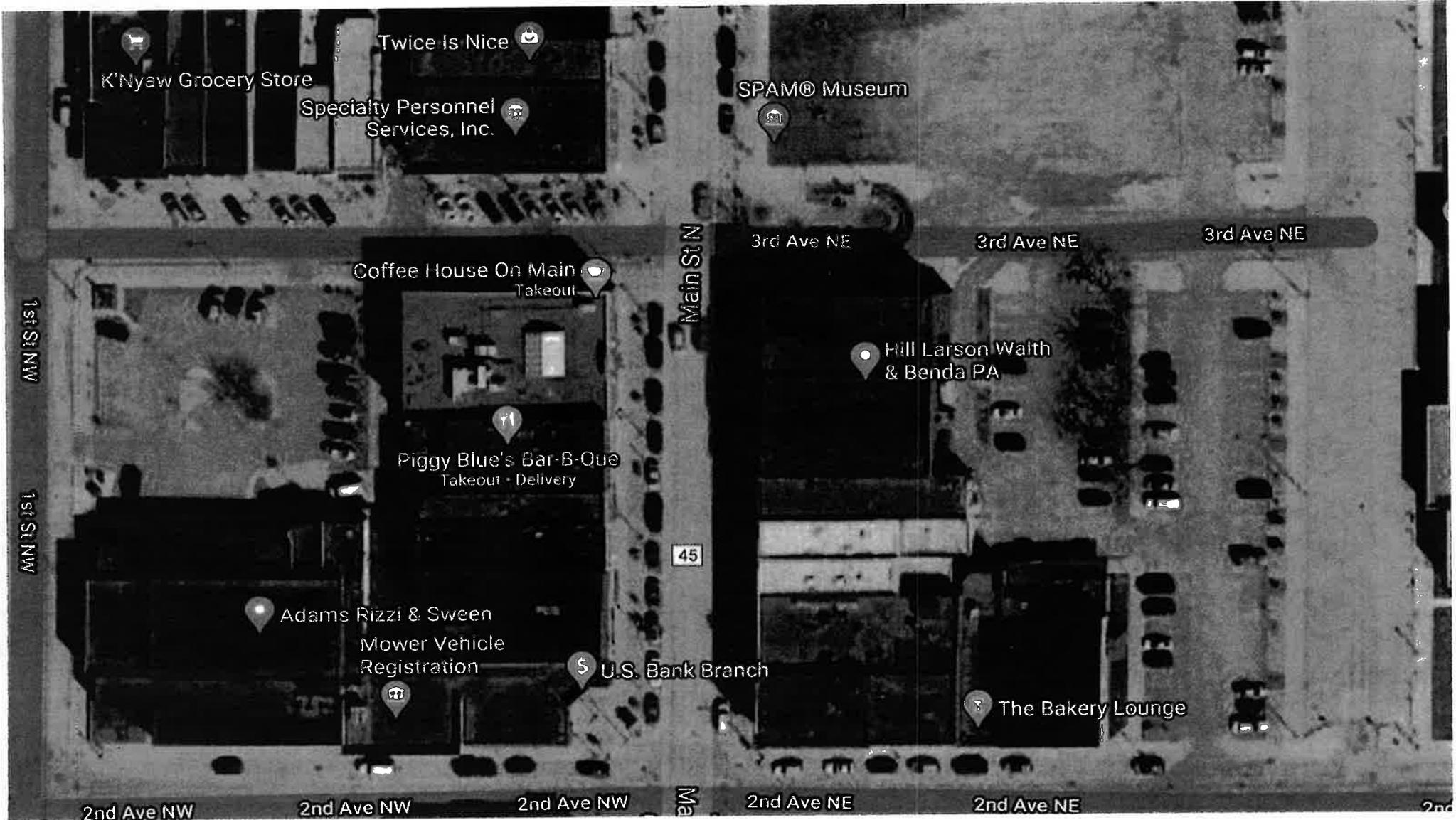
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CITY OF AUSTIN

34.001.0870
ROVE ST

34.001.0880

NE 43102 - 18

Γ : 43.66842 , LON : -92.97401 X : 758260.41 , Y : 162917.46



K'Nyaw Grocery Store

Twice Is Nice

Specialty Personnel Services, Inc.

SPAM® Museum

Coffee House On Main Takeout

Piggy Blue's Bar-B-Que Takeout - Delivery

Adams Rizzi & Sween Mower Vehicle Registration

U.S. Bank Branch

Hill Larson Walth & Benda PA

The Bakery Lounge

1st St NW

1st St NW

Main St N

45

2nd Ave NW

2nd Ave NW

2nd Ave NW

Main St N

2nd Ave NE

2nd Ave NE

3rd Ave NE

3rd Ave NE

3rd Ave NE

2nd Ave NE

EXTERIOR

ROOFING - considering additional estimate

Roof Allweather
Roof Allweather cost of decking

Allweather
Allweather

Preferred Option Notes

\$84,820.00 price down
\$5,000.00 \$4.8 per sq. ft for decking replacement not included
Includes parapet walls \$3720. Call into ALLWEATHER to work

Roof Adam Meyer Construction
TOTAL ROOF

Adam Meyer Construction

\$75,000.00
\$75,000.00 \$89,820.00
Includes 25% deck area repair, does not include downspouts (current downspouts ok), includes south parapet. Warranty 10 year on membrane, 5 year on installation
Sub-contract roofers worked for Kiker names TBD
Seller to pay up to \$70,000

DOORS AND WINDOWS - includes installation

South store fronts with arch top windows 2 ea. plus knee walls
South entrance to 2nd floor 1 door with large transom window
South side 2nd floor windows 7ea
North 2nd floor entrance door 1 ea.
North side utility door
2nd floor east and north windows 8 ea. (verbal increase from 7 to 8)
2nd floor east and west loft windows 4 ea.
North main floor entry doors 2 ea.
East entry door (porch delete)
Double entry door to basement
OH glass door for east wall
TOTAL DOORS AND WINDOWS

Adam Meyer Construction
Adam Meyer Construction

\$62,000.00
\$5,500.00
\$10,500.00
\$1,850.00
\$1,850.00
\$15,000.00
\$12,000.00
\$7,000.00
\$3,500.00
\$3,450.00
\$15,000.00
\$110,650.00 \$27,000.00
Less \$8k from original due to cultured stone on bottom

VESTIBULES - do not pursue at this time

117 South Vestibule
117 North Vestibule
119 South Vestibule
119 North Vestibule
119 East Vestibule
TOTAL VESTIBULES

TBD
TBD
TBD
TBD
TBD

\$10,000.00
\$5,000.00
\$10,000.00
\$5,000.00
\$5,000.00
\$35,000.00

EXTERIOR SURFACES (EFIS, Restoration, etc.)

Eifs, Band Brick Repair/Painting, Caulking all sides of building
Stone accent - bottom 3 feet north, south and east sides
Upper west wall - EFIS option
Upper west wall - paint option
Add banding accents to east side (verbal Est)
Cornice with lighting upgrade (verbal Est)
TOTAL EXTERIOR SURFACES

Total Drywall
Total Drywall
Total Drywall
Total Drywall
Total Drywall
Total Drywall

\$155,000.00
\$14,000.00
\$0.00
-\$15,000.00
\$0.00
\$0.00
\$7,000.00
\$154,000.00 \$7,000.00
\$20,000 included in \$155K
\$5000 included in \$155K
Front and about 12' of west and east sides of building only

MISC (FIRE ESCAPE / COVERED PATIO / PARAPET WALLS / etc.)

Fire Escape
North parapet walls
Apartment decking north side 2ea
Cement patios east and north sides \$8 sq. ft plus demo/prep
Demo covered patio / install awnings
TOTAL MISC

TBD
Adam Meyer Construction
Adam Meyer Construction
TBD
TBD

\$0.00
\$5,000.00
\$7,000.00
\$2,950.00
\$5,400.00
\$20,350.00
Probable delete, working with architect. If more than 4 units need fire escape
Investigating awning options

TOTAL EXTERIOR (not including roof)

1/2 TOTAL EXTERIOR (not including roof)

\$0.00
\$0.00
\$285,000.00
\$142,500.00
Delta
Working to get this number close to zero
Port to reimburse \$142,500 max

INTERIOR

Environmental
Environmental management
Architect
Architect
Structural Repairs and Floor Leveling
Sprinkle
Demo / Disposal Est 13 roll-offs
HVAC
Plumbing
Electrical
Main floor buildout (min to prep space for tenants)
Apartment buildout
TOTAL INTERIOR

EPS
Environmental Assurance
DJ Modin
Atura
ZRT Estimate
Olympic Fire Protection
Adam Meyer Construction
G&G
TBD
Matyas
Total Drywall
TBD

\$40,000.00
\$2,000.00
\$11,100.00
\$7,500.00
\$40,000.00
\$70,100.00
\$10,000.00
\$45,000.00
\$10,000.00
\$10,000.00
\$20,000.00
\$160,000.00
\$414,600.00 \$11,100.00
Drawings for code review and apartment dwellings
Estimate in work
Decreased by \$15,000 8/18/2020

TOTAL PROJECT COST \$774,600.00
Total cost to HPW LLC \$562,100.00
Total cost to Seller \$70K roof + \$142,500 ext. imp \$212,500.00
Total loans from Seller \$185K GC + 60K sprinkle \$245,000.00
Total add'l funds required by HPW LLC \$174,600.00

General Construction Loan \$185,000 to be applied to the following work statement			
Environmental	EPS	\$42,000.00	Clean building of asbestos per bid dated 7/23/2020
Environmental management	Environmental Assurance	\$7,500.00	Drawings for code review and apartment dwellings
Architect	Atura		

Structural Repairs and Floor Leveling	ZRT Estimate	\$40,000.00	Includes structural reinforcement of 2nd floor center hallway crown and repair of roof structure
Demo / Disposal Est 13 roll-offs	Adam Meyer Construction	\$10,000.00	Includes entire 2nd floor demolition up to roof structure to allow for structural repairs and provisioning of new roof
HVAC	G&G	\$45,000.00	Includes repairs to existing furnaces in basements of both buildings and new furnace units and ducting in each apartment
Plumbing	TBD	\$10,000.00	Update building plumbing to provision main floor for tenant buildouts and 2nd floor for apartments
Electrical	Matyas	\$15,000.00	Update building electrical to provision main floor for tenant buildouts and 2nd floor for apartments
Main floor buildout (min to prep space for tenants)	Adam Meyer Construction and Total Drywall	\$20,000.00	Includes remaining demo (post environmental) and disposal to expose original ceiling, exterior wall studs, floors and interior walls that needed to prep for commercial tenant buildouts, repair and replacement of original ceilings as needed
TOTAL INTERIOR		\$189,500.00	

HPW LLC		Future State	
2nd Ave Buildings	Gross Market Rents	Gross Rent Multiplier	8.8
R81 117 Unit A	\$2,400.00	Annual Rent	\$127,200.00
R81 119 Unit B	\$2,400.00	Building Value	\$1,119,360.00
R81 Apt Unit 1	\$1,600.00	80% of Building Value	\$895,488.00
R81 Apt Unit 2	\$1,500.00	Current Loan Commitments	\$245,000.00
R81 Apt Unit 3	\$1,400.00	Additional Loan Loan Request	\$650,488.00
R81 Apt Unit 4	\$1,300.00		
Total 2nd Ave Bldgs	\$10,600.00		



500 Fourth Ave. NE
Austin, MN 55912-3773

www.ci.austin.mn.us

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

April 4, 2022

To: President and Members of the Port Authority Board
From: Craig Clark, Executive Director of the Austin Port Authority
RE: Options of investment of Port Authority Funds and request for the advancement of a wetland delineation and draining plan for the I-90 business park.

Development of 25 acres north of the Kwik Trip truck stop

- Development of road and infrastructure for an extended 12th Avenue NE

Attached is our engineer's estimate for road improvements (Exhibit 1). This project is estimated at \$1,131,695. Austin Utilities estimate is based off improvements to the 7.5 acres along the new roadway and have additional hook up charges by the end user of the lots.

The Port Authority should be cognizant on how you'd like to assess the costs of 12th Avenue extension. Depending on how the lots are subdivided direct beneficiaries of the road improvement could be solely assessed the cost of the road. As you know this parcel also fronts along 14th Street NE. My recommendation would be to spread the improvements of 12th Avenue across the 25 acres. Doing otherwise obviously makes the lots along 14th harder to develop and would drive the sale of lots along 14th Street NE before 12th Avenue would be cost effective. Just as a residential subdivision can pay for a street connection to the broader transportation system, we should do that in this similar circumstance. Is the Port Authority in agreement?

Balancing infrastructure and the timing can be a difficult consideration. Generally, development can occur simultaneously as road improvements are done (as is the case of NuTek) but do present added challenges to access the site. However, having a site "shovel ready" can increase its attractiveness as developers once they have made their decision and want to move right away. Perhaps the biggest component is the reality of incentivizing lot sales. Historically speaking past infrastructure investments can quickly be seen as "sunk costs" and developers ask for a lot price below reasonable land values and then also want us to forgo the infrastructure costs. Is this a cost we're willing to forgo or do we hold the line pushing for repayment? I'm just letting you know once you get the project in the ground it becomes much easier to forgo which can be fine. At this point I would recommend leaving this in a holding pattern and could commence when we have a development project moving forward. This is however a component of investment the Port Authority could make with their reserve funds.



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- Drainage/grading plan

Additional costs for development could include a plan to accommodate drainage and the grading of the site. This can be beneficial to more efficiently place the draining and to some extent in aggregate a bit more cost effective. This can also be pushed to the individual lot development as parcels are sold. Given the rolling topography and different direction the water flows I think it is best to advance this item at this time. Estimated cost is \$30,000 based off other projects. If approved by the Port, an RFP would be developed by the City engineering staff and work commenced to determine the costs which could vary widely depending on the alternatives advanced (\$150,000 to \$500,000). The only way to appreciate these costs are to do the evaluation. A final decision on moving an actual grading plan would come at a later point and would be evaluated by the Port Authority.

- Wetland delineation

The City was working to advance the extension of 12th Avenue NE previously. In preparation of this possibly the City of Austin commissioned a wetland delineation which is required. This showed indication of wetlands in this area immediately adjacent to the proposed 12th Avenue NE extension but partly on Port Authority property. As a result of these preliminary findings work was halted and the road project put on hold.

A proposal to continue the work is included as Exhibit 2. The cost for this service is \$3,957. There is also the possibility that if there will be continued elements of wetlands found on the broader area but the Technical Evaluation Panel (TEP) could determine this property lacking a wetland impact and not require a 2 to 1 offset in wetland credits. There is no guarantee this would transpire and if the property development requires offsets, it would certainly add to the costs of development. We could expect added costs for offsets to be perhaps \$10,000 per acre needed to find an offset. To begin this evaluation, we need to have the delineation completed. In my opinion, there is no one else going to develop this property with these risks and leaving it undeveloped would not be in the long-term interest of the City of Austin. If the private development can not overcome this in the near term it becomes more apparent for an organization like the Port Authority to serve in this capacity. I would recommend we proceed forward to determine where we stand on the wetland delineation and what input the TEP might have to alter its development costs.



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Furthermore, prompting this consideration is the reality of interest from the Joseph Company in siting a warehouse on Outlot D on the proposed map (Exhibit 3). This would be a low impact use. Other lots are just generic layouts and not instructive for our conversation. We are hopeful for continued conversations on the sale of property to them and entering a development agreement with the Joseph Company but the wetland and drainage plan help inform their decision on moving forward and therefore they have joined in this request of the Port Authority explore these items.

Proposed motion:

Port Authority action is requested to approve the wetland delineation service for \$3,957 and authorize up to \$32,000 for the establishment of a drainage plan for the 25 acres owned by the Port for the I-90 Business Park.



March 7, 2022

City of Austin
Steven Lang, PE
500 Fourth Avenue NE
Austin, MN 55912

Re: Proposal of Services – O’Leary Property Wetland Delineation Services

Dear Mr. Lang:

WSB is pleased to present a proposal for professional services. This proposal will define our scope of work and provide you with an estimated cost for the project services required to complete requested wetland services for the City of Austin Street Project. Thank you for considering WSB.

Project Background

The City of Austin requested a proposal of wetland delineation services for the 24.79 Acre O’Leary property located in the SE1/4 of Section 35, T103N-R18W, Mower County, Minnesota.

Scope of Services

WSB has been requested by Steven Lang of the City of Austin to complete level 2 wetland services for O’Leary property located between 14th Street NE and 17th Street NE within the city limits of Austin, MN. Wetland delineation services will occur within the entire 24.79 acres project limits as defined on the attached site plan. The project scope will require the following services:

1) Field Work:

2 Person Field Crew: Includes hand soil borings to determine existing soil conditions, existing vegetation, existing hydrologic conditions, wetland boundary delineation, GPS all wetland boundary and hand soil boring locations and site photos.

2) Level 2 Wetland Delineation Report:

Prepare a level 2 wetland delineation report that includes; review of the historical aerial photos of the site, GIS based maps and figures, appendices and application forms required for the report submittal.

3) Technical Evaluation Panel Meeting (TEP) and Client Correspondence:

One meeting will be required by the Technical Evaluation Panel for this wetland delineation application submittal, a wetland boundary field review and correspondence with client during wetland permit process.

Document printing is included in the scope of work.

Fees

The fees for the described services will be charged on an hourly, not to exceed basis per the attached Schedule of Hourly Rates and Charges. Actual hours will be used for billing purposes. Services requested by the City of Austin outside of the project scope or requests of additional information by the Mower County SWCD LGU (WCA) or US Army Corps of Engineers (USACE) will be considered additional services and an estimate for these services will be completed by WSB with approval by the client prior to completion of services. The estimated cost does not include the cost of permit application fees. The following table is a detailed estimate of hours and cost per task as defined in the project scope:

O'Leary Property Level 2 Wetland Delineation Project Services	Estimated Hours	Estimated Cost
1. Field Work - 2 Person Field Crew:	9	\$1,638.00
2. Level 2 Wetland Delineation Report:	22	\$1,896.00
3. Technical Evaluation Panel Meeting (TEP) and Client Correspondence:	4	\$424.00
TOTAL PROFESSIONAL SERVICES	35	\$3,957.00

**Permit application fees are not included in the provided estimate of services.*

Schedule

We understand the City of Austin's proposed schedule of completion as requested and are prepared to meet that schedule. We are prepared to begin work on the project upon authorization.

A preliminary project schedule is included below. The proposed fieldwork start will be dependent on weather conditions and once growing season conditions have established.

Task	Description	Milestone Dates
1.	Field Work - Two Person Field Crew	April 2022
2.	Level 2 Wetland Delineation Report	May 2022
3.	TEP Meeting and Client Correspondence	May 2022

Acceptance

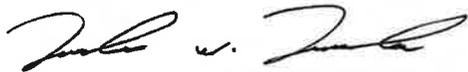
This letter represents our complete understanding of the proposed scope of services. If this proposal is found acceptable, we will prepare a contract for the work described here. In anticipation of this, we have attached our standard terms and conditions and fee schedule. These, along with a Professional Services Agreement (PSA), will be presented for signatures. If you have any questions about this proposal, please feel free to call me at 507.218.3380 or email at llunde@wsbeng.com.

This fee proposal is valid for ninety (90) days from the date above. WSB may reissue a revised proposal upon request if the indicated period has lapsed. Should the scope of work change in nature or be expanded to include additional services, we reserve the right to renegotiate the fees with you.

WSB appreciates the opportunity of being considered for this project and we look forward to providing our professional services to you.

Sincerely,

WSB



Luke W Lunde, CPSS, PSS, PSC
MN Professional Soil Scientist

Attachments

Site Plan
2022 Schedule of Hourly Rates
WSB General Contract Provisions



Locate Property

Search for an address or locate on map

▼ Parcel ID, Name, Address

< Tax Parcels

34.905.0101 - AUSTIN PORT AUTHORITY

Property Detail

Parcel ID/PIN: 34.905.0101
Physical Addr: ,
GIS Acres: 24.79
Deeded Acres: 24.80
Property Class: AG LAND

Current Owner:
AUSTIN PORT AUTHORITY
500 4TH AVE NE
AUSTIN MN 55912
Ownership Type: Organization

Tax Legal:
SubdivisionCd 34905 SubdivisionNa
35 103 18 NE1/4 SE1/4; EXC RR IN I
COR; & EXC E660FT N988.03FT; & E
PLAT OF NATURE RIDGE 3RD

[Lookup More Property Details](#)

Financial Detail

Tax Due
Penalty Due
Fee Due

2022 Rate Schedule



	Billing Rate/Hour
PRINCIPAL ASSOCIATE	\$162 - \$206
SR. PROJECT MANAGER SR. PROJECT ENGINEER	\$162 - \$206
PROJECT MANAGER	\$143 - \$159
PROJECT ENGINEER GRADUATE ENGINEER	\$97 - \$158
ENGINEERING TECHNICIAN ENGINEERING SPECIALIST	\$62 - \$154
LANDSCAPE ARCHITECT SR. LANDSCAPE ARCHITECT	\$73 - \$154
ENVIRONMENTAL SCIENTIST SR. ENVIRONMENTAL SCIENTIST	\$60 - \$151
PLANNER SR. PLANNER	\$75 - \$159
GIS SPECIALIST SR. GIS SPECIALIST	\$72 - \$159
CONSTRUCTION OBSERVER	\$98 - \$128
SURVEY	
One-Person Crew	\$159
Two-Person Crew	\$207
OFFICE TECHNICIAN	\$56 - \$97

Costs associated with word processing, cell phones, reproduction of common correspondence, and mailing are included in the above hourly rates. Vehicle mileage is included in our billing rates [excluding geotechnical and construction materials testing (CMT) service rates]. Mileage can be charged separately, if specifically outlined by contract. | Reimbursable expenses include costs associated with plan, specification, and report reproduction; permit fees; delivery costs; etc. | Multiple rates illustrate the varying levels of experience within each category. | Rate Schedule is adjusted annually.

**EXHIBIT A
GENERAL CONTRACT PROVISIONS**

ARTICLE 1 – PERFORMANCE OF THE WORK

Consultant shall perform the services under this Agreement in accordance with the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services.

ARTICLE 2 – ADDITIONAL SERVICES

If the Client requests that the Consultant perform any services which are beyond the scope as set forth in the Agreement, or if changed or unforeseen conditions require the Consultant to perform services outside of the original scope, then, Consultant shall promptly notify the Client of cause and nature of the additional services required. Upon notification, Consultant shall be entitled to an equitable adjustment in both compensation and time to perform.

ARTICLE 3 – SCHEDULE

Unless specific periods of time or dates for providing services are specified in a separate Exhibit, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond Consultant's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, or other natural disasters or acts of God; fires, riots, war or other emergencies; any action or failure to act in a timely manner by any government agency; actions or failure to act by the Client or the Client's contractor or consultants; or discovery of any hazardous substance or differing site conditions. If the delays outside of Consultant's control increase the cost or the time required by Consultant to perform its services in accordance with professional skill and care, then Consultant shall be entitled to a reasonable adjustment in schedule and compensation.

ARTICLE 4 – CONSTRUCTION OBSERVATION

If requested by Client, Consultant shall visit the project during construction to become familiar with the progress and quality of the contractors' work and to determine if the work is proceeding, in general, in accordance with plans, specifications or other contract documents prepared by Consultant for the Client. The Client has not retained the Consultant to make detailed inspections or to provide exhaustive or continuous project review and observation services.

Consultant neither guarantees the performance of any Contractor retained by Client nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with the construction documents. Client acknowledges Consultant will not direct, supervise or control the work of contractors or their subcontractors, nor shall Consultant have authority over or responsibility for the contractors' means, methods, or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety. Job Site Safety shall be the sole responsibility of the contractor who is performing the work.

For Client-observed projects, the Consultant shall be entitled to rely upon and accept representations of the Client's observer. If the Client desires more extensive project observation or full-time project representation, the Client shall request such services be provided by the Consultant as an Additional Service. Consultant and Client shall then enter into a Supplemental Agreement detailing the terms and conditions of the requested project observation.

ARTICLE 5 – OPINIONS OF PROBABLE COST

Opinions, if any, of probable cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs, collectively referred to as "Cost Estimates," provided for are made or to be made on the basis of the Consultant's experience and qualifications and represent the Consultant's best judgment as an experienced and qualified professional design firm. The parties acknowledge, however, that the

Consultant does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractor's methods of determining their prices, and any evaluation of any facility to be constructed or acquired, or work to be performed must, of necessity, be viewed as simply preliminary. Accordingly, the Consultant and Client agree that the proposals, bids or actual costs may vary from opinions, evaluations or studies submitted by the Consultant and that Consultant assumes no responsibility for the accuracy of opinions of Cost Estimates and Client expressly waives any claims related to the accuracy of opinions of Cost Estimates. If Client wishes greater assurance as to Cost Estimates, Client shall employ an independent cost estimator as part of its Project responsibilities.

ARTICLE 6 – REUSE AND DISPOSITION OF INSTRUMENTS OF SERVICE

All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service and Consultant retains all ownership interests in Instruments of Service, including copyrights. The Instruments of Service are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic format furnished to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Consultant makes no representations as to long term compatibility, usability or readability of electronic files.

If requested, at the time of completion or termination of the work, the Consultant may make available to the Client the Instruments of Service upon (i) payment of amounts due and owing for work performed and expenses incurred to the date and time of termination, and (ii) fulfillment of the Client's obligations under this Agreement. Any use or re-use of such Instruments of Service by the Client or others without written consent, verification or adaptation by the Consultant except for the specific purpose intended will be at the Client's risk and full legal responsibility and Client expressly releases all claims against Consultant arising from re-use of the Instruments of Service without Consultant's written consent, verification or adaptation.

The Client will, to the fullest extent permitted by law, indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable attorneys' fees, and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of these Instruments of Service by the Client or any person or entity that acquires or obtains the reports, plans and specifications from or through the Client without the written authorization of the Consultant. Under no circumstances shall transfer of Instruments of Service be deemed a sale by Consultant, and Consultant makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. Consultant shall be entitled to compensation for any consent, verification or adaptation of the Instruments of Service for extensions of the Project or any other project.

ARTICLE 7 – PAYMENTS

Payment to Consultant shall be on a lump sum or hourly basis as set out in the Agreement. Consultant is entitled to payment of amounts due plus reimbursable expenses. Client will pay the balance stated on the invoice unless Client notifies Consultant in writing of any disputed items within fifteen (15) days from the date of invoice. In the event of any dispute, Client will pay all undisputed amounts in the ordinary course, and the Parties will endeavor to resolve all disputed items. All accounts unpaid after thirty (30) days from the date of original invoice shall be subject to a service charge of 1-1/2% per month, or the maximum amount authorized by law, whichever is less. Consultant reserves the right to retain instruments of service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding services or instruments of service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney fees, incurred in connection with collecting amounts owed by Client. In addition, Consultant may, after giving seven (7) days' written notice to Client, suspend services under this Agreement until it receives full payment for all amounts then due for services, expenses and charges. Payment methods, expenses and rates may be more fully described in Exhibit C and Exhibit E.

ARTICLE 8 – SUBMITTALS AND PAY APPLICATIONS

If the Scope of Work includes the Consultant reviewing and certifying the amounts due the Contractor, the Consultant's certification for payment shall constitute a representation to the Client, that to the best of the Consultant's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in general accordance with the Documents issued by the Consultant. The issuance of a Certificate for Payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Client to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Contractor shall remain exclusively responsible for its Work.

If the Scope of Work includes Consultant's review and approval of submittals from the Contractor, such review shall be for the limited purpose of checking for conformance with the information given and the design concept. The review of submittals is not intended to determine the accuracy of all components, the accuracy of the quantities or dimensions, or the safety procedures, means or methods to be used in construction, and those responsibilities remain exclusively with the Client's contractor.

ARTICLE 9 – HAZARDOUS MATERIALS

Notwithstanding the Scope of Services to be provided pursuant to this Agreement, it is understood and agreed that Consultant is not a user, handler, generator, operator, treater, arranger, storer, transporter, or disposer of hazardous or toxic substances, pollutants or contaminants as any of the foregoing items are defined by Federal, State and/or local law, rules or regulations, now existing or hereafter amended, and which may be found or identified on any Project which is undertaken by Consultant.

The Client agrees to indemnify Consultant and its officers, subconsultant(s), employees and agents from and against any and all claims, losses, damages, liability and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind, except that this clause shall not apply to such liability as may arise out of Consultant's sole negligence in the performance of services under this Agreement arising from or relating to hazardous or toxic substances, pollutants, or contaminants specifically identified by the Client and included within Consultant's services to be provided under this Agreement.

ARTICLE 10 – INSURANCE

Consultant has procured general and professional liability insurance. On request, Consultant will furnish client with a certificate of insurance detailing the precise nature and type of insurance, along with applicable policy limits. Additional Insurance requirements are listed in Exhibit D.

ARTICLE 11 – TERMINATION OR SUSPENSION

If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than sixty (60) days through no fault of Consultant, Consultant shall be entitled to either terminate its agreement upon seven (7) days written notice or, at its option, accept an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by Consultant in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. In the event of termination Consultant shall be compensated for services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

This Agreement may be terminated by either party upon thirty (30) days' written notice without cause. Consultant shall upon termination only be entitled to payment for the work performed up to the Date of termination. In the event of termination, copies of plans, reports, specifications, electronic drawing/data

files (CADD), field data, notes, and other documents whether written, printed or recorded on any medium whatsoever, finished or unfinished, prepared by the Consultant pursuant to this Agreement and pertaining to the work or to the Project, (hereinafter "Instruments of Service"), shall be made available to the Client upon payment of all amounts due as of the date of termination. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the services hereunder and/or the termination of this Agreement.

ARTICLE 12 – INDEMNIFICATION

The Consultant agrees to indemnify and hold the Client harmless from any damage, liability or cost to the extent caused by the Consultant's negligence or willful misconduct.

The Client agrees to indemnify and hold the Consultant harmless from any damage, liability or cost to the extent caused by the Client's negligence or willful misconduct.

ARTICLE 13 – WAIVER OF CONSEQUENTIAL DAMAGES

The Consultant and Client waive claims against each other for consequential damages arising out of or relating to this contract. This mutual waiver includes damages incurred by the Client for rental expenses, for loss of use, loss of income, lost profit, project delays, financing, business and reputation and for loss of management or employee productivity or of the services of such persons; and (2) Damages incurred by the Consultant for principal office expenses including the compensation for personnel stationed there, for losses of financing, business and reputation and for loss of profit except anticipated profit arising directly from the Work. The Consultant and Client further agree to obtain a similar waiver from each of their contractors, subcontractors or suppliers.

ARTICLE 14 – WAIVER OF CLAIMS FOR PERSONAL LIABILITY

It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors.

ARTICLE 15 – ASSIGNMENT

Neither Party to this Agreement shall assign its interest in this agreement, any proceeds due under the Agreement nor any claims that may arise from services or payments due under the Agreement without the written consent of the other Party. Any assignment in violation of this provision shall be null and void. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Consultant or Client. This Agreement is for the exclusive benefit of Consultant and Client and there are no other intended beneficiaries of this Agreement.

ARTICLE 16 – CONFLICT RESOLUTION

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Client and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation as a precondition to any formal legal proceedings.

ARTICLE 17 – CONFIDENTIALITY

The Consultant agrees to keep confidential and not to disclose to any person or entity, other than the Consultant's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information furnished to the Consultant and marked CONFIDENTIAL by the Client. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Consultant to complete services under the Agreement or defend itself from any suit or claim.

ARTICLE 18 – AVAILABLE INSURANCE PROCEEDS AND LIMITATION OF LIABILITY

Consultant maintains professional liability insurance with a liability limit of not less than \$2,000,000 per claim. The Consultant's total liability to Client shall not exceed the total available insurance policy limits per claim available to Consultant under its professional liability insurance policy. Client hereby agrees that to the fullest extent permitted by law, the Consultant's total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to or arising from this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty (Client's Claims) shall not exceed the total policy limits available to Consultant under its professional liability insurance policy for settlement or satisfaction of Client's Claims under the terms and conditions of the Consultant's professional liability insurance policy applicable hereto.

Notwithstanding the language above, Client agrees that with regard to any claim arising from or relating to Consultant's provision of geotechnical engineering services, construction materials testing, special inspections, and/or environmental engineering services, including but not limited to environmental site assessments, that Consultant's liability for any claims asserted by or through Client shall be limited to \$50,000.

Client and Consultant each further agree that neither will be responsible for any incidental, indirect, or consequential damages (including loss of use or loss of profits) sustained by the other, its successors or assigns. This mutual waiver shall apply even if the damages were foreseeable and regardless of the theory of recovery plead or asserted.

ARTICLE 19 – CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Minnesota. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, including but not limited to claims for negligence or breach of warranty, that is not settled by nonbinding mediation shall be settled by the law of the state of Minnesota.

ARTICLE 20 – LOCATION OF UNDERGROUND IMPROVEMENTS

Where requested by Client, Consultant will perform customary research to assist Client in locating and identifying subterranean structures or utilities. However, Consultant may reasonably rely on information from the Client and information provided by local utilities related to structures or utilities and will not be liable for damages incurred where Consultant has complied with the standard of care and acted in reliance on that information. The Client agrees to waive all claims and causes of action against the Consultant for claims by Client or its contractors relating to the identification, removal, relocation, or restoration of utilities, or damages to underground improvements resulting from subsurface penetration locations established by the Consultant.

LINE NUMBER	ITEM NUMBER	ITEM	UNITS	TOTAL ESTIMATED QUANTITIES	UNIT PRICE	ENGINEER'S ESTIMATED COST
1	2021.501	MOBILIZATION	LS	1	\$ 50,000.00	\$ 50,000.00
2	2105.507	COMMON EXCAVATION (P)	CY	4,500	\$ 11.50	\$ 51,750.00
3	2105.507	SELECT GRANULAR BORROW (CV) (P)	CY	2,250	\$ 15.00	\$ 33,750.00
4	2105.607	CHANNEL AND POND EXCAVATION	CY	5,000	\$ 6.00	\$ 30,000.00
5	2211.519	SUBGRADE PREPARATION	ROST	14	\$ 225.00	\$ 3,150.00
6	2257.506	AGGREGATE BASE CLASS 5	CY	2,725	\$ 17.25	\$ 47,006.25
7	2357.506	BITUMINOUS MATERIAL FOR TACK COAT	GAL	825	\$ 2.00	\$ 1,650.00
8	2360.509	TYPE SP 9.5 WEARING COURSE MIX (3,C)	TON	625	\$ 70.00	\$ 43,750.00
9	2360.509	TYPE SP 12.5 NON WEAR COURSE MIX (3,C)	TON	1,250	\$ 70.00	\$ 87,500.00
10	2501.502	12" RC PIPE APRON	EACH	1	\$ 750.00	\$ 750.00
11	2502.503	6" PERF PVC PIPE DRAIN	LF	2,740	\$ 16.00	\$ 43,840.00
12	2502.602	6" PVC PIPE DRAIN CLEANOUT	EACH	6	\$ 2,000.00	\$ 12,000.00
13	2503.503	10" PVC PIPE SEWER (SDR-35)	LF	1,370	\$ 75.00	\$ 102,750.00
14	2503.503	12" RC PIPE SEWER DES 3008	LF	150	\$ 65.00	\$ 9,750.00
15	2503.503	15" RC PIPE SEWER DES 3008	LF	500	\$ 80.00	\$ 40,000.00
16	2503.503	18" RC PIPE SEWER DES 3008	LF	40	\$ 100.00	\$ 4,000.00
17	2503.503	24" RC PIPE SEWER DES 3006	LF	40	\$ 120.00	\$ 4,800.00
18	2503.602	SANITARY SEWER SERVICE	EACH	9	\$ 1,500.00	\$ 13,500.00
19	2503.602	CONNECT TO EXISTING SANITARY SEWER	EACH	2	\$ 1,500.00	\$ 3,000.00
20	2506.502	CONST DRAINAGE STRUCTURE DES SPECIAL (CB)	EACH	8	\$ 2,500.00	\$ 20,000.00
21	2506.502	CONST DRAINAGE STRUCTURE DES 4007	EACH	4	\$ 5,000.00	\$ 20,000.00
22	2506.502	CONST DRAINAGE STRUCTURE DES XX-4020	EACH	2	\$ 4,000.00	\$ 8,000.00
23	2506.502	ADJUST FRAME & RING CASTING	EACH	5	\$ 1,000.00	\$ 5,000.00
24	2506.602	CONNECT INTO EXISTING STORM SEWER	EACH	2	\$ 1,500.00	\$ 3,000.00
25	2511.507	RANDOM RIP RAP CLASS III	CY	10	\$ 50.00	\$ 500.00
26	2531.503	CONCRETE CURB & GUTTER DESIGN B624	LF	2,740	\$ 20.00	\$ 54,800.00
27	2563.601	TRAFFIC CONTROL	LS	1	\$ 5,000.00	\$ 5,000.00
28	2573.502	STORM DRAIN INLET PROTECTION	EACH	10	\$ 250.00	\$ 2,500.00
29	2573.503	SILT FENCE, TYPE MS	LF	1,000	\$ 2.50	\$ 2,500.00
Sewer & Street Construction Total						\$ 704,246.25
Construction Contingency 20%						\$ 140,849.25
Water Distribution System						\$ 75,000.00
Electric Distribution System						\$ -
Gas Distribution System						\$ 21,000.00
Total Construction Estimate						\$ 941,095.50
Legal & Admin 5.0%						\$ 47,000.00
Engineering 7.5%						\$ 71,000.00
Survey & Mat'l Testing 2.0%						\$ 19,000.00
Construction Inspection 4.0%						\$ 38,000.00
TOTAL PROJECT						\$ 1,116,095.50

12th Avenue NE - 14th St. to 17th St.

length 1370
width 40

2" asphalt 616.5
8" agg base 2712.6
12" granular 2232.6
Subgrade Ex 4465.2

12th Ave. NE Cook Farm
water per ft \$ 70.00 \$ 70.00
electric per ft \$ 129.00 \$ 100.00
gas per ft \$ 15.00 \$ 10.00

Developer Costs for Lots Along 12 Av NE from 14 St NE to 17 St NE (north side, 7.5 acre)

Electric - No cost for electric extension - Existing OH along south side of 12 Av NE. - Any possible electric primary extension into the lot would be at an additional cost.

Service to most electrical loads from existing OH electric should involve only minor costs from AU.

Gas - Estimated at \$21,000 total. An approx. per acre cost would be \$2,800/acre. Gas service contract to extend service into each property will be \$1,500, or more, depending on location within property where gas meter will be located.

Water - Estimated at \$75,000 total. Exact lot dimensions would be needed to calculate AU charges. An approx. per acre cost would be \$10,000/acre.

Tap fee ranges from \$425 to \$1,650 depending on size of service line required.

Property owner to extend water service line from water main in street into property to building.

\$ 845,095.50

\$ 96,000.00

\$ 175,000.00



500 Fourth Ave. NE
Austin, MN 55912-3773

www.ci.austin.mn.us

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

April 4, 2022

To: President and Members of the Port Authority Board

From: Craig Clark, Executive Director of the Austin Port Authority

RE: Signage for 209 4th Avenue NE related to Port Authority Easement on the façade

I was notified by Karen Benson that they have prospective tenant for their property at 209 4th Avenue NE who would like to place a sign on the building. Included in the packet (Exhibit 1) is the agreement we have with them which places a façade easement on the exterior of the building. As you can see in the document 2 e directly relates to the installation of signage. There was no previous signage on the building in the proposed area.

In short, we need the Port Authority's approval of the sign. Included as (Exhibit 2) is the proposed sign from Land Home Financial.

Port Authority action is requested to approve the sign as included in Exhibit 2. Applicant shall properly record and provide a copy of such recording to the Port Authority.



The client warrants that the subject matter is his property and copyright. If a third party has a claim on the subject matter, the client agrees that he or she will be responsible for any legal action taken to protect the client's copyright. The client agrees to indemnify and hold Jenic Sign Corp. harmless for all liability, damages and attorney fees that may be incurred in any legal action or with a copyright infringement involving the work product of Jenic Sign Corp.

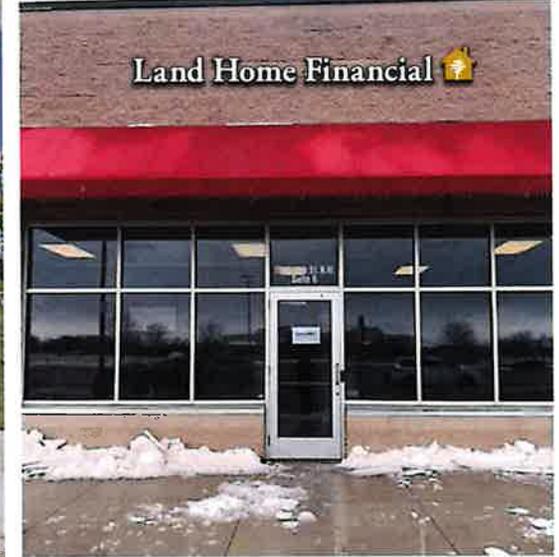
ELECTRICAL: THIS SIGN IS INTENDED TO BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 600 OF THE NATIONAL ELECTRICAL CODE AND/OR OTHER APPLICABLE LOCAL CODES. THIS INCLUDES PROPER GROUNDING AND BONDING OF THE SIGN.



AFTER - NOT TO SCALE



BEFORE - NOT TO SCALE



BEFORE - NOT TO SCALE - CURRENT LOCATION

REUSING CHANNEL LETTERS FROM AUSTIN LOCATION AND INSTALLING IN NEW AUSTIN LOCATION

Land Home Financial



SCALE: 1" = 1'

DIRECT MOUNT CHANNEL LETTER/LOGO

DATE: 3/28/22

SALESMAN: BOB GRUBER JR

DRAWN BY: BRET SCHWINGHAMMER

LOCATION: AUSTIN, MN

SQ. FT.:

VOLTAGE: 120/277

PHOTO EYE: NO

WO: #

A000580917

OFFICE OF COUNTY RECORDER
MOWER COUNTY MINNESOTA

I HEREBY CERTIFY THAT THE WITHIN
INSTRUMENT WAS FILED, AND/OR
RECORDED ON 02/19/2010 02:37PM

AS DOC #: A000580917
REC FEE: \$46.00

SUSAN M. DAVIS
COUNTY RECORDER

BY Cass Matusz DEPUTY

PRESERVATION AND CONSERVATION EASEMENT

Between James Benson and Karen Benson and

The Austin Port Authority ✓

Dated November 5th 2009

PRESERVATION AND CONSERVATION EASEMENT

THIS PRESERVATION AND CONSERVATION EASEMENT, made this ^{5th} day of ~~October~~^{November}, 2009, by and between James Benson and Karen Benson, husband and wife, (hereinafter referred to as "Grantor(s)"), and the The Austin Port Authority, a Public Corporation under the laws of the State of Minnesota, acting in accordance with the provisions of Minnesota Statutes Chapter 84C, as amended, with its principal office and mailing address at City Hall, 500 Fourth Avenue NE, Austin, Minnesota 55912 (hereinafter "Grantee").

WITNESSETH:

WHEREAS, Grantors are owners in fee simple of certain real property in the City of Austin, Mower County, Minnesota, said property being legally described as follows:

See Exhibit A

(hereinafter "Site") and including one main structure commonly known the Jim Benson Insurance Agency (formerly Forth Avenue School) building (hereinafter referred to as the "Building") located at 209 4th Avenue NE, Austin, Minnesota, 55912 (hereinafter sometimes collectively referred to as the "Premises").

WHEREAS, Grantee is authorized to accept preservation and conservation easements to protect and preserve property significant in national and state history and culture under the provisions of Minnesota Statutes Chapter 84C, as amended (hereinafter the "Act"); and

WHEREAS, Grantee has determined that preservation of the premises is advisable and serves the public interest by increasing interest in, and potential economic activity and development in, Grantee's historic core business district, which has experiences economic distress for many years; and

WHEREAS, both the Grantor and Grantee recognize the architectural, historic, cultural and aesthetic values (hereinafter "Preservation and Conservation Values") and significance of the Property, and have the common purpose of conserving and preserving the aforesaid values and significance of the Property; consistent with the initial commercial use thereof, always in keeping with zoning regulations in effect as of the date hereof or pursuant to zoning variances, amendments or special uses from time to time hereafter approved in writing by Grantee and the local zoning authorities; and

WHEREAS, the grant of a Preservation and Conservation Easement by Grantors to Grantee on the External Facades will assist in preserving and maintaining the External Facades, and their architectural, historical and cultural features; and

WHEREAS, to that end, Grantors desire to grant to Grantee, and Grantee desires to accept, a Preservation and Conservation Easement on the External Facades, pursuant to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantors do hereby irrevocably grant and convey unto Grantee a Preservation and Conservation Easement in gross in perpetuity (the "Easement") in and to the Premises including, but not limited to the Exterior surfaces of the Building, owned by Grantors, and legally described above.

Grantors claim title by Contract for Deed dated June 1, 2009, under which they are Vendees and James J. Urick and Pamela A. Urick are Vendors claiming title under deed dated April 1, 2005 and recorded in the Official Records of Mower County, Minnesota, as document number A000538406.

The Easement herein granted shall be of the nature and character hereinafter expressed, and shall constitute a binding servitude, to run in perpetuity upon said Property, and to that end, Grantors covenant on behalf of themselves, their heirs and assigns, with Grantee, its successors, and assigns, that each of the following covenants and stipulations, will contribute to the public purpose and will aid significantly in the preservation of the Property, and will help maintain and assure the present and future historic integrity of the Property.

1) Preliminary Description of Facades. Grantors have restored and rehabilitated the Exterior Facades of the Building to conform to the drawings provided to Austin Main Street Project and approved by said organization's Design Committee. A copy of said drawings and additional photographs of the Exterior Facades are attached hereto as Exhibit B. It is stipulated by and between Grantor(s) and Grantee that the external nature of the Building as shown on Exhibit B will be deemed to be the external appearance and condition of the Property as of the date of the commencement of this easement.

As used herein: "Exterior Facades" shall mean and include all walkways and hardscape approaching various entrances to the Building and exterior surfaces of the building as designed by the architect/draftsman and evidenced on Exhibit B, and landscaping sympathetic to the architect/draftsman's architectural style; Exterior Facades include the visible exterior surfaces on all sides of the building (including any materials, coatings, treatments, etc. of said surfaces), the windows and doors, and any awnings, lights or other decorative or functional fixture on the exterior surface of the building.

2) Grantors' Permanent Covenants. In furtherance of the Easement herein granted, Grantors covenant and agree, for themselves, their heirs and assigns, to do (and to refrain from doing as the case may be) upon the Premises, Building and Site, the following:

- a) Grantors shall not demolish, remove, or raze the Building or the facades except as provided in Paragraphs 6 & 7.
- b) Without the prior express written permission of Grantee, or its designee, signed by a duly authorized representative thereof, Grantor shall not undertake any of the following actions:
 - i) Increase or decrease the height of the Exterior Facades or the Building;

- ii) Adversely affect the structural soundness of the Facades;
 - iii) Make any changes in the appearance or construction of the Exterior Facades, including the alteration, partial removal, construction, remodeling, or other physical or structural change including any change in color or surfacing excepting ordinary maintenance pursuant to Paragraph 3 (c) below or restoration in accordance with Paragraph 1) above;
 - iv) Erect anything on the Premises, Site or the Facades, which would prohibit the Facades from being visible from street level, except for a temporary structure during any period of approved alteration or restoration.
 - v) Permit any significant reconstruction, repair, repainting, or refinishing of the Exterior Facades that alter their state from that shown in Exhibit B. This subsection (v) shall not include ordinary maintenance pursuant to Paragraph 3 (c) below;
- c) Grantors agree at all times to maintain the Premises, Building and Site in a good and sound state of repair and to maintain the Exterior Facades and the structural soundness and safety of the Building and Site. Grantor shall undertake a Minimum Maintenance Program so as to prevent deterioration of the Exterior Facades. Subject to the casualty provisions of Paragraphs 6 through 8, this Minimum Maintenance Program shall include all reasonably necessary efforts to maintain the Exterior Facades in their condition as shown in Exhibit B and shall include any replacement, rebuilding, repair, and reconstruction as necessary to have the external nature of the Building at all times appear to be, and actually be, the same as depicted in Exhibit B.
- d) Grantors shall not permit buildings or structures, including satellite-receiving dishes, to be erected or placed on the Premises, except for temporary structures required for the maintenance or rehabilitation thereof, without the reasonable written approval of Grantee.
- e) Grantor shall not permit signs, billboards, awnings, or advertisements to be displayed or placed on the Exterior Facades, other than those shown in Exhibit B; provided, however, that Grantors may, with prior written approval from Grantee, erect such signs as compatible with the preservation and conservation purposes of this Easement and appropriate to identifying the Premises, and any activities taking place on the Premises. Such approval from Grantee shall not be unreasonably withheld. As used herein, the term "signs" includes only such signs as are affixed to the exterior of the building in such a manner as to imply such affixation to be permanent in nature. Nothing herein shall remove the requirement that any such signage as is hereby already included in Exhibit B, or hereafter added, must comply in all respects with the Sign Ordinance of the City of Austin.

- f) Grantors shall not engage in or permit removal, destruction, or cutting down of trees, shrubs, or other vegetation on the Premises; provided, however, that Grantors may with prior written approval, from and in the sole discretion of Grantee, undertake such landscaping of the Premises deemed compatible with the preservation and conservation purposes of this Easement. In all events, Grantors shall maintain trees, shrubs, and lawn in good manner and appearance in conformity with good landscaping practices. Approval from Grantee shall not be unreasonably withheld.
 - g) Grantors shall not permit the dumping of unsightly or offensive materials on the Premises.
 - h) Grantor shall not permit above ground utility transmission lines on the Premises if there is a reasonable alternative.
 - i) Grantors shall not subdivide, sell or develop the Site separately, and shall not devise or convey the Premises except as a unit.
- 3) Standards for Review. In exercising any authority granted to Grantee by this Easement to: inspect the Premises, Building, Site or the Facades; review any construction, alteration, reconstruction of the Premises, Building, Site or Facades following casualty damage; Grantee shall refer to and apply the Standards, as currently in effect and as amended from time to time hereafter. State or local standards may also be considered for review of work affecting historically or architecturally significant structures. Grantors agree to abide by the Standards in performing all ordinary repairs and maintenance work and the minimum maintenance program described in Paragraph 3 (c). In the event the Standards are abandoned or materially altered or otherwise become inappropriate for the purposes set forth above, reasonable alternative standards agreed upon by Grantee and Grantors shall apply.
- 4) Casualty Damage or Destruction.
- a) In the event that the Building, Site, or Facades or any part thereof, shall be damaged or destroyed by casualty, Grantors shall as soon as practicable notify Grantee in writing of the damage or destruction. The notification shall include what, if any, emergency work has already been completed. For purposes of this Easement, the term "casualty" is defined as such sudden damage or loss as would qualify for a loss deduction pursuant to Section 165 (c) (e) of the Internal Revenue Code (construed without regard to the legal status, trade, or business of Grantors or any applicable dollar limitation). No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the property and to protect public safety, shall be undertaken by Grantors without Grantee's prior approval. Within four (4) weeks of the date of any damage or destruction, that materially affects the operation and use of the Building or Site, Grantors shall submit to Grantee a written report prepared by a qualified architect, and engineer if required, acceptable to Grantors and Grantee which shall include the following:

- i) An assessment of the nature and extent of the damage;
 - ii) A determination of the feasibility of the restoration of the Premises, Building, Site or Exterior Facades and/or reconstruction of damaged or destroyed portions of the Premises, Building, Site or External Facades; and/or reconstruction of damaged or destroyed portions of the Premises, Building, Site or Exterior Facades; and
 - iii) A detailing of such restoration/construction work necessary to return the Premises, Building, Site or External Facades to the condition existing at the time of the Commencement of this Agreement.
 - b) If, in the opinion of Grantee, after reviewing such report, the purpose and intent of the easement will be served by such restoration/reconstruction, Grantors shall, within eighteen (18) months after the date of such damage or destruction complete the restoration/construction of the Premises in accordance with plans and specifications consented to by Grantee up to at least the total amount of insurance proceeds payable as a result of the damage or casualty. Grantee, at its option shall have the right to raise or contribute funds toward the costs or restoration of partially destroyed Premises above and beyond the total of the insurance proceeds payable. Grantors shall have no obligation to repay any of said funds so raised or contributed.
- 5) Grantee's Remedies Following Casualty Damage: The forgoing notwithstanding, in the event of damage resulting from casualty, as defined in Paragraph 6, of such magnitude and extent as to render repairs or reconstruction of the Premises, Building, Site, or Facades impossible using all applicable insurance proceeds, as determined by two or more independent bona fide cost estimates, then
- a) Grantee may, at its own cost and expense elect to reconstruct the Premises, Building, Site, or Facades, using insurance proceeds available, donations, or other funds received by Grantors or Grantee on account of such casualty;
 - b) Grantee and Grantors may elect to extinguish the Easement pursuant to Paragraph 25.
- 6) Review after Casualty Loss: If, in the opinion of Grantee and Grantors, restoration/reconstruction would not serve the purpose and intent of the easement, then Grantors shall continue to comply with the provisions of the Easement dealing with the extinguishment of the Easement and/or an effort to alter, demolish, remove, to raze the Premises, Building or Site, and/or construct new improvements on the Premises.
- 7) Grantee's Covenants: Grantee hereby warrants and covenants that:
- a) In the event that Grantee shall at any time in the future become the fee simple owner of the Premises, Grantee for itself, its successors, and assigns, covenants

and agrees, in the event of a subsequent conveyance of the same to another, to specifically continue the applicability of the Easement.

- b) Grantee may, with the agreement and consent of Grantors, convey, assign, or transfer this Easement to a Qualified Organization as defined in Minnesota Statutes Chapter 84C, provided that any such conveyance, assignment, or transfer requires that the preservation or conservation purposes for which the Easement was granted will continue to be carried out.
 - c) Grantee may also delegate its obligations, duties, responsibilities, and/or rights, in whole or in part, by designation to a Qualified Organization as defined in Minnesota Statutes Chapter 84C.
 - d) Grantee shall exercise reasonable judgment and care in performing its obligations and exercising its rights under the terms of the Easement.
- 8) Inspection: Grantors hereby agree that representatives of Grantee shall be permitted to the Premises including the Facades and the Building and Site, at any time when Grantee has reason to believe, based upon observance or report of conditions constituting or threatening to constitute deterioration of the Exterior Façade(s). Upon notice by Grantee to Grantor of such that such conditions have been met, Grantors agree that representatives of Grantee shall be permitted to enter and inspect the interior of the building to ensure maintenance of structural soundness and safety of the Exterior Facades and any interior structural member of the Premises that provides support to the Exterior Facades. Inspection of the interior may involve reasonable testing of interior structural condition, but any such testing shall be undertaken only after consultation with Grantor. Inspection of the interior will be made at a time mutually agreed upon by Grantors and Grantee, and Grantors covenant not to withhold unreasonably their consent in determining a date and time for such inspection.
- 9) Grantee's Remedies. Grantee has the following legal remedies to correct any violation of any covenant, stipulation, or restriction herein, in addition to any remedies now or hereinafter provided by law:
- a) Grantee may, following reasonable written notice to Grantors, institute suit(s) to enjoin such violation by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Premises, Building, Site or Facades to the condition and appearance required under this instrument.
 - b) Grantee shall notify Grantors of any violation it determines to be in existence. Grantors shall, upon such notice, have one-hundred and eighty (180) days to correct the violation, or to be making substantial progress toward such correction. In the event Grantors do not undertake or complete correction of the violation, Grantee may, following reasonable notice to Grantors, enter upon the Premises, correct any such violation, and hold Grantors, their successors, and assigns, responsible for the cost thereof.

- i) Such cost, until repaid, shall constitute a lien on the Premises.
 - ii) Grantee shall exercise reasonable care in selecting independent contractors or individuals to correct any such violations, including making reasonable inquiry as to whether any such contractor or individual is properly licensed and has adequate liability insurance and worker's compensation coverage.
 - c) Grantee shall also have available all legal and equitable remedies to enforce Grantor's obligations hereunder.
 - d) In the event Grantors are found to have violated any of their obligations, Grantors shall reimburse Grantee for any costs or expenses incurred in connection therewith, including all reasonable court costs, and attorney, architectural, engineering and expert witness fees.
 - e) Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.
- 10) Notice from Government Authorities. Grantors shall deliver to Grantee copies of any notice, demand, letter, or bill received by Grantors from a government authority within five (5) days of receipt by grantors. Upon request by Grantee, Grantors shall promptly furnish grantee evidence of Grantors' compliance with such notice, demand, letter, or bill, where compliance is required by law.
- 11) Notice of Proposed Sale. Grantors shall promptly notify Grantee in writing of any proposed sale of the Premises and provide the opportunity for Grantee to explain the terms of the Easement to potential new owners prior to sale closing.
- 12) Runs with the land: The obligation imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the premises except as provided in Paragraphs 25 and 26 (f) hereof. This Easement shall extend to and be binding upon Grantors and Grantee, their respective successors in interest, and all persons hereafter claiming under or through Grantors and Grantee, and the words "Grantors" and "Grantee" when used herein shall include all such persons. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this instrument where such person shall cease to have any interest in the premises by reason of a bona fide transfer. Restrictions, stipulations, and covenants contained in this instrument shall be inserted by Grantors, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantors divest themselves of either the fee simple title to or any lesser estate in the premises or any part thereof.

- 15) Plaques: Grantors agree that Grantee may provide and maintain a plaque on the Facades of the Building, which plaque shall not exceed 6 by 6 inches in size, giving notice of the significance of the premises, building or Site and the existence of this Easement.
- 16) Indemnification: Grantors hereby agree to pay, protect, indemnify, hold harmless, and defend at their own cost and expense, Grantee, its agents, director, and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in any way relating to the administration, performed in good faith, of this preservation and conservation easement, including, but not limited to, the granting or denial of consents hereunder, the reporting on or advising as to any condition on the premises, and the execution of work on the Premises. In the event that Grantors are required to indemnify Grantee pursuant to the terms of this Easement, the amount of such indemnity, until discharged, shall constitute a lien on the Premises.
- 17) Taxes: Grantors shall pay immediately, when first due and owing, all general taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Premises, Building and Site. Grantee is hereby authorized, but in no event required or expected, to make or advance, upon three (3) days prior written notice to Grantors, in the place of Grantors, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipality charge, fine, imposition, or lien asserted against the Premises, Building or Site and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment, if made by Grantee, shall become a lien on the Premises, Building and Site with the same priority as the item if not paid would have had and shall bear interest until paid by Grantors at the prime rate of interest from time to time charged by the primary mortgage lender on the premises, or the statutory rate, whichever is higher.
- 18) Insurance: Grantors shall keep the Premises, Building and Site insured by an insurance company rated "A" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage of a type and in such amounts as would normally be carried on a property such as the Premises, Building and Site considering Grantor's use of the same and the protection intended by the grant of this Easement. Such insurance shall include Grantee's interest and name Grantee as an additional insured and shall provide for at least thirty (30) days' notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Furthermore, Grantors shall deliver to Grantee fully executed copies of such insurance policies evidencing the aforesaid insurance coverage at the commencement of this grant and copies of a new or renewed policies at least ten (10) days prior to the expiration of such policy. Grantee shall have the right to provide insurance at Grantor's cost and expense, should grantors fail to obtain same. In the event Grantee obtains such insurance, the cost

- 13) Recording: Grantors shall cause this Easement to be recorded in the official records of Mower County, Minnesota within ten days (10) of the execution of this easement. This instrument is effective with respect to third parties only upon recording of this Easement in the official records of Mower County, Minnesota.
- 14) Subordination of Mortgages: Grantors and Grantee agree that all mortgages and rights in the property of all Mortgagees are subject and subordinate at all times to the rights of Grantee to enforce the purposes of this Easement. Grantors have provided a copy of the Easement to all Mortgagees of the Premises as of the date of this agreement, and has secured the agreement of each Mortgagee to subordinate the mortgage to the Easement by execution of a Subordination Agreement in similar for to that attached hereto as Exhibit C. Grantors shall immediately cause to be satisfied or release any lien or claim of lien that is not so subordinated to this Easement or which may hereafter come to exist against the premises, which would have priority over any of the rights, title, or interest hereunder of Grantee. The following provisions apply to all Mortgagees now existing or hereafter holding a mortgage on the Premises:
- a) If a mortgage grants to a mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain as to all or any part of the Premises or the right to receive insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Premises, the Mortgagee shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to Grantee until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to the Easement.
 - b) If a Mortgagee has received an assignment of the leases, rents, and profits of the Premises as security or additional security for a loan, then the Mortgagee shall have a prior claim to the leases, rents, and profits of the Premises and shall be entitled to receive same in preference to grantee until said Mortgagee's debt is paid off, notwithstanding that the Mortgage is subordinate to the Easement.
 - c) Until a Mortgagee or purchaser at foreclosure obtains ownership of the Premises following foreclosure of its Mortgage or deed in lieu of foreclosure, the Mortgagee or purchaser shall have no obligation, debt, or liability under the Easement.
 - d) Before exercising any right or remedy due to breach of the Easement except the right to enjoin a violation hereof, Grantee shall give all Mortgagees of record written notice describing the default, and the Mortgagees shall have sixty (60) days thereafter to cure or cause a cure of the default.
 - e) Nothing contained in the above paragraphs or in the Easement shall be construed to give any Mortgagee the right to extinguish this Easement by taking title to the Premises by foreclosure or otherwise.

of such insurance shall be a lien on the Premises, Building and Site until repaid by Grantors.

- 19) Liens: Any lien on the Premises, Building or Site created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien.
- 20) Written Notice: Any notice which either Grantors or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by registered, or by certified mail with return receipt requested, or by hand delivery, or by telefacsimile transmission to the following addresses:

if to Grantors:

James Benson and Karen Benson
25475 515th Avenue
Austin, Minnesota 55912

and if to Grantee:

City of Austin
City Hall
500 Fourth Avenue NE
Austin, Minnesota 55912

or to any subsequent address as notified. Each party may change its address set forth herein by a written notice to such effect to the other party. Any notice, consent, approval, agreement, or amendment permitted or required of Grantee under the Easement may be given by Grantee, or by any duly authorized representative of Grantee.

- 21) Evidence of Compliance: Upon request by Grantee, Grantors shall promptly furnish Grantee with evidence of Grantor's compliance with any obligation of Grantors contained herein.
- 22) Extinguishment: Notwithstanding any provision in this Agreement to the contrary, Grantors and Grantee hereby recognize that an unexpected change in the conditions surrounding the Premises, Building or Site may make impossible the continued ownership or use of the Premises, Building or Site for the preservation and conservation purposes and necessitate extinguishment of this Easement. Such a change in Condition includes, but is not limited to, partial or total destruction of the building or the Facades resulting from a casualty of such magnitude that Grantee and Grantor agree to demolition as set forth in paragraphs 6, 7, and 8, or condemnation or loss of title of all or a portion of the Premises, Building, Site or Facades. Such an extinguishment must be the result of a final judicial proceeding or mutual written agreement of Grantor and Grantee.

23) Interpretation and Enforcement: The following provisions shall govern the effectiveness, interpretation, and duration of this Easement.

- a) Any rule of strict construction designed to limit the breadth of restriction on alienation or use of property shall not apply in the construction or interpretation of this instrument, and this instrument shall be interpreted broadly to effect its preservation and conservation purposes and the transfer of rights and the restrictions on use herein contained.
- b) This instrument shall extend to and be binding upon Grantors and all persons hereafter claiming under or through Grantors, and the word "Grantors" when used herein shall include all such persons, whether or not such persons have signed this instrument or then have an interest in the premises. Anything contained herein to the contrary notwithstanding a person shall have no obligation pursuant to this instrument where such person shall cease to have any interest (present, partial, contingent, collateral, or future) in the premises by reason of a bona fide transfer for full value. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.
- c) This instrument may be executed in counterparts. Each counterpart shall constitute the agreement of the Parties. Immediately after execution hereof, one counterpart shall be held by each of Grantors and Grantee, and one counterpart shall be stored as a matter of public record at the office of Grantee.
- d) Except as expressly provided herein, nothing contained in this instrument grants, nor shall be interpreted to grant, to the public any unlimited right to enter on the Premises, Building or Site.
- e) The terms and conditions of this Easement shall be referenced in any transfer of the property by Grantors, their heirs and assigns.
- f) Notwithstanding anything to the contrary contained herein, for purposes of furthering the preservation of the Premises, Building and Site, and of furthering the other purposes of this instrument, and to meet changing conditions, Grantors and Grantee are free to amend jointly the terms of this instrument in writing without notice to any party; provided however, that no such amendment shall limit the perpetual duration or interfere with the preservation and conservation purposes of this grant. Such amendment shall become effective upon recording among the land records of Mower County, Minnesota.
- g) This instrument is made pursuant to the laws of the State of Minnesota, but the invalidity of any such statute or any part thereof shall not affect the validity and enforceability of this instrument according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by

GRANTEE:
The Austin Port Authority


By Jerry McCarthy, Its Chairman


By Tom Dankert, Its Secretary

STATE OF MINNESOTA)
)ss
MOWER COUNTY)

On this 5th day of ~~October~~^{November}, 2009, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Jerry McCarthy and Tom Dankert to me personally known, who, being by me duly sworn, did say that they are the Chairman and Secretary, respectively, of The Austin Port Authority, that they are duly authorized to execute this agreement on behalf of The Austin Port Authority, and that they do so on behalf of The Port Authority.


Notary Public



Exhibit A
Legal Description

The East 20 feet of the West 45 feet of Lot 18, Block 33, Original Village (now City) of Austin, and that part of the Northeast Quarter of the Northeast Quarter of Section 3, Township 102 North, Range 18 West, described as follows:

Beginning at the Northwest corner of the East 20 feet of the West 45 feet of said Lot 18; thence North 50 feet; thence East 20 feet to a point 50 feet North of the Northeast corner of the East 20 feet of the West 45 feet of said Lot 18; thence South 50 feet to the Northeast corner of the East 20 feet of the West 45 feet of said Lot 18; thence 20 feet along the North line of the first-described tract to the place of beginning, Mower County, Minnesota.

Exhibit B
Exterior Facades

See Attached Photographs and/or Drawings



Exhibit C
Subordination Agreement

See Attached

