

A G E N D A
CITY COUNCIL MEETING
MONDAY, AUGUST 7, 2023
5:30 P.M.
COUNCIL CHAMBERS

Call to Order.

Pledge of Allegiance.

Roll Call.

- (mot) 1. Adoption of Agenda.
- (mot) 2. Approving minutes from July 17, 2023
- 3. Recognitions and Awards.
- (mot) 4. *Consent Agenda
Licenses:
 - Edible Cannabinoid: Cheers Liquor, 502 12th Avenue NW
 - Exempt Gambling: Austin Morning Lions on October 27, 2023
 - Massage Therapist: Betsy House, Ellsworth, Wisconsin
 - Massage Therapist: Ehler Paw, 506 Wayside Avenue, Albert Lea
 - Sign Installer: Rose City, Inc, Eagle Bend

Claims:

- a. Pre-list of bills
- b. Credit Card Report
- c. Settlement Agreement with Chad Norman

Appointments:

Katie Stromlund to the Pillars of the City Committee, term expiring December 31, 2025

PETITIONS AND REQUESTS:

- (res) 5. Accepting donations to the City of Austin.
- 6. Reviewing an annexation ordinance.
 - (mot) a. For preparation of the ordinance.
 - (ord) b. For adoption and publication of the ordinance.
- (res) 7. Approving an amendment to lease with KSMQ Public Service Media, Inc.
- (res) 8. Approving a quitclaim deed to the State of Minnesota as part of an eminent domain proceeding.
- (res) 9. Approving an ICM agreement with NuTek Biosciences, LLC.
- 10. Reviewing the Public Facilities Authority loan for the Waste Water Treatment Plant.
(No Council action required.)

(res) 11. Declaring the property at 922 2nd Avenue NE a hazardous structure.

(mot) 12. Granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1202 4th Street SE, Anthenat Property.

CITIZENS ADDRESSING THE COUNCIL

HONORARY COUNCIL MEMBER COMMENTS

REPORTS AND RECOMMENDATIONS:

City Administrator

City Council

(mot) Adjourn to **Monday, August 21, 2023** at 5:30 pm in the Council Chambers.

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

M I N U T E S
CITY COUNCIL MEETING
July 17, 2023
5:30 PM
Council Chambers

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

MEMBERS ABSENT:

STAFF PRESENT: City Administrator Craig Clark, Director of Administrative Services Tom Dankert, Police Chief David McKichan, Public Works Director Steven Lang, Planning and Zoning Administrator Holly Wallace, Hormel Nature Center Director Luke Reese and City Clerk Ann Kasel

APPEARING IN PERSON: Austin Daily Herald, Taggart Medgaarden, Donald Nystel, Heidi Pepper, Lindsey Brown

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

Added to the agenda:

4. Licenses:

Edible Cannabinoid: Bell Liquor, 200 South Main Street
Mobile Business: Yarn Mobile, LLC, PO Box 423

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

Moved by Council Member Fischer, seconded by Council Member Poshusta, approving Council minutes from July 3, 2023. Carried.

AWARDS AND RECOGNITIONS

Planning and Zoning Administrator Holly Wallace stated the City received a \$500,000 EPA Brownfield assessment grant and Stantec is providing services for the project.

Heidi Pepper and Lindsey Brown provided an EPA Brownfields community wide assessment update. She stated brownfields are properties which have been previously developed and the redevelopment may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant. The City received a \$500,000 grant to identify brownfield sites in the community through November 30, 2025. Ms. Brown identified key areas around

Oakland and 1st Avenue and Main Street. The grant would fund Phase 1 and Phase 2 environmental assessments on identified properties.

CONSENT AGENDA

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

Licenses:

Community Festival: Austin ArtWorks Festival on August 25-27, 2023
Lodging Establishment (transfer): JJKWL Lodges, LLC to Nanbai, LLC
Mobile Food: Red Cedar Organics, LLC, Chetek, WI
Mobile Food: The Wandering Scoop, Rochester
Outside Liquor Sales: B & J Bar on July 28 and 29, 2023
Edible Cannabinoid: Bell Liquor, 200 South Main Street
Mobile Business: Yarn Mobile, LLC, PO Box 423

Claims:

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

Event Applications:

FITS Employee Appreciation on July 18, 2023
Minnesota Autism Center Open House on July 18, 2023
B & J Summer Parking Lot Party on July 28 and 29, 2023
Oaxacan Community Basketball Tournament on July 29 and 30, 2023
Travis Manion Foundation 9/11 Heroes Run on September 9, 2023

Carried 6-0 with Council Member Helle abstaining.

PUBLIC HEARINGS

A public hearing was held for a five-year tax abatement request from the Austin Housing and Redevelopment Authority. The HRA is proposing to build a single-family home at 903 24th Avenue NW valued at approximately \$350,000. City Administrator Craig Clark stated the application is in conformance with the City's tax abatement policy.

Moved by Council Member Baker, seconded by Council Member Baskin, adopting a resolution approving a five-year tax abatement request from the Austin Housing and Redevelopment Authority. Carried 7-0.

PETITIONS AND REQUESTS

Planning and Zoning Administrator Holly Wallace reviewed a zoning ordinance change petitioned by Schafer Northwest, LLC d/b/a Pulver Towing. She stated the petitioners are requesting to rezone the property from a "B-2" community business district to a "I-1" industrial

district and amend the future land use plan to light industrial. The Planning Commission reviewed the matter at their July 11, 2023 meeting and recommended approval by a 6-0 vote.

Moved by Council Member Baker, seconded by Council Member Poshusta, for preparation of the zoning ordinance. Carried.

Moved by Council Member Postma, seconded by Council Member Fischer, for adoption and publication of the zoning ordinance. Carried 7-0.

Planning and Zoning Administrator Holly Wallace reviewed a variance request from the Radhe Shyam Corp. d/b/a One Stop Food Mart. She stated the petitioners have requested to build up to 5.4 feet from the west property line, which is adjacent to residential property. The current ordinance requires a 20-foot setback from a residential property line. The Planning Commission reviewed the matter at their July 11, 2023 meeting. Two adjacent property owners spoke in opposition to the variance stating they were concerned about the property use, increase traffic and a change in sight lines. The Planning Commission voted 6-0 to deny the variance stating the variance would alter the essential character of the locality in which the property is situated. Ms. Wallace noted the petitioners have an alternative plan in the event the variance is not granted which would comply with a 20-foot setback.

City Administrator Craig Clark stated the requested variance is similar to what the Council approved for the Muffler Center recently. He stated it is important to grow the business corridor.

Ms. Wallace noted that the neighbors in the Muffler Center rezone did not object to the variance.

Donald Nystel, 1303 8th Avenue SW, stated the proposed building would be the length of this property line and would impact the enjoyment of his property.

Council Member Baskin stated he tends to defer to the Planning Commission decision and would also like to deny the variance.

Moved by Council Member Baskin, seconded by Council Member Poshusta, denying a variance request from the One Stop Food Mart. Carried.

Public Works Director Steven Lang requested the Council approve an individual control mechanism agreement (ICM) with WCI Austin Landfill, LLC. She stated the City has been accepting leachate from the landfill since 2011 and the agreement sets forth the pollutant levels for the leachate being brought to the waste water treatment plant. The agreement is for a three-year term.

Moved by Council Member Baskin, seconded by Council Member Fischer, adopting a resolution approving an ICM agreement with WCI Austin Landfill, LLC. Carried 7-0.

Public Works Director Steven Lang requested the Council approve engineering planning and design services for the Oakland Avenue West and 1st Avenue SW reconstruction project. He stated the streets are scheduled to be reconstructed in 2025 and 2027 and the City has received

federal grants for the projects. The City received the following proposals for engineering services:

Consultant	Proposed Amount
WHKS & Co.	\$ 795,700
SEH, Inc.	\$ 995,288
Bolton & Menk	\$1,188,134

He noted that a portion of the proposal amount will be allocated to Austin Utilities thereby bringing the total low bid to \$744,820.

Mr. Lang requested the Council approve the contract with WHKS & Co.

Council Member Postma asked about the timing of their reconstruction with the replacement of the I-90 bridges.

Mr. Lang stated the start of the project is locked in to begin in 2025.

Council Member Baker requested if there is a better way to reduce consultant fees on the project.

Mr. Lang stated the engineering department does not have the staff available for the large projects. He noted there will need to be surveying and soil borings completed on the project.

Council Member Baskin asked what makes this project so much different.

Mr. Lang stated the City generally completes low volume residential streets and these streets are commercial and major arteries through town.

Moved by Council Member Fischer, seconded by Council Member Helle, approving a contract for engineering services with WHKS for the Oakland Avenue West and 1st Avenue SW reconstruction project. Carried 7-0.

Police Chief David McKichan requested permission to purchase a drone for the police department with 2023 budget savings in the amount of \$3,521. The drone would be designed for interior searches.

Moved by Council Member Baskin, seconded by Council Member Baker, approving the purchase of a drone by the Police Department. Carried.

Hormel Nature Center Director Luke Reese requested the Council approve a grant application with the Greater Minnesota Regional Parks and Trails for intern funding at the Jay C. Hormel Nature Center.

Moved by Council Member Baker, seconded by Council Member Baskin, adopting a resolution approving a Greater Minnesota Legacy Grant application for a Jay C. Hormel Nature Center supplemental teaching staff project. Carried 7-0.

Moved by Council Member Fischer, seconded by Council Member Poshusta, adopting a resolution declaring the property at 613 10th Drive SE a hazardous structure. Carried 7-0.

Moved by Council Member Postma, seconded by Council Member Fischer, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 707 6th Avenue SW, Batikare Property. Carried.

REPORTS

Tom Schulte, President Local Firefighters 598, stated the 2023 IMFF convention will be held in September in Austin. He invited the Council to live fire training Saturday, September 9th.

Mayor King noted the City is accepting applications for an honorary council member.

Council Member Baskin congratulated Games People Play for their 40 years in Austin.

Council Member-at-Large Austin reported the summer programming at the library is going well.

Council Member Postma thanked the City staff for their hard work on the 4th of July. He stated the Austin Country Club is hosting junior golfers.

Council Member Helle noted the Parks and Recreation Director Dave Merrill will be leaving the City and she wished him well. She recommended the City hire an interim director from outside the City on a short-term basis.

Mayor King noted Council, the Port Authority and staff toured the Mill on Main apartments.

Moved by Council Member Fischer, seconded by Council Member Baker, adjourning the meeting to August 7, 2023. Carried.

Adjourned: 6:34 p.m.

Approved: August 7, 2023

Mayor: _____

City Recorder: _____

RESOLUTION NO.

ACCEPTING DONATIONS TO THE CITY OF AUSTIN

WHEREAS, the City has received gift as follows:

Gift	Donor	For
\$250	Jerry & Jan Fox	Bike Club
\$25	IMO George Moore	Austin Public Library
\$25	IMO Sid Brown	Austin Public Library
\$25	Lois McConnell	Flowers IMO Matthew Brick

NOW THEREFORE, BE IT RESOLVED that the Austin City Council accepts said gifts to the City of Austin.

Passed by a vote of yeas and nays this 7th day of August, 2023.

YEAS

NAYS

ATTEST:

City Recorder

APPROVED:

Mayor

**City of Austin 500 Fourth To:
Avenue N.E. Council
Austin, Minnesota 55912-3773**

Mayor and City



Memorandum

**Planning & Zoning Department
507-437-9950 Fax 507-437-7101**

From: Holly Wallace, Planning & Zoning Administrator

Date: July 24, 2023

Re: Annexation of I-90

There are portions of I-90 and other public right of way in the city that are not annexed. This creates gaps in jurisdiction and issues with overall planning.

The council passed a notice of intent to annex on May 15, 2023, Austin Township waived any objection. The area to be annexed is wholly within the city, is categorized as public right of way and is not subject to taxation.

Please let me know if you have any questions.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF AUSTIN, MINNESOTA, ANNEXING
PROPERTY LOCATED IN AUSTIN TOWNSHIP, MOWER COUNTY, MINNESOTA,
PURSUANT TO MINNESOTA STATUTES 414.033, SUBL. 3, PERMITTING
ANNEXATION BY ORDINANCE.

WHEREAS, the territory described below is not presently within the corporate limits of any incorporated city, and

WHEREAS, the area proposed for annexation is 40 acres or less in size, is 60% or more bordered by land already within the corporate limits of the City of Austin, and is not appropriate for annexation by ordinance pursuant to Minnesota Statutes 414.033, Subd. 2(3); and

WHEREAS, the area proposed for annexation is described as follows:

All that part of Interstate 90 Right-of-Way, County State Aid Highway No. 46, and State Highway 105, lying in the Northeast Quarter of Section 5, Township 102N Range 18W; Northwest Quarter of Section 5, Township 102N, Range 18W; Southwest Quarter of Section 5 Township 102N, Range 18W; Southeast Quarter of Section 5 Township 102N, Range 18W and; Northwest Quarter of Section 4 Township 102N, Range 18W Mower County, Minnesota, excepting any land already within the city.

WHEREAS, the area proposed for annexation abuts upon the corporate limits of the

City of Austin, Minnesota; and

WHEREAS, the area proposed for annexation is unincorporated, abuts on the city's boundary in all directions, and is not included within any other municipality; and

WHEREAS, the area proposed for annexation is approximately 32 acres in size; and

WHEREAS, the reason for the proposed annexation is the right of way is entirely within the city limits; and

WHEREAS, the nature of the area proposed for annexation is: Public Right of Way; and

WHEREAS, the area proposed for annexation is not included in any area that has already been designated for orderly annexation pursuant to Minnesota Statutes 414.0325, nor in any other proceeding currently pending before the Office of Administrative Hearings - Municipal Boundary Adjustment Unit; and

WHEREAS, the City of Austin is not required to hold a public hearing pursuant to Minnesota Statutes S 414.033, Subd. 3, as a Notice of Intent for Annexation was approved by city council May 15, 2023, and was served on May 19, 2023, to Austin Township and the Office of Administrative Hearings — Municipal Boundary Adjustment Unit; and

WHEREAS, the Township provided written notice on June 7, 2023, waiving objection to the annexation; and

WHEREAS, the city council reviewed the annexation;

NOW THEREFORE, the city council of the City of Austin hereby ordains as follows:

1. The city council hereby determines that the property as hereinafter described abuts upon the corporate limits of the City of Austin, Minnesota in all directions and is not included within any other municipality.
2. None of the property is now included within the limits of any city, or in any area that has already been designated for orderly annexation pursuant to Minnesota Statutes 5414.0325.
3. The corporate limits of the City of Austin, Minnesota, are hereby extended to include the following described property, said land abutting the City of Austin and it being necessary and appropriate that the same be annexed within the corporate limits of said City of Austin, Minnesota, described as follows:

All that part of Interstate 90 Right-of-Way, County State Aid Highway No. 46, and State Highway 105, lying in the Northeast Quarter of Section 5, Township 102N Range 18W; Northwest Quarter of Section 5, Township 102N, Range 18W; Southwest Quarter of Section 5 Township 102N, Range 18W; Southeast Quarter of Section 5 Township 102N, Range 18W and; Northwest Quarter of Section 4 Township 102N, Range 18W Mower County, Minnesota, excepting any land already within the city.

A copy of the corporate boundary map showing the parcel to be annexed and its relationship to the corporate boundaries of the City of Austin is attached hereto as Exhibit A.

4. That the area legally described herein is vacant and will not affect the population of the City at this time.
The area to be annexed is approximately 32 acres.
5. The property is classified as public right of way.
6. The City of Austin will make no cash payment to Austin Township pursuant to Minnesota Statutes 414.036, since the land being annexed is owned by State and/or local government and is tax exempt.
7. That pursuant to Minnesota Statutes 414.036, there are no special assessments assigned by the town to the annexed property.
8. That the City Clerk-Treasurer of the City of Austin is hereby authorized and directed to file a copy of this ordinance with the Municipal Boundary Adjustment Unit of the Office of the Administrative Hearings, the Minnesota Secretary of State, the Mower County Auditor, Mower County Recorder and the Austin Township Clerk.
9. That this ordinance shall be in full force and effect and final upon the dates this ordinance is approved by the Office of Administrative Hearings.

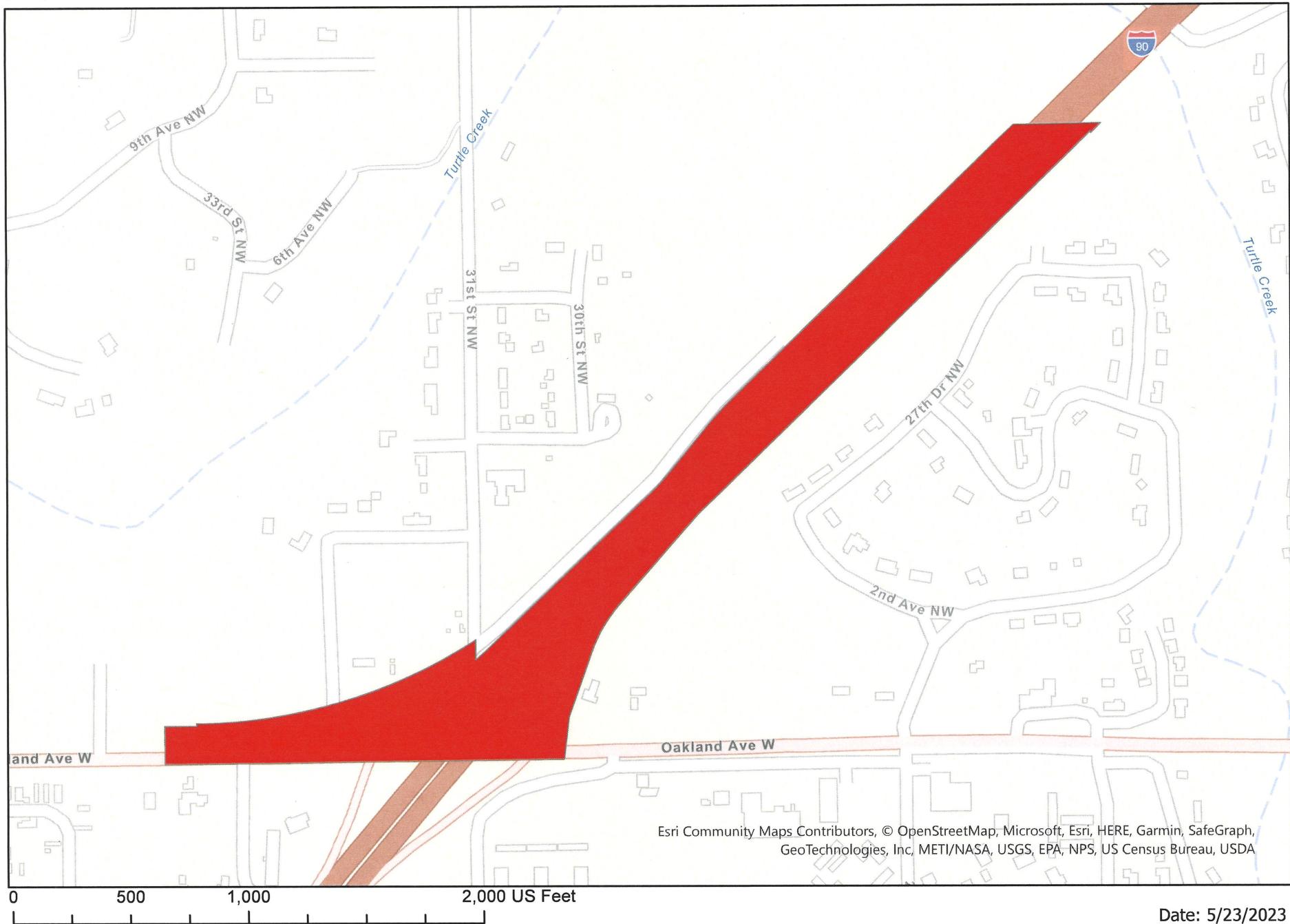
PASSED AND ADOPTED by the City Council of the City of Austin, Minnesota , this 7th day of August , 2023.

YEAS:

NAYS:



City of Austin Annexed Area I-90/Hwy 46



City of Austin
Craig Clark,
City Administrator



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

TO: Honorable Mayor and City Council Members
FROM: Craig D. Clark, Administrator
RE: KSMQ Request for Lease Modification

KSMQ has submitted the following letter (Exhibit 1) requesting the City establish a lease value of \$22,916 per month based of the specialized cost of construction, term of the agreement and similar leases of local commercial properties.

KSMQ uses this in-kind contribution to leverage Corporation for Public Broadcasting funds for the operations of their facility.

The city received assurances from Roger Behrens, Capital Bonding Coordinator, with Minnesota Management and Budget that he approves of the minor lease modification and would not jeopardize our requirements of the State bonding proceeds.

Council action is requested to approve the resolution included as Exhibit 2 to amend the lease authorizing the Mayor to sign and Recorder attest the agreement.



July 28, 2023

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

re: KSMQ lease amendment

Dear Mr. Clark,

We appreciate the rental agreement the City of Austin has provided KSMQ Public Service Media, Inc for the facility & grounds located at 107 W Oakland Ave.

As stated in paragraph 6 of the lease agreement between the City of Austin and KSMQ,

"Rent. No rent is required to be paid by Tenant to the Landlord for the Term of this Lease/Use Agreement, any renewal periods thereafter or during any hold over periods. Provided, however, notwithstanding any other provision herein to the contrary, it is the intention of the parties hereto that this Lease/Use Agreement be a complete "triple net" lease, and that all costs and expenses, of any nature or kind whatsoever, attributable to the Premises and Improvements, or the Tenant's use thereof, during the Term hereof, including but not limited to the operation of the Governmental Program, shall be the sole responsibility of the Tenant, and Landlord shall not have any liability therefor. Landlord and Tenant agree that Landlord is providing an in-kind contribution or Non Federal Financial Support to Tenant by not charging any rent under this Lease/Use Agreement."

At the time the lease was executed, there was no fair market value indicated within the document for KSMQ to report as Non-Federal Financial Support (NFFS) in our annual reporting to the Corporation for Public Broadcasting (CPB). This value is a substantial part of the formula used to determine annual funding support given to KSMQ operations by CPB.

We propose the attached amendment to the current lease agreement with a fair market value stated for the KSMQ facility and grounds. Fair market value was determined by legal counsel contracted by KSMQ. The value was determined by the overall cost of the facility build divided by the initial terms of the lease and two lease extension opportunities. The value determined was compared to the square footage market value of similar commercial properties in Austin.

We respectfully ask the Council to consider the lease amendment proposed. If you have any questions or concerns, do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Robert W Hartman II".

Robert W Hartman II
Interim Station Manager
KSMQ Public Service Media, Inc.

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (this "Amendment") is entered by and between City of Austin, A Minnesota municipal corporation ("Landlord") and KSMQ Public Service Media, Inc., A Minnesota nonprofit corporation ("Tenant").

RECITALS

- I.** Landlord is a Minnesota municipal Corporation and the fee owner of a parcel of real property situated in Mower County, State of Minnesota, which is hereinafter defined as the "Premises" and
- II.** Landlord and Tenant requested funds from the Minnesota Legislature and the Minnesota Legislature granted funds for the construction of a facility to provide public television programing, and
- III.** Following construction, the facility and Premises is owned by Landlord, and occupied and operated by Tenant for the purpose of providing regional public television services to the Austin Area and southern Minnesota, and
- IV.** Landlord and Tenant desire to further amend the Lease to provide for further specification of Landlord's in-kind contribution of the fair market value of rent to Tenant.

AGREEMENT

NOW, THEREFORE, in consideration of the Amendment, the parties hereto agree as follows:

1. Rent. As stated in paragraph 6 of the Lease, "Landlord and Tenant agree that the Landlord is providing an in-kind contribution or Non Federal Financial Support to Tenant by not charging any Rent under this Lease/Use Agreement."
2. Landlord and Tenant agree that the fair market rental value for the Premises is \$22,916 a month for the initial term of the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Lease/Use Agreement on the day and date shown immediately below their respective signatures.

LANDLORD, City of Austin, a Minnesota municipal corporation

By: Steve King, Mayor

Reviewed by the City Attorney's Office

Dated: _____

City Attorney

And: _____
Tom Dankert, Director, Adminis

Dated: _____

TENANT

KSMQ Public Service Media, Inc., a Minnesota non-profit corporation

By: Robert W Hartman II, Interim Station Manager

Dated : _____

STATE OF MINNESOTA)
) SS.
COUNTY OF MOWER)

The above KSMQ Regional Public Television Project Lease/Use Agreement was acknowledged before me this _____ day of _____, 20____, by Steve King and Tom Dankert, the Mayor and City Recorder respectively of the City of Austin, a Minnesota municipal corporation and political subdivision, on behalf of the City of Austin.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF MOWER)

The above KSMQ Regional Public Television Project Lease/Use Agreement was acknowledged before me this _____ day of _____, 20____, by Robert W Hartman II, Interim Station Manager of KSMQ Public Service Media, Inc., a Minnesota non-profit corporation, on behalf of such corporation.

Notary Public

This instrument was drafted by:

Libby Law Office, P.A.
855 Rice St., Suite 100
St. Paul, MN 55117

RESOLUTION NO.

**APPROVING AN AMENDMENT TO THE LEASE AGREEMENT
WITH KSMQ PUBLIC SERVICE MEDIA, INC.**

WHEREAS, the City of Austin entered into a lease/use agreement for the KSMQ Regional Public Television Project with KSMQ Public Service Media, Inc. on October 21, 2019 by resolution number 15942; and

WHEREAS, the parties desire to amend the lease to determine the fair market value for the premises; and

WHEREAS, the parties agree that the fair market value for the premises is \$22,916 for the initial term of the lease; and

WHEREAS, as stated in paragraph 6 of the lease, the City of Austin is not charging rent under the lease.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Austin, Minnesota authorizes the Mayor and City Recorder to execute an amendment to lease agreement with KSMQ Public Service Media, Inc.

Passed by the City Council this 7th day of August, 2023.

YEAS

NAYS

ATTEST:

APPROVED:

City Recorder

Mayor

BAUDLER, MAUS, FORMAN & KING, LLP

Bryan J. Baudler, *Retired*
 Robert M. Maus, *Retired*
 Thomas C. Baudler
 David L. Forman
 Michelle M. King
 Emily M. Gullickson, *Associate*
 Lee A. Bjorndal, *of Counsel*

Attorneys at Law
Trusted Legal Counsel Since 1908

108 North Main Street
 Austin, Minnesota 55912-3496
 507.433.2393
 800.351.2393
 Fax 507.433.9530
www.baudlerlaw.com

July 26th, 2023

Mower County Board of Commissioners
 201 First Street NE
 Austin, MN 55912

Austin City Council
 c/o Craig Clark, City Administrator
 500 Fourth Avenue NE
 Austin, MN 55912

Re: Minnesota Department of Transportation Eminent Domain Acquisition

Dear City and County:

I am writing this letter as a Trustee of the Austin Cemetery Association and Oakwood Cemetery.

In connection with the property improvements scheduled to occur at the intersection of Interstate 90 and 4th street NW, the Department of Transportation is taking a very small portion of Oakwood Cemetery on the southwest corner of the cemetery. I enclose a copy of a letter from the Department of Transportation on this, and a map of the affected area.

The Cemetery has signed a warranty deed transferring this parcel to the State of Minnesota. The State is also requesting that the City and County sign a quitclaim deed for the same parcel. A "quitclaim" deed merely transfers any interest which the grantor may have in property. I am not aware that the City or County has any interest in the described property, and I suspect that the State is simply taking a "belt and suspenders" approach to clearing out any potential interest that may exist. The original quitclaim deeds for the City and County are included with this letter.

If you have questions about this, please contact Joseph Pignato who signed the letter provided herewith. You can return the signed deeds back to me and I will send to the State of Minnesota Department of Transportation

Very truly yours,

Baudler, Maus, Forman & King, LLP



By: Thomas C. Baudler
tbaudler@baudlerlaw.com

TCB/mmo
Enc.

Cc: Austin Cemetery Association Board of Trustees

QUITCLAIM DEED

STATE DEED TAX DUE HEREON: \$_____

C.S. 5080 (90=391) 901

Parcel 316P

County of Mower

Date: _____

For a valuable consideration, the City of Austin, a body politic and corporate under the laws of the state of Minnesota, Grantor, hereby conveys and quitclaims to the State of Minnesota, Grantee, real property in Mower County, Minnesota, described as follows:

All of the following:

That part of the Southwest Quarter of the Northeast Quarter of Section 34, Township 103 North, Range 18 West, shown as Parcel 316P on Minnesota Department of Transportation Right of Way Plat Numbered 50-07 as the same is on file and of record in the office of the County Recorder in and for Mower County, Minnesota;

containing 224 square feet, more or less;

together with other rights as set forth below, forming and being part of said Parcel 316P:

Access:

All right of access as shown on said plat by the access control symbol(s).

Permanent Maintenance Easement:

together with a permanent maintenance easement in perpetuity as shown on said plat 50-07 as to said Parcel 316P and designated as a permanent maintenance easement;

containing 7928 square feet, more or less;

Temporary Easement:

A temporary easement for highway purposes as shown on said plat as to said Parcel 316P by the temporary easement symbol, said easement shall cease on December 1, 2027, or on such earlier date upon which the Commissioner of Transportation determines by formal order that it is no longer needed for highway purposes.

together with all hereditaments and appurtenances belonging hereto.

CITY OF AUSTIN

By _____

Its _____

And _____

Its _____

STATE OF MINNESOTA)
)SS.
COUNTY OF MOWER)

The foregoing instrument was acknowledged before me this _____ day of
_____, _____, by _____ and
_____, the _____ and
of City of Austin, a body politic and corporate under
the laws of the state of Minnesota, on behalf of the corporation.

NOTARY PUBLIC

My commission expires: _____

This instrument was drafted by the
State of Minnesota, Department of
Transportation, Legal and Property
Management Unit,
395 John Ireland Blvd.
St. Paul, MN 55155-1800

Send tax statements to Grantee:
State of Minnesota
Department of Transportation
District 6 Right of Way
2900 48th Street NW
Rochester, MN 55901-5848

Topographic information required: Proposed R/W line & access taking.

Lot lines & dimensions.

Scale 1" = 200 ft.

Outline & location of buildings & improvements. Streets or highway frontage.

S.P. 5080-170 C.S. 5080 (90=391) 901 COUNTY MOWER C.I. # TRWSP5080170
OWNER AUSTIN CEMETERY ASSOCIATION PARCEL NO. 316P

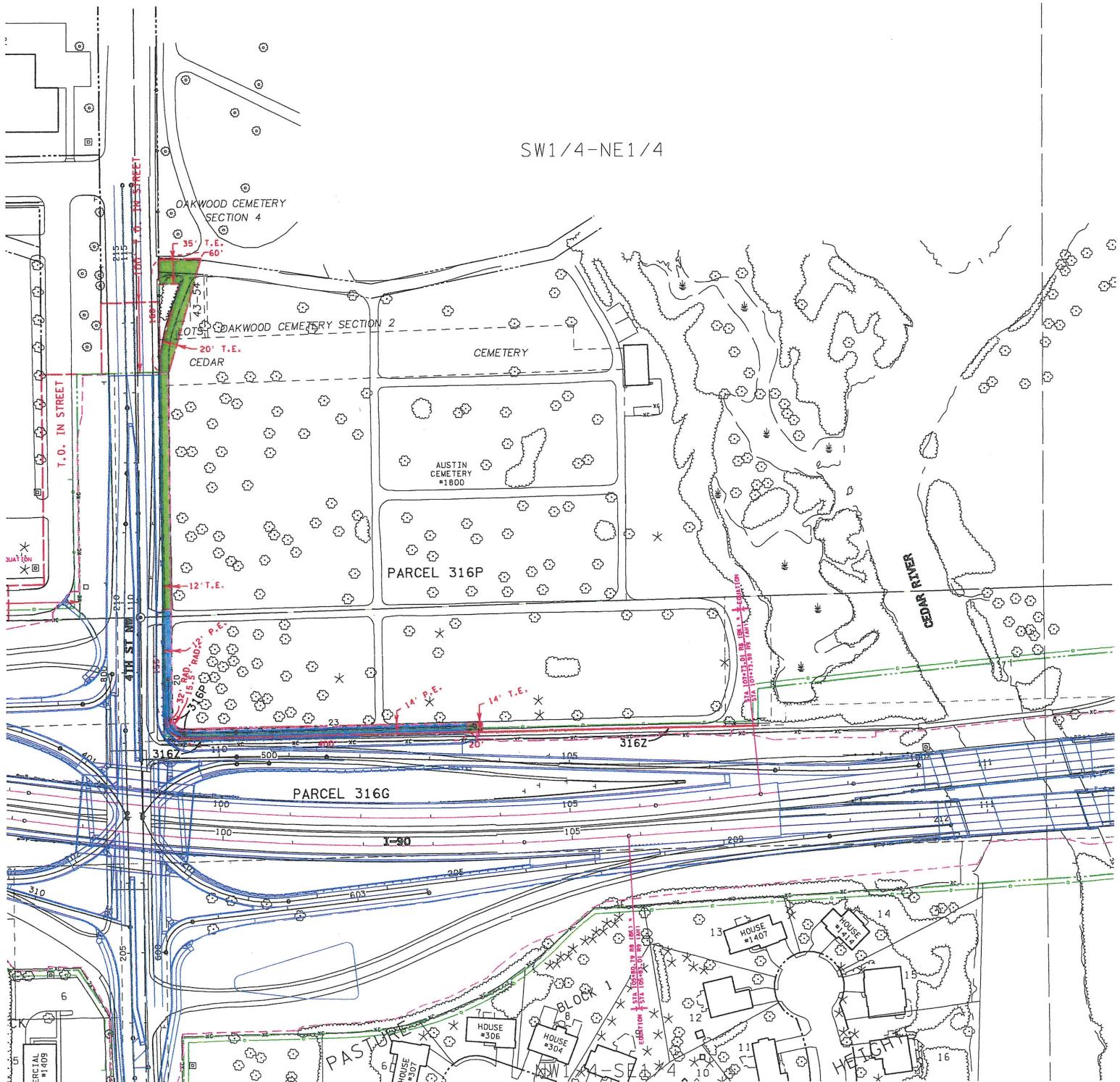
AREA COMPUTATIONS

ENTIRE TRACT	1,890,940 Sq. Ft.	43.41 Acres	(Shape)
RIGHT OF WAY	224 Sq. Ft.	0.005 Acres	
BAL. AFTER ACQ.	1,890,716 Sq. Ft.	43.40 Acres	
MAINTENANCE EASEMENT	7,928 Sq. Ft.	0.18 Acres	
T.E. (Exp. 12-1-27)	8,801 Sq. Ft.	0.20 Acres	

PIN 34.900.0351



SW1/4-NE1/4



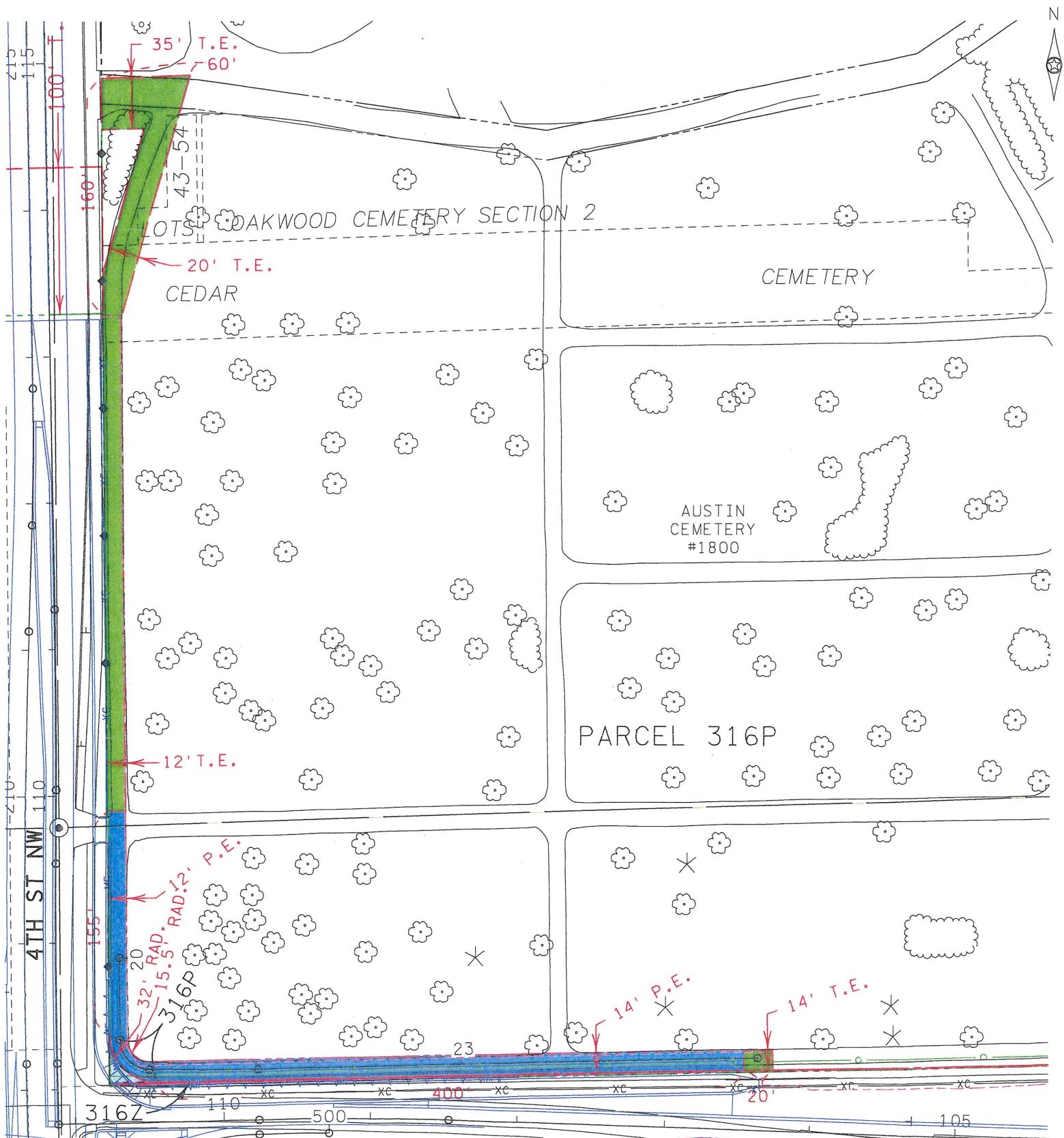
Topographic information required: Proposed R/W line & access taking.

Lot lines & dimensions.

Scale 1" = 90 ft.

Outline & location of buildings & improvements. Streets or highway frontage.

S.P. 5080-170 C.S. 5080 (90=391) 901 COUNTY MOWER C.I. # TRWSP5080170
OWNER AUSTIN CEMETERY ASSOCIATION PARCEL NO. 316P



RESOLUTION NO.

**RESOLUTION APPROVING THE EXECUTION OF A
QUITCLAIM DEED FROM THE CITY OF AUSTIN, MINNESOTA
TO THE STATE OF MINNESOTA**

WHEREAS, the State of Minnesota is designing bridge improvement projects at the intersection of Interstate 90 and 4th Street NW; and

WHEREAS, the State of Minnesota is acquiring a small portion of the Oakwood Cemetery as part of the project via eminent domain; and

WHEREAS, the State of Minnesota has requested the City sign a quitclaim deed for the same property; and

WHEREAS, the City of Austin does not appear to have any interest in the property.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Austin, Minnesota, that the Mayor and the City Recorder are hereby authorized and directed to execute the quitclaim deed to the State of Minnesota.

Passed by a vote of Yeas and Nays this 7th day of August, 2023

YEAS:

NAYS:

APPROVED:

Mayor

ATTEST:

City Recorder

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



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

Memorandum

To: Mayor & Council
From: Steven J. Lang, P.E.
Date: August 1, 2023
Subject: Individual Control Mechanism
 Nu-Tek Biosciences, LLC

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

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

City staff tests the effluent from the facility to ensure that it is complying with the limits set in the ICM agreement. The facility is then assessed strong waste charges for strengths that are greater than normal household waste, 200 mg/L. We have worked with the owner to develop these limits for a 12-month interim start up period of the plant. To-date, as the facility works through start-up procedures, we have not developed enough data to create a multi-year agreement. Therefore, we are recommending another short term for this ICM agreement. Following this period, we will reevaluate the limits in hopes of developing a multi-year ICM agreement.

We would recommend approving this short-term ICM discharge agreement with Nu-Tek Biosciences, LLC with an expiration date of December 31st, 2023. If you have any questions, please feel free to contact me.

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

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

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

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

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

	<u>Maximum Weekly Limit²</u>		<u>Maximum Daily Limit¹</u>	<u>Min. Max.</u>
Flow:			30,000 gpd	
CBOD:	250	lbs/day		
TSS ⁴ :	50	lbs/day		
TKN ⁵ :	50	lbs/day		
pH				6.0 – 10.5

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

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

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

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

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

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

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

10. This ICM is not exclusive. This ICM shall not release the Permittee from conditions set forth by the Minnesota Pollution Control Agency, Minnesota Department of Health, Minnesota Department of Natural Resources or the community in which the site is located
11. This ICM is enforceable under the provisions of the ordinance. A violation of this ICM shall be a violation of the ordinance and subject to the enforcement provisions of the ordinance.
12. The ICM shall not release the Permittee from any liability, duty or penalty imposed by local, state or federal statutes, regulations or license requirements regarding waste disposal.
13. The Permittee shall pay all fees related to this ICM agreement within 30 days to avoid penalties. Any fees that are over 90 days due by the neglect of the Permittee may result in the termination of this ICM.
14. The ICM may be renewed or modified by mutual consent of the City, and permittee. This ICM is not transferable except with the prior written permission of the City and prior agreement in writing to the transfer and all conditions in the ICM by the parties involved.
15. This agreement expires on December 31st, 2023 and is subject to be re-opened at the request of either party.

Agreed to:

City of Austin, Minnesota

Thomas Yezzi

By: _____

Steve King
Mayor

By: Thomas Yezzi

Date: _____

Date: 8/11/2023

By: _____

Tom Dankert
City Recorder

Date: _____

RESOLUTION NO.

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

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

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

Passed by a vote of yeas and nays this 7th day of August, 2023.

YEAS

NAYS

ATTEST:

City Recorder

APPROVED:

Mayor

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



Phone: 507-437-9940

www.ci.austin.mn.us

MEMO

TO: Mayor and City Council
 FROM: Tom Dankert *TD*
 DATE: August 1, 2023
 SUBJECT: PFA loan for WWTP
 U:\Word\2023\Miscellaneous\PFA Loan certification.doc

The \$42.2 million loan that was authorized by the Public Facilities Authority has a requirement including having adequate deposits in the debt service reserved fund balance and a certification to the Council that adequate revenues exist in the next year to cover debt service payments. This certification is required prior to September 1 of each year. While we are still early in this loan (we have only drawn the required \$50,001 minimum), technically there is still that requirement.

I have created the attached spreadsheet in an attempt to be able to update annually to meet this bond resolution requirement. Since the loan payments have not been determined for February 1, 2024 and August 1, 2024, we will utilize the best info we have. Once the loan is fully drawn (after the \$14.5 million bonding bill reduction) then a more "normal" calculation can occur as the payments will then be adjusted for the final draws on the loan.

The key on the attached spreadsheet are the items highlighted in yellow. These need to be over 105% otherwise Council has the authority to levy a tax onto all property to ensure the principal and interest payments are in the bank ahead of time. For the 2025 payments, we have utilized the originally estimated principal and interest payments using the full \$42.2 million loan

We are asked to certify this to Council annually, so the plan is to place this on a Council agenda each August for review by Council, with "no action" to be taken. This ensure annually we are reviewing the calculation.

Please call if you have any questions.

City of Austin
 PFA Loan
 Debt Service Coverage Requirements
 July 31, 2023

Section 4.02 Bond Fund:

	<u>Rate</u>	<u>Days</u>	<u>2/1/2024</u>	<u>8/1/2024</u>	<u>2/1/2025</u>	<u>8/1/2025</u>
Estimated Payment			\$ 50,001	\$ 50,001	\$ -	\$ 2,619,960
Interest	1.912%				\$ 395,832	
June 28, 2023 to July 31, 2023		34	\$ 89			
August 1, 2023 to January 31, 2024		184	\$ 482			
February 1, 2024 to July 31, 2025		181	\$ 474			
August 1, 2024 to January 31, 2025		184	\$ 482			
Maximum Due August (P & I)				\$ 50,957		
Maximum Due February (Interest only)			\$ 571		\$ 395,832	\$ 2,619,960
					Both P & I Included	Both P & I Included
					Maximum under Original Loan	Maximum under Original Loan

Section 4.04 Rate Covenant:

Need 105% Net Revenues to pay P and I.

Certify to City Council on or before September 1

Cash on hand in Bond Fund (Reserved FB), July 31
61000.3610.71

\$ 51,528 \$ 50,957 \$ 395,832 \$ 2,619,960

Coverage Ratio (105%)

2,338,694	4539%			
2,553,506	Needs to be at	5011%		
2,502,403	least 105%	Needs to be at	1277%	
2,732,251		least 105%	Needs to be at	200%

Estimated Annual P/I payments (reduced loan)	\$ 1,950,000
Net revenues needed for 105% coverage	\$ 2,047,500
Estimated Annual P/I payments (original loan)	\$ 2,619,960

Exhibit A

Clean Water State Revolving Fund

Austin_CWRF_01

Rate: 1.912%

Date:

Maturity: 08/20/42

Loan Amortization Schedule
 MPFA-CWRF-L-038-FY23

WW plant expansion and rehabilitation

Tax Exempt

General Obligation Revenue Note

final loan amount: 42,216,633.00

42,216,633.00

Date	Effective	Source	Disbursement	Repayment	Interest	Principal	Loan Balance	Annl Dcpt Srv
projected	11/23/22	Op Res	42,216,633.00				42,216,633.00	
projected	12/28/22	Op Res		78,476.03			42,216,633.00	
projected	01/25/23	Op Res		1014.68			42,216,633.00	
projected	02/28/23	Op Res		213,006.37			42,216,633.00	
projected	03/29/23	Op Res		278,029.37			42,216,633.00	
projected	04/26/23	Op Res		305,168.02			42,216,633.00	
projected	05/24/23	Op Res		401,348.84			42,216,633.00	
projected	06/28/23	Op Res		477,582.70			42,216,633.00	
	08/20/23			1,405,808.66	594,175.66	811,633.00	41,405,000.00	1,405,808.66
	02/20/24			395,831.80	395,831.80		41,405,000.00	
	08/20/24			2,223,831.80	395,831.80	1,828,000.00	39,577,000.00	2,619,663.60
	02/20/25			378,356.12	378,356.12		39,577,000.00	
	08/20/25			2,241,356.12	378,356.12	1,863,000.00	37,714,000.00	2,619,712.24
	02/20/26			360,545.84	360,545.84		37,714,000.00	
	08/20/26			2,258,545.84	360,545.84	1,898,000.00	35,816,000.00	2,619,091.68
	02/20/27			342,400.96	342,400.96		35,816,000.00	
	08/20/27			2,277,400.96	342,400.96	1,935,000.00	33,881,000.00	2,619,801.92
	02/20/28			323,902.36	323,902.36		33,881,000.00	
	08/20/28			2,295,902.36	323,902.36	1,972,000.00	31,909,000.00	2,619,804.72
	02/20/29			305,050.04	305,050.04		31,909,000.00	
	08/20/29			2,314,050.04	305,050.04	2,009,000.00	29,900,000.00	2,619,100.08
	02/20/30			285,844.00	285,844.00		29,900,000.00	
	08/20/30			2,333,844.00	285,844.00	2,048,000.00	27,852,000.00	2,619,688.00
	02/20/31			266,265.12	266,265.12		27,852,000.00	
	08/20/31			2,353,265.12	266,265.12	2,087,000.00	25,765,000.00	2,619,530.24
	02/20/32			246,313.40	246,313.40		25,765,000.00	
	08/20/32			2,373,313.40	246,313.40	2,127,000.00	23,638,000.00	2,619,626.80
	02/20/33			225,979.28	225,979.28		23,638,000.00	
	08/20/33			2,393,979.28	225,979.28	2,168,000.00	21,470,000.00	2,619,958.56
	02/20/34			205,253.20	205,253.20		21,470,000.00	
	08/20/34			2,414,253.20	205,253.20	2,209,000.00	19,261,000.00	2,619,506.40
	02/20/35			184,135.16	184,135.16		19,261,000.00	
	08/20/35			2,435,135.16	184,135.16	2,251,000.00	17,010,000.00	2,619,270.32
	02/20/36			162,615.60	162,615.60		17,010,000.00	
	08/20/36			2,456,615.60	162,615.60	2,294,000.00	14,716,000.00	2,619,231.20
	02/20/37			140,684.96	140,684.96		14,716,000.00	
	08/20/37			2,478,684.96	140,684.96	2,338,000.00	12,378,000.00	2,619,369.92
	02/20/38			118,333.68	118,333.68		12,378,000.00	
	08/20/38			2,501,333.68	118,333.68	2,383,000.00	9,995,000.00	2,619,667.36
	02/20/39			95,552.20	95,552.20		9,995,000.00	
	08/20/39			2,523,552.20	95,552.20	2,428,000.00	7,567,000.00	2,619,104.40
	02/20/40			72,340.52	72,340.52		7,567,000.00	
	08/20/40			2,547,340.52	72,340.52	2,475,000.00	5,092,000.00	2,619,681.04
	02/20/41			48,679.52	48,679.52		5,092,000.00	
	08/20/41			2,570,679.52	48,679.52	2,522,000.00	2,570,000.00	2,619,359.04
	02/20/42			24,569.20	24,569.20		2,570,000.00	
	08/20/42			2,594,569.20	24,569.20	2,570,000.00	-	2,619,138.40
totals			42,216,633.00	51,176,114.58	8,959,481.58	42,216,633.00		51,176,114.58

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

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

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

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

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

4.05. Full Faith and Credit Pledged. The full faith and credit and taxing powers of the City shall be and are hereby irrevocably pledged for the prompt and full payment of the principal of and interest on the Note, and the City covenants and agrees that it will make good any deficiency from the general fund of the City. On or before September 1 of each year, beginning in 2023, the Administrative Services Director will calculate and certify to this Council the total amount of cash on hand in the Bond Fund and the available net revenues of the System on hand and estimated to be received and available on or before the 20th day of August of the next succeeding year, and shall determine the sufficiency of such total amount for the payment of principal of and interest on the Note coming due on such August 20 and the interest payable on the immediately preceding February 20.

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

**City of Austin
Zoning Department**



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

Memorandum

To: Mayor and City Council

Cc: Allen Smith
922 2nd Ave NE
Austin, MN 55912

From: Holly Wallace, Planning & Zoning Administrator

Re: Hazardous Structure located at 922 2nd Ave NE Austin MN 55912

Date: August 2, 2023

May I ask the City Council to review and approve this resolution classifying the property located at 922 2nd Ave NE, Austin, Minnesota, as hazardous pursuant to Minnesota Statues 463.15 – 463.261. City staff has been dealing with numerous complaints regarding this property and the owner has failed to repair these structural deficiencies. (See attached)

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

Thank You!



April 6th, 2023

Allen Smith
922 2nd Ave NE
Austin, MN 55912

RE: Housing Violations at 922 2nd Ave NE Austin, MN 55912

Dear Allen:

The City of Austin Planning and Zoning Department has observed a violation of City Code on April 5th, 2023 your property. An investigation of this complaint was conducted on at this site, and the following issues need to be resolved:

1. **Repair/Replace or Remove garage. Garage is in unsafe conditions- structural members, exterior walls and roofing.**
2. **Exterior walls of garage shall be maintained weatherproof and properly surface coated**
3. **Exterior door on garage shall be maintained in good condition**
4. **Repair/Replace or Remove covered patio on back of house. Covered patio in in unsafe conditions- structural members, exterior walls and roofing.**
5. **Exterior walls of covered porch shall be maintained weatherproof and properly surface coated**
6. **Repair/Replace broken or missing windows on covered patio**

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

304.1 General. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

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

1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;
2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects;
3. Structures or components thereof that have reached their limit state;
4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or water tight;

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

Exception:

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

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

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

304.13 Window, skylight and door frames. Every window, skylight, door and frame shall be

kept in sound condition, good repair and weather tight.

304.13.1 Glazing. Glazing materials shall be maintained free from cracks and holes.

304.13.2 Openable windows. Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

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

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

Sincerely,



Brent Johnson
Zoning Inspector



TIME STAMP 4

August 2, 2023
10:23 AM



August 2, 2023
10:22 AM

TIME STAMP



August 2, 2023
10:22 AM

TIME STAMP

RESOLUTION NO. _____

**RESOLUTION ORDERING SECURING AND RAZING OF A HAZARDOUS BUILDING
LOCATED AT 922 2ND AVE NE AUSTIN, MINNESOTA
OWNED BY ALLEN SMITH**

WHEREAS, Pursuant to Minnesota Statutes, Section 463.15 to 463.61, the City Council of Austin, Minnesota, finds the building located at 922 2nd Ave NE to be a hazardous building for the following reasons:

1. **Repair/Replace or Remove garage. Garage is in unsafe conditions- structural members, exterior walls and roofing.**
2. **Exterior walls of garage shall be maintained weatherproof and properly surface coated**
3. **Exterior door on garage shall be maintained in good condition**

WHEREAS, The conditions listed above are more fully documented in the inspection report prepared by Brent Johnson on April 6th, 2023 a copy (or copies) of which is (are) attached to the resolution as Exhibit A.

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

1. Pursuant to the foregoing findings and in accordance with Minnesota Statutes, Sections 463.15 to 463.261, the City Council hereby orders the record owner(s) of the above hazardous buildings to make such buildings safe to the public health, welfare, and safety by taking the following actions:
 1. **Repair/Replace garage. Garage is in unsafe conditions- structural members, exterior walls and roofing. Permit required**
 2. **Exterior walls of garage shall be maintained weatherproof and properly surface coated**
 3. **Exterior door on garage shall be maintained in good condition**
 4. **Or demolish garage- permit required**
2. The repairs listed above must be made within 30 days after the order is served upon the record owner and in compliance with applicable codes, regulations and permits.
3. The City Council further orders that unless such corrective action is taken, the building(s) is/are ordered to be razed, the foundation(s) filled and the property left free of debris in compliance with all applicable codes, regulations and permits. The structures must be removed within 20 days after the initial 30 day repair period has expired.
4. If corrective action is not taken and an answer is not served within 20 days as specified in Minn. Stat. Section 463.18, a motion for summary enforcement of this order will be made to the District Court of Mower County.
5. In accordance with Minn. Stat. Section 463.24, the owner or occupant must remove all personal property and/or fixtures that will reasonably interfere with the work within 14 days. If the property and/or fixtures are not removed and the city enforces this order, the city may sell personal property, fixtures, and/or salvage materials at a public auction after three days posted notice.

6. The City Council further orders that if the city is compelled to take any corrective action herein, all necessary costs expended by the city will be assessed against the real estate concerned and collected in accordance with Minnesota Statutes, Section 463.22, 463.161 and 463.21.
7. The Mayor, City Recorder, City Attorney and other officers and employees of the City are authorized and directed to take such action, prepare, sign and serve such papers as are necessary to comply with this order and to assess the costs thereof against the real estate described above for collection along with taxes.
8. The city attorney is authorized to proceed with the enforcement of this order as provided in Minn. Stat. Sections 463.15 to 463.261.

Passed by a vote of Yeas and Nays this _____ day of _____, 2023

YEAS _____ NAYS _____

ATTEST:

APPROVED:

City Recorder

Mayor

City of Austin
Zoning Department



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

May 24th, 2023

Samuel Anthenat
1202 4th St SE
Austin MN 55912

RE: Zoning Violations at 1202 4th St SE Austin, MN 55912

Dear Samuel:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on May 23rd, 2023 this site and the following issues need to be resolved:

Remove all junk from property

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

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

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

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

B. Public nuisances affecting health

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

D. Public nuisances affecting peace and safety.

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

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

NOTICE AND ABATEMENT.

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

F. The notice shall be served in person or by certified or registered mail. If the premises are not occupied and the owner is unknown, the notice may be served by posting it on the

premises. The notice shall specify the steps to be taken to abate the nuisance and the time, not exceeding ten (10) days, within which the nuisance is to be abated.

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

City Code Section 10.14, Subd. 5:

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

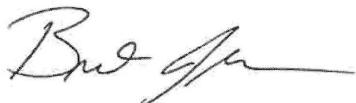
City Code Section 10.14, Subd. 6:

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

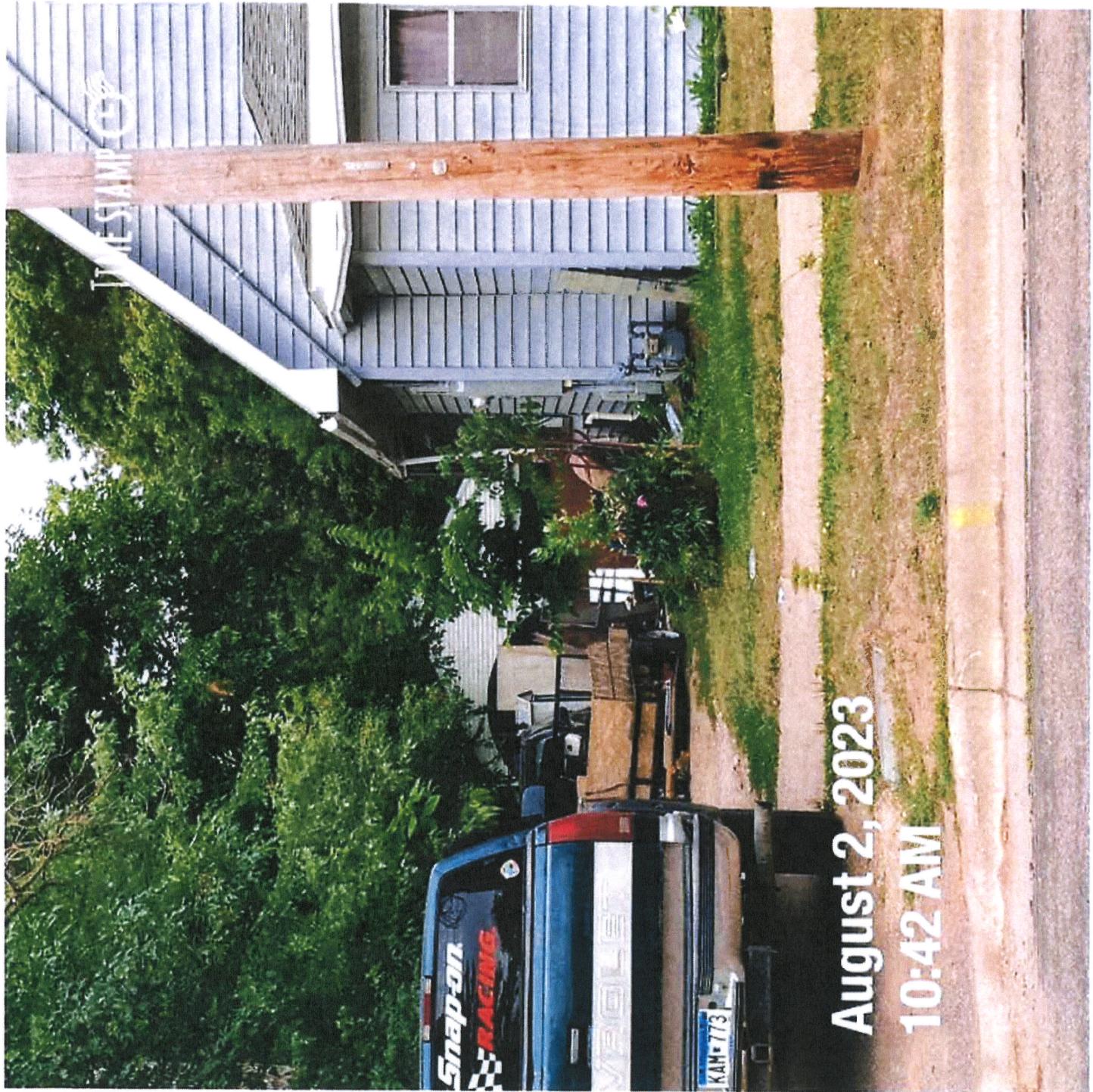
Please resolve the City Code violations within **10 days** of the date of this letter, or the matter will be referred to the Austin City Council for corrective action. Council generally meets the first and third Mondays of every month. You will be fined a minimum of \$100, the amount varies depending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

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

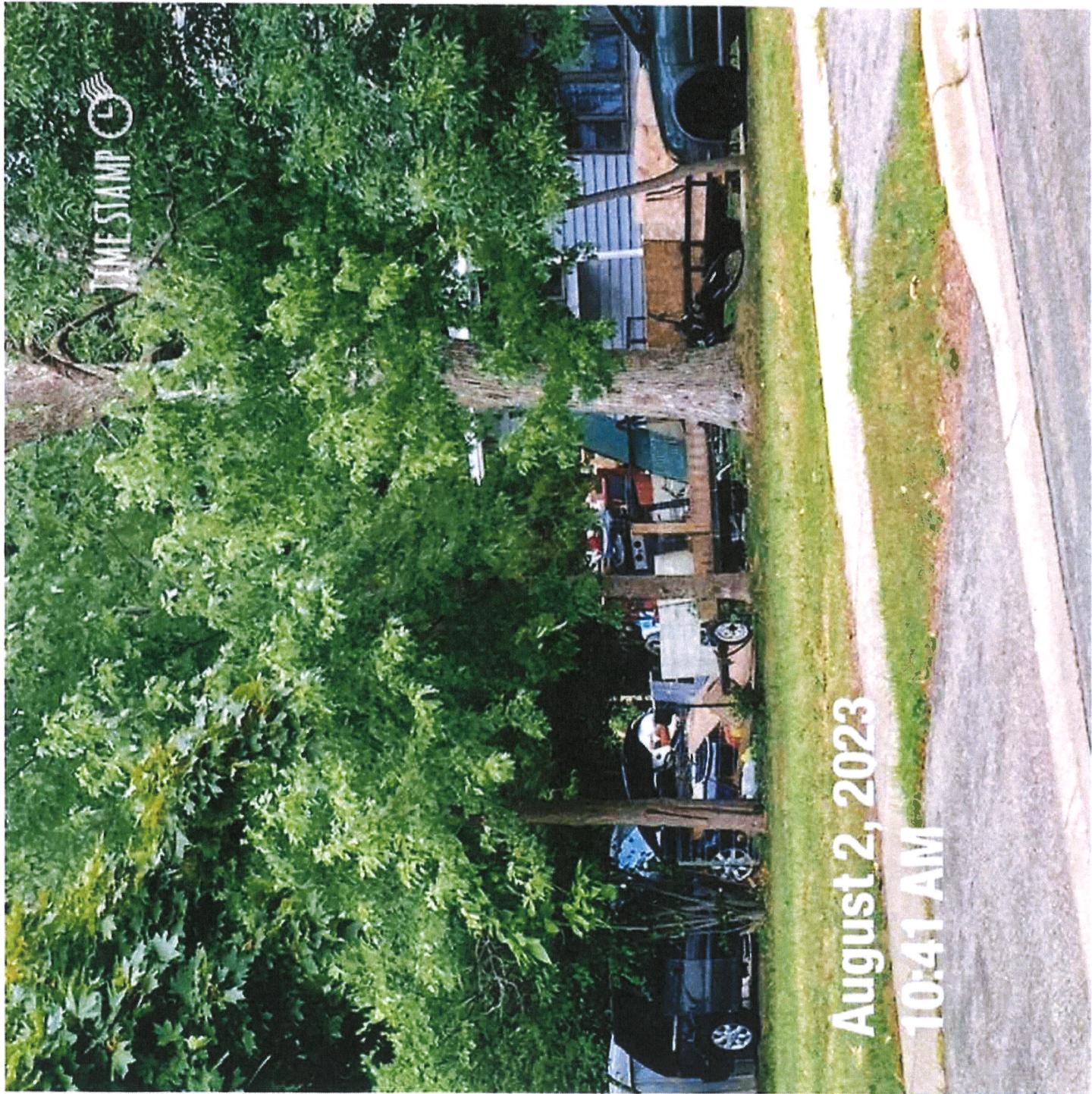
Sincerely,



Brent Johnson
Zoning Inspector



1202 SF
15+



TIME STAMP

August 2, 2023
10:41 AM

1202