

**A G E N D A**  
**CITY COUNCIL MEETING**  
**MONDAY, JULY 1, 2024**  
**5:30 P.M.**  
**COUNCIL CHAMBERS**

Call to Order.

Pledge of Allegiance.

Roll Call.

(mot) 1. Adoption of Agenda.

(mot) 2. Approving Minutes from June 17, 2024.

(mot) 3. \*Consent Agenda

Licenses:

Sign Installer: Fairway Outdoor Funding, LLC, La Crosse, WI  
Right of Way: South East Septic LLC, Dexter, MN

Claims:

a. Pre-list of Bills

Event Applications:

Spam Tiny House (SPAMples) – Various Dates Between June 21, 2024 to  
September 15, 2024  
PayItForward Car Show – August 31, 2024

**PETITIONS AND REQUESTS:**

(res) 4. Approving a Contract for an Assessment of Pool Conditions

(res) 5. Approving an Agreement for the School Resource Officer

(res) 6. Approving an ICM Agreement with Nu-Tek Bio Sciences LLC

(res) 7. Approving a Settlement Agreement with MetroNet

8. Requesting approval of an ordinance change related to Massage Therapist and Massage Establishment Licensing

(mot) a. For preparation of the ordinance

(ord) b. For adoption of the ordinance

(res) c. For summary publication of the ordinance

(res) 9. Accepting Donations to the City of Austin

(res) 10. Declaring the Structure at 1906 3rd Avenue NE as Hazardous.

**CITIZENS ADDRESSING THE COUNCIL**

**HONORARY COUNCIL MEMBER COMMENTS**

**REPORTS AND RECOMMENDATIONS:**

City Administrator  
City Council

(mot) Adjourn to **Monday, July 15, 2024** at 5:30 pm in the Council Chambers

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

MINUTES  
CITY COUNCIL MEETING  
June 17, 2024  
5:30 PM  
Council Chambers

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

MEMBERS ABSENT: Council Member Jason Baskin

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

APPEARING IN PERSON: Austin Daily Herald, Alex Bumgardner from Austin Utilities, SEH representatives Bob Cohrs & Brea Grace, Val Sheedy from Mower County, Nick Novotny from Impact Austin

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

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

Moved by Council Member Baker, seconded by Council Member Fischer, approving Council minutes from June 3, 2024. Carried.

#### AWARDS AND RECOGNITIONS

Mayor Steve King announced Sargent Kim Lenz will be leaving the Austin Police Department. Police Chief David McKichan thanked Sargent Lenz for her years of service and for her work within the department. Sargent Lenz has been with the City of Austin Police Department for 17 years and will be leaving for a position in Red Wing, MN. Sargent Lenz gave a speech and thanked everyone for attending the meeting. Mayor King thanked all the officers that also showed up in support of Sargent Lenz.

#### CONSENT AGENDA

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

Licenses:

Exempt Gambling (bingo): United Way of Mower County on August 16, 2024

Mobile Business: Recreational Rentals of New Mexico, Wichita, KS

Right of Way: North Star Concrete LLC, 57369 227<sup>th</sup> Street

Claims:

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

Event Applications:

Pro Horseshoe Tour on June 22 & 23, 2024

Kids Fishing Contest on July 6, 2024

Darren Dash Freedom Fest 5k Run on July 6, 2024

Employee Recognition Event on July 18, 2024

Carried.

## PUBLIC HEARINGS

City Administrator Craig Clark has requested approval of a resolution in support of an extension for Nu-Tek for their job creation requirements they must meet to receive Minnesota Investment Funding. Mr. Clark stated Nu-Tek relayed they will accomplish their employment goals over this next year.

Moved by Council Member Baker, seconded by Council Member-at-Large Austin, to adopt a resolution approving a MIF/MN DEED Extension Request for Nu-Tek Biosciences. Carried 6-0.

## PETITIONS AND REQUESTS

Public Works Director Steven Lang stated there was an amendment for construction administration, construction contractor bid, and additional administration fees for the Airport fuel system upgrades.

Mr. Lang stated there is a new revised grant amount of \$913,486.10 and off that the MNDOT grant will cover 70% and city will cover 30%. The City's amount will be approximately \$275,00.00. Mr. Lang is requesting approval to sign the agreement.

Moved by Council Member Baker, seconded by Council Member-at-Large Austin, approving authorization to sign a state grant amendment for the Airport Fuel System Upgrade. Carried.

Director of Administrative Services Tom Dankert requested a motion to approve calling for a public hearing for the Amendment of Tax Increment Financing District #16 YMCA Redevelopment – Stencil Development. Mayor King asked if council has any questions.

Council Member Baker asked Mr. Dankert why the amounts were 4% for both the original rate and the discounted rate. Mr. Dankert stated they may have used that percentage amount to maximize all the available dollars available for use or total eligible TIF dollar. Phase one was 4% and that was what we use in Phase two. That was the request.

Moved by Council Member Fischer, seconded by Council Member Postma, approving calling for a public hearing on July 15, 2024 for the Amendment of Tax Increment Financing District #16 YMCA Redevelopment – Stencil Development. Carried.

Steven Lang requested approval of the Change Order Number Four. He stated there have been a few changes from Council's last presentation. Work change directive 56 & 65 have been eliminated and removed. They may come back in change order #5 in the future. This reduces the number of change orders to nine. The current change order costs are \$753,830.00. These costs are split between the Domestic and Industrial Budget. Currently cost increase to the Domestic Budget are 2.58 % and the cost increase to the Industrial Budget are 1.17%. The overall project cost increase is 1.84%.

Council Member Baker stated he had the opportunity to go and see the Wastewater Treatment Plant to view the project and it was a fascinating trip with Mr. Lang. He encouraged other Council members to tour the plant. Mr. Baker stated the challenge in front of us is to make sure we are running this new plant with minimal staffing. We need to have eyes wide open discussions about where are we going to add staff and we need to do this in that plant.

Moved by Council Member Baker, seconded by Council Member-at-Large Austin, approving a resolution for Change Order Number Four for the Waste Water Treatment Plant Project. Carried 6-0.

Mayor King reviewed a Natural Gas Prepay Ordinance with Minnesota Municipal Gas Agency. He requested a motion for preparation of the ordinance.

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

Moved by Council Member Baker, seconded by Council Member Poshusta, for adoption of the ordinance. Carried 6-0.

Moved by Council Member Baker, seconded by Council Member Fischer, for summary publication of the ordinance. Carried 6-0.

Planning and Zoning Administrator Holly Wallace stated the City of Austin, Impact Austin and Mower County have collaborated on a joint project to review a Comprehensive Plan and a Downtown Master Plan for Mower County and the City of Austin.

The committee reviewed six proposals. They chose three to interview. They chose SEH as the consultant for the plan. SEH stood out because of their work and partnership within the community and they have worked with various organizations. The Memorandum of Agreement was developed to address how the project will be paid for by various entities. They will be able to do more with their collaborations than a lone entity.

Brea Grace from SEH gave a presentation on the direction of the Comprehensive Plan. Ms. Grace will be the project manager from this project. She stated they will be engaging the public on this project and gaining feedback from people within the city. The process timeline will be from now until December of 2025. Ms. Wallace is requesting approval of the Memorandum of Agreement. There were no questions or comments from council.

Moved by Council Member Baker, seconded by Council Member-at-Large Austin, approving a resolution for the Comprehensive Plan and Downtown Master Plan MOA. Carried 6-0.

City Clerk Brienne Wolf requested Council approve a resolution for the expansion of the on-sale liquor license for Hoot & Ole's LLC to include their patio area.

Moved by Council Member Baker, seconded by Council Member-at-Large Austin approving a resolution for an expansion to Hoot & Ole's on-sale liquor license to include the patio area. Carried 6-0.

Moved by Council Member-at-Large Austin, seconded by Council Member Postma, accepting donations to the City of Austin. Carried 6-0.

Moved by Council Member Fischer, seconded by Council Member Baker, approving a resolution declaring 1008 7th Avenue NE as a hazardous property. Carried 6-0.

Moved by Council Member-at-Large Austin, seconded by Council Member Baker, to grant the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 503 8th Avenue SE, Wakefield Property. Carried.

Moved by Council Member Helle, seconded by Council Member Fischer, to grant the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 506 11th Avenue SW, Wendroth Property. Carried.

## REPORTS AND RECOMMENDATIONS

Steven Lang followed up on Council Member Baker's comments about the tour at the WWTP. If anyone would like a tour, he is planning a group tour for late July or early August.

## COUNCIL REPORTS

Council Member-at-Large Austin stated there was a Library Board meeting last week. The library will be hosting a Skateboard Art Class on June 21<sup>st</sup>. The Library Board is also looking at having a social worker being present in the library. The library provided hot spots to the community and there is a six to eight week waiting list for them at the moment as the Austin Aspire Hot Spots were deactivated for the summer. The library offering of open hours on Sunday in the spring did not yield high enough participation so there will be no Sunday hours in the fall.

Council Member Baker told the Downtown Comprehensive Plan committee to act with urgency. There are a number of buildings that are empty on Main Street and we need big ideas.

Council Member Postma stated the HRA/Riverland partner house is for sale. He stated Discover Austin is hosting the Horseshoe Tour this weekend and starting now is the Hormel Foods AGEA Golf Tournament at the County Club.

Council Member Helle thanked the employees and the elected officials that have been working with the Sicora group. She appreciates people taking their time and engaging in this. She thanked all the departments that supported 4th Avenue Fest last week. She stated Park and Rec, Library, Fire, and Engineering put in a lot of hours on this event. She thanked the public that came out to the event.

Mayor King stated he and Craig were at the celebratory meeting at Riverland for the Wastewater Treatment Certification courses that will be offered at Riverland. The City of Austin will be the fiscal host of this for the next three years. He stated that approximately 260 people will be going through this certification.

Moved by Council Member-at-Large, seconded by Council Member Postma, adjourning the meeting to July 1, 2024. Carried.

Adjourned: 6:08 p.m.

Approved: July 1, 2024

Mayor: \_\_\_\_\_

City Recorder: \_\_\_\_\_

City of Austin  
Jason Sehon, Director  
Parks, Recreation & Forestry  
507-433-1881  
jsehon@ci.austin.mn.us



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Austin, Minnesota 55912-3773  
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## MEMORANDUM

**TO:** Honorable Mayor and Council

**FROM:** Jason Sehon, Director of Parks, Recreation & Forestry 

**DATE:** July 1, 2024

**SUBJECT:** Consider Awarding Bid for Pool Evaluation/Conditions Assessment of Austin Municipal Pool

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Staff brought this item before City Council at its June 17, 2024 Work Session. Council asked staff to bring the item back for consideration at its July 1, 2024 regular meeting.

For the last several months, staff has been researching and looking into the possibility of scheduling a Pool Evaluation/Conditions Assessment for Austin Municipal Pool.

Our concern is with the unknown status and condition of many areas of the pool. This year alone prior to opening the pool we ran into numerous unexpected repairs (not included in the 2024 budget), some of which are as follows:

- Sand blast to remove all old paint, caulk and re-paint main pool. (Approximate cost - \$100,000).
- Broken 10" PVC pipe in main pool well. (Cost estimate \$12,000 - project completed in house for \$3,000).
- Replaced bad impellers on dive well pump and slide pump.
- Replaced bad flow sensor for dive well chlorine injector system.
- Replaced boiler for main pool (In current 2024 budget, approximate cost \$70,000).
- Boiler repairs for dive well and tot lot pools.
- Repairs to mixing valve for showers.
- Identified and repaired a leak in main pool. (Approximate cost \$3,200).

- Second minor leak in main pool detected and will need to be assessed and repaired after closing of the pool in August 2024.
- Repaired/replaced splash park pumps and chemical lines.
- Repaired broken 6" return line for dive well.
- Replaced 400 amp electrical fuse panel for slide. (In current 2024 budget, approximate cost \$12,000).
- Replaced bad sensors and gauges on boilers.
- Replaced five (5) pool access steps.
- Purchased new chemical test kit.
- Purchased new pool vacuum (In current 2024 budget, approximate cost \$7,000).
- Repaired bad valve in tot lot sand filter system. (We were unable to locate a replacement valve due to its age and that they are not manufactured anymore).
- Replace shower heads in men's locker room.
- Installed new injectors for chlorine system.
- Slide repairs, including sealing seams (In current 2024 budget, approximate cost \$15,000).
- Replaced slide pump.

Our goal going forward is to create a comprehensive plan for future repairs and replacement to areas of the pool. We have talked with other City's who operate municipal pools who have also had a Pool Conditions Assessment completed for their pool in recent years.

A Pool Evaluation/Conditions Assessment is intended to provide an assessment of the current conditions of our municipal pool facility and determine feasible options with costs for the future. Specific objectives include:

- Understand the conditions of the facility
- Review the overall operational performance of the facility, including attendance and cost recovery
- Recommended options for improvements
- Opinions of Cost for the improvements
- Overall operations expectations- including potential impact on attendance, operating expenses and revenue.
- Provide a comparison character and cost for the option to replace the pool facility

We have received quotes from two (2) companies to complete an Assessment of Austin Municipal Pool:

1. TSP, Inc.: \$16,500
2. Waters Edge Aquatic Design: \$17,500
  - a. (3) base items: \$14,900

- b. Additional Option Item, Additional Assessment Visit with pool empty (optional): \$2,600

Staff feels the proposal submitted by Waters Edge Aquatic Design will provide us with the best information for our municipal pool. Their proposal includes more clarity and detail on what they are going to assess, evaluate and how they are going to report back to us. Attached, please find the Swimming Pool Evaluation Services Proposal/Agreement submitted by Waters Edge Aquatic Design.

**Staff Recommendation:**

Staff Recommends awarding the bid to Waters Edge Aquatic Design in the amount of \$17,500. This fee includes the three (3) base items as submitted in their proposal in the amount of \$14,900 as well as an optional Additional Assessment Visit with pool empty (optional) in the amount of \$2,600 if staff deems it necessary after the initial inspection.

Staff requests to fund the project with contingency funds.

Please let me know if you have any questions.

April 17, 2024

Mr. Jason Sehon  
Director of Parks, Recreation & Forestry  
City of Austin, Minnesota  
**VIA ELECTRONIC MAIL TO: JSEHON@CI.AUSTIN.MN.US**

Re: Swimming Pool Evaluation Services Proposal/Agreement – Rev02  
City of Austin, Minnesota Swimming Pool

Dear Mr. Sehon:

Thank you for contacting us regarding an evaluation of your existing swimming pool. We appreciate the opportunity to offer our services to you. This document includes a proposal to complete the services as we believe would be beneficial for assisting you in determining the future for the swimming facility.

The study is intended to provide an assessment of the current conditions of the swimming pool facility, and determine feasible options with costs for the future. Specific objectives include:

- Understand the conditions of the facility
- Review the overall operational performance of the facility, including attendance and cost recovery
- Recommended options for improvements
- Opinions of Cost for the improvements
- Overall operations expectations- including potential impact on attendance, operating expenses and revenue.
- Provide a comparison character and cost for the option to replace the pool facility.

**Scope of Work & Fee**

This includes the scope we recommend to summarize current conditions and develop potential improvement options. The tasks below can be customized to best suit the needs for this study.

**Task 1 – Existing Conditions Assessment**

- Conduct an in-person visit to the facility to review existing conditions. The review consists of a visual assessment of the facility- including the pool, buildings, and the site. The primary visit will occur during the operating season to review the systems while operating. The basins will not be reviewed as they will be filled with water. However, some assessment will be made based upon videos and photographs shared by City staff. The reviews would include the following:
  - Meet staff to discuss concerns, challenges, and maintenance history (*during facility assessment*)
  - Bathhouse and filter building
  - Pool structures (limited review)
  - Pool deck and fence
  - Pool water treatment system and recirculation system

- Pool deck equipment
- Pool site
- Support facilities
- Provide recommendations for improvements, separated into the categories such as immediate improvements, mid-term and long-term repairs.
- Identify immediate needs, basic renovations to extend the life of the facility, and identify potential enhancements to improve the recreational and program quality of the facility.
- Develop Opinions of Cost projections for recommended immediate improvement categories.

#### Task 2 – Feasibility of Enhancements versus Replacement

- Provide a list of potential enhancements to the facility that would potentially increase interest and attendance in the facility, along with expanded program opportunities.
- Develop Opinions of Cost projections for the enhancements
- Identify overall anticipated impact of the improvements on the operating conditions for the swimming facility.
- Provide a character description and magnitude of costs for the replacement options, to assist in determining feasibility of enhancement versus replacement.

#### Task 3 – Basic Operations Analysis and Projections

- Review the operation data provided, offering thoughts on the current operating conditions.
- Provide projections on the impact that enhancement options will have on the operating conditions.

#### ***Optional Tasks – Dependent Upon the Outcome of the Initial Tasks***

##### Task 1a – Second Visit to Review the Pool Basin While Empty

A second visit and review could be made once the swim season is over and the basins are emptied. The structures can be thoroughly reviewed for condition of the coatings and underlying pool structure conditions.

##### Task 4 – Community Input Survey

An online survey can be conducted to identify current perception by the community concerning the facility, and also determine the desires and interests for new or modified amenities and aquatics focused programs. The survey would be conducted online with a summary report presented. The findings from the survey can help guide opportunities for a modified or new facility.

##### Task 5 – Public Meeting/Open House

In addition to an online survey, an in-person public open house meeting can be conducted to present information and gather feedback from the community. The Open House could be

held in a large gathering location/meeting room, or it could be held onsite at the swimming facility during normal open hours or a special event.

**Task 6 – Concept Designs/Drawings (Optional)**

If either an enhanced facility, or a new facility is determined to be feasible- conceptual drawings can be created to share a plan for the proposed outcome. The conceptual plan can come in the form of plan view concept drawings, or by developing 3-Dimensional renderings and perspectives.

**Fee Proposal**

The fees provided include all project related expenses for the scope listed above. For the planning services listed above, we request a fee based upon the following tasks:

**Base Items**

Task 1 – Conditions Assessment	\$9,900
Task 2 – Enhancements Alternatives & Feasibility	\$3,500
<u>Task 3 – Basic Operations Analysis</u>	<u>\$1,500</u>
Total:	\$14,900

**Additional Option Items** (which can be added later once feasibility is determined)

Task 1a – Additional Assessment Visit (with pool empty)	\$2,600
Task 4 – Online Community Input Survey	\$2,400
Task 5 – Public Open House Meeting	\$5,300
Task 6 – Conceptual Drawings	\$4,500

Terms and conditions are described in the following two pages, and along with this letter proposal represents the full agreement. Please feel free to contact us with questions about this proposal. We look forward to working with you. If the proposal is acceptable, you may execute the agreement by signing below.

**Tasks Authorized:** \_\_\_\_\_

**Amount Authorized:** \_\_\_\_\_

**Proposed By: Waters Edge Aquatic Design, LLC**

**Accepted By: City of Austin, Minnesota**

By:  \_\_\_\_\_

By: \_\_\_\_\_

Name: Jeff Bartley

Name: \_\_\_\_\_

Title: Principal

Title: \_\_\_\_\_

Date: April 17, 2024

Date: \_\_\_\_\_

## Terms and Conditions

- A. **Times for Providing Services:** ENGINEER's obligation to provide services hereunder will be for a period of time that may reasonably be required for the completion of said services and will perform these services with reasonable diligence and expediency consistent with sound professional practices.
- B. **Suspension:** The OWNER agrees that the ENGINEER is not responsible for damages arising from any delays for causes beyond the ENGINEER'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; failure of any government agency to act in a timely manner; failure of performance by the OWNER or their contractors or consultants; or discovery of any hazardous substances or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or time required by the ENGINEER to perform its services, the ENGINEER shall be entitled to a reasonable adjustment in schedule and compensation.
- C. **Payment Provisions:** Invoices shall be submitted monthly in proportion to services provided, are due upon presentation, and shall be considered past due if not paid within thirty (30) calendar days of the due date. If payment in full is not received by the ENGINEER within thirty (30) calendar days of the due date, invoices shall bear interest at one (1.0) percent (or the maximum rate allowable by law, whichever is less) of the PAST DUE amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principle.

OWNER shall notify ENGINEER if they object to any portion of an invoice in writing within seven (7) calendar days of receipt of the invoice. The OWNER shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement.

**Suspension of Services:** If the OWNER fails to make payments when due, the ENGINEER may suspend performance of services upon seven (7) calendar days' notice to the OWNER. Upon payment in full by the OWNER, the ENGINEER shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the ENGINEER to resume performance.

Payments to the ENGINEER shall not be withheld, postponed or made contingent on the construction, completion or success of the Project or upon receipt by the OWNER of offsetting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the ENGINEER's compensation for any reason unless the ENGINEER has been found to be legally liable for such amounts.

- D. **Opinions of Cost:** Opinions of probable construction costs for the PROJECT will be made on the basis of ENGINEER's professional judgment and experience. The OWNER understands that the ENGINEER has no control over the cost or availability of labor, materials, equipment, or services provided by others, or over Contractor's methods of determining prices, or over market conditions. ENGINEER makes no warranty, express or implied, that bids, the negotiated cost of the PROJECT or actual construction costs will not vary from opinions of probable construction cost prepared by ENGINEER.
- E. **Performance Standards:** The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill normally furnished by members of the ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.
- F. **Use of Documents:** All Documents are instruments of service in respect to this PROJECT, and ENGINEER will retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the PROJECT is completed. OWNER may make and retain copies of Documents for information and reference in connection with use on the PROJECT by OWNER for use, maintenance and repair of the PROJECT. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the PROJECT or on any other project.

If the ENGINEER for any reason is not allowed to complete all the services called for by this Agreement, the ENGINEER shall not be held responsible for the accuracy, completeness, or constructability of the construction documents prepared by the ENGINEER if used, reused, changed or completed by the OWNER or by another party. Accordingly, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees, and subconsultants (collectively, ENGINEER) from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising or allegedly arising from such use, change or completion by any other party of any construction documents prepared by ENGINEER.

- G. **Insurance:** ENGINEER will procure and maintain insurance as set forth in the attached certificate. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the PROJECT.
- H. **Termination:** The OWNER may terminate this Agreement for the OWNER's convenience and without cause upon giving the ENGINEER not less than seven (7) calendar days written notice. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons: Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party; Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party; Suspension of the Project or the ENGINEER's services by the OWNER for more than ninety (90) calendar days, consecutive or in the aggregate; Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of termination of this Agreement by either party, the OWNER shall, within fifteen (15) calendar days of termination, pay the ENGINEER for all services rendered and all reimbursable costs incurred by the ENGINEER up to the date of termination.

- I. **Successors, Assigns, and Beneficiaries:** Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent mandated or restricted by law.
- J. **Third-Party Beneficiaries:** 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 OWNER or the ENGINEER. The ENGINEER's services under this Agreement are being performed solely for the OWNER's benefit, and no other party or entity shall have any claim against the ENGINEER because of this Agreement or the performance or nonperformance of services hereunder. The OWNER and ENGINEER agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.
- K. **Controlling Law:** This Agreement is to be governed by the law of the state in which the project is located.
- L. **Dispute Resolution:** OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of thirty (30) days from the date of notice prior to other provisions of this Agreement, or under law. OWNER and ENGINEER agree to use mediation for dispute resolution if the previously described negotiation process is not successful. In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, each party shall pay their own legal expenses, including staff time, court costs, attorney's fees and all other related expenses in such litigation.
- M. **Allocation of Risks:** To the fullest extent permitted by law, ENGINEER and OWNER agree to indemnify and hold harmless each other against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, where such fees are recoverable under applicable laws, to the extent caused by their own negligent acts of performance of professional services under this Agreement.
- In recognition of the relative risks and benefits of the PROJECT to both the OWNER and the ENGINEER, the risks have been allocated such that the OWNER agrees, to the fullest extent permitted by law, to limit the liability of the ENGINEER to the OWNER for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the ENGINEER to the OWNER shall not exceed the ENGINEER's insurance limits provided for services rendered on this PROJECT. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
- N. **Survival:** All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.
- O. **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision that comes as close as possible to expressing the intention of the stricken provision.
- P. **Waiver:** Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/18/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Holmes Murphy & Associates 2727 Grand Prairie Parkway Waukee IA 50263	<b>CONTACT NAME:</b> Monica Wilks <b>PHONE (A/C, No, Ext):</b> 816-857-7820 <b>E-MAIL ADDRESS:</b> mwilks@holmesmurphy.com		<b>FAX (A/C, No):</b>													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Twin City Fire Insurance Co</td> <td>29459</td> </tr> <tr> <td>INSURER B : Hartford Accident and Indemnity Company</td> <td>22357</td> </tr> <tr> <td>INSURER C : Trumbull Insurance Company</td> <td>27120</td> </tr> <tr> <td>INSURER D : XL Specialty Insurance</td> <td>37885</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>			INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Twin City Fire Insurance Co	29459	INSURER B : Hartford Accident and Indemnity Company	22357	INSURER C : Trumbull Insurance Company	27120	INSURER D : XL Specialty Insurance	37885	INSURER E :		INSURER F :
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INSURER F :																
<b>INSURED</b> Waters Edge Aquatic Design, LLC 1153 Southwest Boulevard Kansas City, KS 66103	WATEDGPC															

**COVERAGES**

CERTIFICATE NUMBER: 801358621

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			83SBWAB0182	5/18/2023	5/18/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			83UEGV8705	5/18/2023	5/18/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			83SBWAB0182	5/18/2023	5/18/2024	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N Y N/A	83WEGAB4PTS	5/18/2023	5/18/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability			DPR5013217	5/18/2023	5/18/2024	Each Claim \$ 2,000,000 Annl Aggr \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

All Work Performed

Additional Insured only if required by written contract with respect to General Liability, Automobile Liability and Umbrella/Excess Liability applies on a primary basis and the insurance of the additional insured shall be non-contributory: City of Austin, Minnesota, Project Owner and Others as required by written contract, per policy terms and conditions.

**CERTIFICATE HOLDER****CANCELLATION**

City of Austin  
 500 Fourth Avenue NE  
 Austin MN 55912-3773

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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RESOLUTION NO.

**AWARDING CONTRACT FOR EVALUATION OF  
AUSTIN MUNICIPAL POOL CONDITIONS**

**WHEREAS**, the City of Austin would like to evaluate the condition of the Austin Municipal Pool to create a comprehensive plan for the future; and

**WHEREAS**, the City needs to hire a design and consulting firm for the project;  
and

**WHEREAS**, the City has received two proposals for this project; and

**WHEREAS**, the City has received a proposal from Waters Edge Aquatic Design to provide the services for the condition of the facility, review of the operation performance of the facility, and recommendations for improvement in the amount of \$17,500; and

**WHEREAS**, City staff reviewed the proposal and recommends awarding the contract to Waters Edge Aquatic Designs.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Austin, Minnesota, that the Mayor of the City of Austin and City Recorder are authorized to enter into the contract with Waters Edge Aquatics Design.

Passed by a vote of Yeas and Nays this 1st day of July, 2024.

YEAS

NAYS

ATTEST:

APPROVED:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

## LETTER OF AGREEMENT

THIS AGREEMENT ("Agreement") is made effective as of the 1st day of July, 2024, by, between and among Independent School District No. 492 (the "District") and the City of Austin.

WHEREAS, the District desires to utilize the services of two (2) police liaison officers pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, it is agreed by, between and among the parties as follows:

1. Subject to the terms and conditions set forth in this Agreement, the District hereby agrees to utilize the services of two (2) police liaison officers for the purpose of student retention from August 26, 2024 through May 30, 2025. The police liaison officers shall service primarily Austin High School and Ellis Middle School and shall be shared with other District sites as needed. The City of Austin shall execute and deliver proper notice to the District that this Agreement constitutes a valid and binding obligation of the City of Austin for the time period stated.
2. In consideration of the full and complete performance of the agreed services in paragraph 1 hereof, District agrees to compensate the City of Austin amounts equal to the following: Eighty percent (80%) of the Ellis and Ninety percent (90%) Austin High School officer's salary and associated benefits. It is understood that all Federal, State and local taxes are included in the cost of said services.

The City of Austin shall invoice the District for the services performed bi- annually, and the District shall pay such invoice within thirty (30) days following receipt. The City of Austin invoices shall show for the City of Austin employee by name and title, and the time period included for the billing.

If circumstance the City of Austin is not able to provide the agreed services in full, the Chief of Police and Director of Human Resources will meet to discuss an adjustment to the terms of this contract.

3. The City of Austin agrees to provide police liaison services as described in Exhibit "A", which is attached hereto and made a part of this Agreement.
4. The District reserves the right to extend the contract term basis, subject to the City of Austin's concurrence.
5. Either District or City of Austin may terminate the Term of Services under this Agreement at any time and for any reason by providing the other party with thirty (30) days written notice.

Further, either District or City of Austin may terminate the Term of Services under this Agreement by providing the other party with five (5) days written notice in the event the other party commits a material breach of this Agreement or otherwise fails to comply with its material obligations under this Agreement.

6. The District and the City of Austin acknowledge and agree that the City of Austin's police liaison officers are not employees of the District, and that the City of Austin or its agents will have no authority to bind the District or otherwise incur liability on behalf of the District without express delegation of authority by the District. The District shall have no obligation to provide any employee benefits or privileges of any kind or nature to the City of Austin police liaison officers, including, without limitation, insurance benefits, pension benefits, or the like.
7. The police liaison officers are not entitled to access private or confidential data maintained by the School District, including, but not limited to, private personnel data and private student data, unless state or federal law allows such access. In the event that the officers learn private student data or private personnel data in connection with their assignment to the schools, such information cannot be shared with individuals other than School District employees who have a legitimate need to know such information, unless otherwise authorized by the law.
  - a. The District recognizes that the police liaison officers will be performing services that would otherwise be the responsibility of the District's employees, as delineated in Exhibit A to the Agreement. In the course and scope of these duties, the liaison officers may encounter and/or be required to review educational records, which would be available to District employees performing these same functions. In this limited capacity, the police liaison officers shall be treated as "school officials" who have a "legitimate educational interest" in reviewing these records, as the quoted terms are defined by the Family Educational Rights and Privacy Act (FERPA), the Minnesota Government Data Practices Act (MGDPA), and the regulations thereto.
  - b. The District and the City of Austin acknowledge that educational records reviewed by the police liaison officers in their capacity as school officials shall not be shared with the City of Austin or its Police Department, unless such disclosure meets one of the exceptions to consent specified in Section 99.31 of FERPA and Section 12.31 of the MGDPA.
  - c. From time to time, other school employees may disclose educational records to the police liaison officers in their capacity as "school officials." Such disclosures shall comply with FERPA and with the MGDPA. Such disclosure shall not alter the fact that these records are education records and that FERPA and the MGDPA prohibit the police liaison officers from re-disclosing these records or from using them for any purpose other than the purpose for which the disclosure was made, unless there is prior written consent for such re-disclosure.

- d. The City of Austin hereby acknowledges the restrictions placed on the police liaison officers' access to and use of student records, as outlined in this section and as required by state and federal law. The District shall direct and supervise the police liaison officers' use and maintenance of education records.
8. The School District's authorized representatives in matters relating to this Agreement are Dr. Joey Page and Todd Lechtenberg unless the City of Austin is notified in writing of an additional or substitute representative. Said Representative shall have final authority for acceptance of the City of Austin's services as satisfactory and shall certify acceptance on each invoice submitted by the City of Austin. The City of Austin shall not rely on the directives or interpretations of any other individual as representing the School District under this Agreement.
9. The City of Austin acknowledges and agrees that it and its employees and agents that are assigned to perform services under this Agreement shall comply with the policies set forth in Exhibit B hereto and with any amendments to those policies that are made during the term of this Agreement.
10. The City of Austin hereby represents and warrants that it:
  - a. Is not subject to any restrictions whatsoever which would prevent it from entering into or carrying out the provisions of this Agreement;
  - b. Possesses all licenses, permits, approvals and other certificates necessary and required for performing the services pursuant to this Agreement;
  - c. Possesses the proper skill, training, experience and background so as to be able to perform this Agreement in a competent and professional manner; and
  - d. Has full authority to enter into this Agreement and consummate the transaction contemplated hereby.
11. Both parties shall, at its own expense, procure and maintain liability insurance against claims for bodily injury, death and property damage occurring on or about the facilities of the District in conjunction with any use of the District facilities named in paragraph hereto in amounts reasonably satisfactory to the District and the City of Austin.
12. This Agreement contains the entire agreement between the City of Austin and the School District with respect to the services. All prior agreements and understandings are superseded hereby.
13. No provision of this Agreement may be modified, waived, terminated or amended except by a written instrument executed by the parties hereto. No waiver of a breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or other provisions hereof.

14. Any notices or demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been given when delivered personally or three (3) days after deposit in a regularly maintained receptacle of the United States Postal Service, postage prepaid, return receipt requested and addressed as follows or as the parties may from time to time designate in writing:

TO School District:

**U.S. Mail**

Independent School Dist. 492  
Attn: Dr. Joey Page

**Non-Mail**

401 3rd Ave. NW  
Austin, MN 55912

TO City of Austin:

Tom Dankert  
City of Austin  
500 4th Ave NE  
Austin, MN 55912

Tom Dankert  
City of Austin  
500 4th Ave NE  
Austin, MN 55912

15. If any provision of this Agreement is prohibited by law or held to be invalid, illegal, or unenforceable, the remaining provisions hereof shall not be affected, and this Agreement shall continue in full force and effect as if such prohibited illegal or invalid provision had never constituted a part hereof, with this Agreement being enforced to the fullest extent possible.
16. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against either party.

Executed as of the day and date first written above.

CITY OF AUSTIN

INDEPENDENT SCHOOL DISTRICT 492  
AUSTIN PUBLIC SCHOOLS

BY: \_\_\_\_\_

BY:  \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: Executive Director of Finance and Operations

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Executed as of the day and date first written above.

## **Exhibit A Scope of Services**

Provide a technically and professional qualified individuals deemed acceptable to the School District to assist the School District in its retention of students. Scope of work includes, but is not limited to the following:

- 1) Full professional responsibility for all police liaison services provided at the School District.
- 2) Assist in weekly multi-disciplinary team meetings with District staff.
- 3) Provide periodic in-service for District staff regarding student discipline and legal issues.
- 4) Ensure the confidentiality of all student information.
- 5) Assist in the development of appropriate individual student plans.
- 6) Assist in team building and healthy team functioning in all programs.
- 7) Provide consultation to district staff on student discipline issues.
- 8) Ensure that all services are within the scope and duties as appointed by the Court

The City of Austin will adhere to policies adopted by the Austin Public School board and accessible at [Austin.k12.tx.us](http://Austin.k12.tx.us). See Policy 406 and policy 413 attached as a component of Exhibit A.

**RESOLUTION NO.**

**RESOLUTION AUTHORIZING EXECUTION OF A LETTER OF AGREEMENT  
WITH INDEPENDENT SCHOOL DISTRICT #492**

BE IT RESOLVED THAT the City of Austin, Minnesota is authorized to enter into a letter of agreement with Independent School District No. 492 for police liaison officers from August 26, 2024 through May 30, 2025. A copy of said agreement is attached hereto.

Passed by a vote of yeas and nays this 1st day of July, 2024.

YEAS:

NAYS:

ATTEST:

APPROVED:

---

City Recorder

---

Mayor

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:** June 20, 2024  
**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 27<sup>th</sup> 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. Since startup in 2022, we have had multiple interim ICM agreements, but feel that the wastewater discharge has now reached a point where it is fairly consistent. Attached is a 3 ½ year agreement with some minor modifications to the flow and loading parameters.

We would recommend approving this 3-year ICM discharge agreement with Nu-Tek Biosciences, LLC with an expiration date of December 31<sup>st</sup>, 2027. 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 Limit<sup>2</sup></u>	<u>Maximum Daily Limit<sup>1</sup></u>	<u>Min. Max.</u>
Flow:		35,000 <del>30,000</del> gpd	
CBOD:	250 lbs/day		
TSS <sup>4</sup> :	100 <del>50</del> lbs/day		
TKN <sup>5</sup> :	85 <del>50</del> 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 ICM Agreement is subject to review, modification, restriction, or termination in the event The City or its Waste Water Treatment facility or process experiences additional regulatory or statutory standards, whether adopted by the MPCA, the EPA, the Minnesota State Legislature, the Federal Government, or other regulatory agency or institution with authority over the City's Waste Water Treatment facility or process related to any contaminant, byproduct, or substance present in Permittee's leachate when delivered to the City under this ICM Agreement. Said review, modification, restriction, or termination shall be at the City's sole discretion but shall be based on the City's ability to meet any such regulatory or statutory standards with existing facilities and process and at no additional cost to the City.
- 16. This agreement expires on **December 31<sup>st</sup>, 2027** ~~June 30th, 2024~~ 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: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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 three year agreement attached in Exhibit A and that such agreement will be effective immediately upon adoption of this resolution and will expire on December 31, 2027.

Passed by a vote of yeas and nays this 1st day of July, 2024.

YEAS

NAYS

ATTEST:

APPROVED:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor



## MEMORANDUM

To: Craig Clark  
From: Brian Grogan  
Date: June 25, 2024  
Re: Settlement Agreement - MetroNet

---

MetroNet has notified the City of Austin, Minnesota ("City") that due to changing market conditions, MetroNet no longer seeks to provide cable/video services in the City. MetroNet has therefore requested termination of Cable Television Franchise Ordinance No. 692, adopted by the City on June 21, 2021; as well as Cable Television Franchise Ordinance No. 611 granting a limited area franchise to Jaguar, adopted by the City on June 16, 2014 ("Cable Franchises").

MetroNet has stated that while it seeks to terminate the Cable Franchises, MetroNet intends to continue to provide broadband service within the City. The provision of broadband service in the City does not currently require franchise authorization. Rather, MetroNet would be required to comply with applicable City Code provisions related to right-of-way construction.

Settlement Agreement Terms:

The City and MetroNet are also parties to an Indefeasible Right of Use Agreement ("IRU Agreement") dated June 14, 2021, which provides for dedicated dark fiber connections to be constructed by MetroNet to specified City locations and provided to the City free of charge. As consideration for the termination of the Cable Franchises MetroNet has agreed to comply with the IRU Agreement which shall expire on August 4, 2036; however, the City shall have the option to renew the IRU Agreement for 15 years.

The City and MetroNet also entered into a Memorandum of Understanding dated November 2, 2023, regarding construction work in the City ("Memorandum"). As part of the terms of the Settlement Agreement MetroNet shall comply with the Memorandum until such time as the City determines that MetroNet has satisfied the steps outlined within the Memorandum.

MetroNet shall continue to comply with the December 10, 2020, Pole Attachment Agreement with Austin Utilities.

MetroNet has agreed to provide payment to the City for unpaid franchise fees and PEG fees collected from its subscribers in the City as set forth in the Cable Franchises, in the amount of \$15,500. MetroNet will reimburse the City \$25,000 for its reasonable costs and expenses in connection with this Settlement Agreement.

The attached Settlement Agreement has been reviewed and agreed to by City staff and MetroNet has executed the document.

Action Requested:

Approve the Settlement Agreement resulting in the termination of the Cable Franchises.

Attachment:

Settlement Agreement - MetroNet and City of Austin.

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made this \_\_\_ day of \_\_\_\_\_ 2024, by the City of Austin, Minnesota ("City"), Jaguar Communications, LLC (formerly Jaguar Communications, Inc., hereinafter "Jaguar") and CMN-RUS, LLC (formerly CMN-RUS, Inc., hereinafter "MetroNet"). The City and MetroNet shall sometimes be referred to herein individually as a "Party" or collectively as the "Parties."

### **RECITALS**

1. On June 16, 2014, the City adopted Ordinance No. 611 granting a limited area franchise to Jaguar ("Jaguar Franchise").
2. On May 18, 2020, the City adopted Resolution No. 16066 approving the change of control of Jaguar to MetroNet Holdings, LLC.
3. The City granted Cable Television Franchise Ordinance No. 692 ("MetroNet Franchise") to MetroNet on June 21, 2021.
4. On June 14, 2021, the City and MetroNet entered into an Indefeasible Right of Use Agreement ("IRU Agreement") which provides for dedicated dark fiber connections to be constructed by MetroNet to specified City locations in exchange for the City's waiver of certain construction permit fees.
5. The MetroNet Franchise is set to expire on or about August 4, 2031 ("Expiration Date").
6. The MetroNet Franchise anticipated construction of a cable system to provide cable service that would serve approximately ninety percent (90%) of the City within twenty-eight (28) months from the commencement of construction.
7. The City and MetroNet entered into a Memorandum of Understanding dated November 2, 2023 regarding construction work in the City ("Memorandum"). The Memorandum outlined ten (10) specific steps MetroNet will undertake with respect to further construction in the City.
8. MetroNet has notified the City that due to market conditions it no longer plans to provide cable service within the City, however, MetroNet still desires to install facilities within the City to provide broadband services and MetroNet desires to maintain the IRU Agreement.
9. MetroNet has requested that the City agree to terminate the MetroNet Franchise and the Jaguar Franchise, and the City is not opposed subject to certain conditions.
10. The City and MetroNet desire to maintain the IRU Agreement subject to clarification regarding the term of the IRU Agreement as set forth herein.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, considerations, and mutual promises contained herein and other good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound, the Parties agree as follows:

## AGREEMENT

1. **FRANCHISE TERMINATION DATE.** The Parties hereby agree to terminate the MetroNet Franchise and the Jaguar Franchise effective \_\_\_\_\_, 2024.
2. **REMOVAL OF FACILITIES.**
  - a. Pursuant to the Jaguar Franchise and the MetroNet Franchise, MetroNet agrees to remove any cables, wires and appliances from publicly dedicated Streets, alleys or utility easements within the City associated solely with the provision of cable service.
  - b. MetroNet agrees to restore affected sites to their original condition consistent with all City Code requirements.
  - c. Nothing herein shall be construed to waive any rights that the City may have with respect to the enforcement of City Code obligations on any MetroNet facilities that remain in the City's streets. Such enforcement rights shall extend to facilities owned by any affiliates of MetroNet. MetroNet agrees to compensate the City for any damages resulting from the discontinued use or abandonment of the cable system, including all costs which the City may incur to remove any abandoned portion of the cable system from the streets.
3. **CONTACT.** MetroNet will provide a phone number and e-mail address for a technical employee who may be contacted for technical questions or issues or to request removal of abandoned or unused MetroNet property.
4. **INSURANCE.** MetroNet agrees to maintain the policies of insurance, pursuant to the terms outlined in Section 22.5 of the MetroNet Franchise, through August 4, 2031.
5. **MAPS.** Within thirty (30) days of the date of adoption of this Agreement, MetroNet shall provide to the City maps showing the location of all existing facilities in the City pursuant to Section 7.08 of the City Code.
6. **PERMITS.** Except as otherwise specified in the IRU Agreement, MetroNet agrees to comply with all permitting obligations and applicable fees applied to right-of-way users pursuant to the City Code. MetroNet agrees to comply with the City Code with respect to any future construction for telecommunications or broadband facilities.
7. **IRU AGREEMENT.** Section 3 of the IRU Agreement shall be deleted in its entirety and replaced with the following:

This Agreement shall expire on August 4, 2036. The City shall have the unilateral right to trigger a renewal term for fifteen (15) years for the continuation of the exclusive use and access to the City Fibers which shall be provided free of charge to the City. The Parties agree that the obligations under the IRU Agreement shall not extend beyond the Useful Life of the City Fibers. "Useful Life", as used in this Section, refers to the period that begins on the installation date of the City Fibers and continues until the date when the City Fibers become technically unusable along a substantial portion of the segments described in Exhibit A due to normal wear over an extended period of time.

8. **POLE ATTACHMENTS.** MetroNet shall continue to comply with the December 10, 2020 Pole Attachment Agreement between MetroNet Fibernet, LLC, and Austin Utilities.
9. **COMPLIANCE WITH MEMORANDUM.** MetroNet shall comply with the agreement set forth in the Memorandum until such time as the City determines, in its sole reasonable discretion, that MetroNet has satisfied the steps MetroNet agreed to undertake with respect to further construction in the City.
10. **UNPAID FRANCHISE FEES AND PEG FEES.** MetroNet shall, within thirty (30) days of the date of adoption of this Agreement, provide payment to the City for unpaid franchise fees and PEG fees collected from its subscribers in the City as set forth in the MetroNet Franchise and the Jaguar Franchise, together with and applicable interest or late fees, in the amount of Fifteen Thousand Five Hundred and No/100 Dollars (\$15,500).
11. **FEES AND COSTS.** MetroNet shall, within thirty (30) days of the date of adoption of this Agreement, fully reimburse the City Twenty-five Thousand and No/100 Dollars (\$25,000.00) for City's reasonable costs and expenses in connection with this Settlement Agreement.
12. **VOLUNTARY AGREEMENT.** This Agreement is freely and voluntarily executed by each Party, without any duress or coercion, and after each Party has consulted with its counsel. Each Party has carefully and completely read all the terms and provisions of this Agreement.
13. **BINDING EFFECT.** This Agreement will inure to the benefit of and be binding upon the Parties and respective successors and assigns. The Parties for themselves and their respective successors, assigns agree to join in or execute any instruments and to do any other act or thing necessary or proper to carry into effect this or any part of this Agreement.
14. **GOVERNING LAW.** This Agreement, and any controversies arising hereunder, shall be interpreted and adjudicated in accordance with the laws of the State of Minnesota, whose courts shall have exclusive jurisdiction thereof.
15. **ENTIRE AGREEMENT.** This Agreement represents the entire understanding and agreement between the parties as to the subject matter hereof and may be modified or waived only by a separate writing.
16. **HEADINGS.** All headings are herein provided for the convenience of reference only and do not affect the meaning or interpretation of this Agreement.
17. **COUNTERPARTS.** This Agreement may be executed electronically and in counterparts, each of which is an original and all of which together constitute one and the same document.
18. **COPIES.** PDF copies of the executed Agreement may be treated as original documents.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as their free and voluntary acts and deeds, effective as of the date first above written.

**CITY OF AUSTIN, MN**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CMN-RUS, LLC**

By: John Campbell  
John Campbell (Jun 24, 2024 14:32 CDT)  
John Campbell

Its: EVP & General Counsel

**JAGUAR COMMUNICATIONS, LLC**

By: John Campbell  
John Campbell (Jun 24, 2024 14:32 CDT)  
John Campbell

Its: EVP & General Counsel

**RESOLUTION NO.**

**REQUESTING TERMINATION OF METRO FIBERNET, LLC  
CABLE/VIDEO SERVICES IN THE CITY OF AUSTIN, MINNESOTA**

WHEREAS, due to changing market conditions, MetroNet no longer seeks to provide cable/video services in the City of Austin; and

WHEREAS, Metro Fibernet, LLC has requested to termination of Cable Television Franchise Ordinance No. 692 adopted by the City of Austin on June 21, 2021 and Cable Television Franchise Ordinance No. 611 adopted by the City of Austin on June 16, 2014; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Austin does grant termination of Cable Television Franchise Ordinance No. 692 and No. 611.

Passed by a vote Yeas and Nays this 1st day of July, 2024.

YEAS

NAYS

ATTEST:

APPROVED:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF AUSTIN, MINNESOTA  
MESSAGE THERAPIST AND MESSAGE ESTABLISHMENT  
CITY CODE SECTION 6.40 & 6.41**

The Council of the City of Austin ordains:

Section 1. Austin City Code Chapter 6, Section 6.40 and 6.41, are hereby repealed in their entirety.

Section 2. A new Section 6.41 is hereby enacted and should read as follows:

**§ 6.41 MESSAGE THERAPIST AND MESSAGE ESTABLISHMENT**

Subd. 1. *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- A. **MESSAGE THERAPY.** The use of pressure, friction, stroking, tapping or kneading on the human body, or the use of vibration or stretching on the human body by manual or mechanical means for the purpose of, but not limited to, maintain good health and establishing and maintaining good physical condition.
- B. **MESSAGE ESTABLISHMENT.** Any enterprise, establishment, or operation, licensed under this section, whether under the control of an individual or legal entity, providing or offering to provide massage therapy within the city for a fee or other consideration paid either directly or indirectly, that has one or more massage therapists, other than the owner, employed or utilizing space within the massage establishment to provide massage therapy services.
- C. **MESSAGE THERAPIST.** A person licensed under this section to administer massage therapy as described by a recognized school for consideration.
- D. **PATRON.** Any person who receives massage therapy under such circumstances that is reasonably expected that he or she will pay money or give any consideration therefor.
- E. **RECOGNIZED SCHOOL.** Any school or institution of learning which has for its purpose the teaching of the theory, method, profession or work of massage therapists, which school requires a resident course of study of not less than 500 hours before the student shall be furnished a diploma or certificate of graduation from the school following successful completion of the course of study or learning. The school must show current membership in good standing in the American Massage Therapy Association or other recognized professional massage organization. Schools offering a correspondence course not requiring actual attendance of class shall not be deemed a **RECOGNIZED SCHOOL.**

Subd. 2. *Exceptions.* This section shall not apply to the following classes of individuals while engaged in the duties of their professions:

- A. Any medical professional or medical facility that is licensed, certified, or registered by the State of Minnesota under Minnesota Statutes Chapters 147, 148, or 150A;
- B. Any massage therapist hired or employed by, and exclusively providing massage therapy on the premises of any facility operated by a medical professional or medical facility licensed by the State of Minnesota under Minnesota Statutes Chapters 147, 148, or 150A, whether or not the Patron is a patient of such medical professional or medical facility;
- C. Barbers and beauticians licensed under the laws of the State of Minnesota, provided that the massage is limited to the head and scalp, or hands and feet for manicure or pedicure services; or
- D. Coaches and trainers of educational institutions acting within the scope of their employment.

Subd. 3. *License required; application fee, investigation; issuance; inspection; denial; revocation; suspension.*

- A. Massage therapists and massage establishments shall be licensed as provided in this section.
- B. Applications for licenses required by this section shall be in writing in such form as required by the City Administrator.
- C. In addition to the information required pursuant to § 6.02 hereof, the application shall require the following:
  - 1. The applicant's full name, address, social security number, written proof that the age of the applicant is at least 18 years
  - 2. The applicant's two previous addresses and dates of residences;
  - 3. Occupation for three years preceding date of application;
  - 4. Diploma or certificate of graduation from a recognized school; and
  - 5. A verified statement signed by the applicant that all information contained therein is true and correct.
- D. Each application for a license under this section shall be accompanied by a fee as specified by resolution to defray the cost of required Police Department investigation and administration.

- E. After investigation, the Council shall issue to the applicant a license; provided that, a license may be denied to any applicant who has within the previous two years been convicted of an action for which a license could be revoked or suspended as set forth in § 6.09.
- F. The issuing authority, or his or her designee, shall have the right to enter and inspect the licensed premises during the hours in which the licensed premises is open to ensure compliance with all provisions of the code.
- G. The Council may revoke or suspend a license issued under this section for any one of the following:
  - 1. Violation of any provision of this section or applicable license requirements of this section;
  - 2. Conviction of any crime or offense involving dishonesty, fraud, deceit or immorality; or
  - 3. If the Council has reasonable grounds to believe that any licensee is infected with a contagious or communicable disease.

Subd. 4. *Massage therapist's regulations.* Licensees shall comply with the following regulations:

- A. The therapist shall prominently and publicly display his or her license at all times during massages.
- B. Massages shall not be given unless patrons are wearing clothing fully covering their genitals.
- C. Massages shall not be given to patrons who have open sores or other visible signs of communicable diseases.
- D. The therapist shall report any change of facts regarding any information which was required in his or her license application to the City Administrator, within ten days after the change.
- E. It is unlawful for a massage therapist to touch or massage, with his or her hands or body, a sexual or genital part of a patron or to allow to touch or massage with his or her hands or body a sexual or genital part of the therapist.
- F. It is unlawful for a massage therapist or patron to expose his or her genital parts to any other person.
- G. No beer, liquor, narcotic drug or controlled substances, or cannabinoid products as defined in § 6.60, subd. 1(C), as such terms are defined by state statutes or the City Code, shall be permitted on the licensed premises.
- H. No massage therapy services shall be provided between the hours of 11:00 p.m. and 6:00 a.m.

Subd. 5. Additional Provisions.

- A. Massage establishments shall be located in areas zoned by the Zoning Chapter in R-O, B-1, B-2, B-3 and I-1 districts; provided, however, that individual massage therapists may engage in business as a home occupation, as defined by § 11.031, subd. 13 of this City Code, in residential districts as a conditional use. An inspection by the Building Inspector shall be conducted of all premises where massage therapy takes place before consideration by the Council.
- B. Massage therapists may practice massage therapy at hospitals, nursing homes, hospices and other health care providers, if approved by the healthcare facility.
- C. Massage establishments which are not home occupations shall comply with all relevant local, state and federal health and building regulations which govern the design, construction, maintenance and sanitation of health spas or similar establishments.
- D. The provisions of this section do not apply to locations where massage is practiced by persons excepted from this section under Subd. 2 of this section.

Subd. 6. *Penalty.* It is unlawful for any person to practice massage therapy for consideration, except as provided in this section. Violation of this section shall be a misdemeanor. Each day of violation shall constitute a separate offense.

Passed by a vote of yeas and nays this 1st day of July, 2024

YEAS

NAYS

APPROVED:

\_\_\_\_\_  
Stephen M. King, Mayor

ATTEST:

\_\_\_\_\_  
Tom Dankert, City Recorder

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

**SUMMARY OF ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF AUSTIN  
MESSAGE THERAPIST AND MESSAGE ESTABLISHMENT  
CITY CODE SECTIONS 6.40 & 6.41**

The Austin City Council adopted a new massage therapist and massage establishment ordinance at the July 1, 2024, City Council meeting.

**SUMMARY:** A repeal of former Section 6.40 (regulation and licensing of Sauna and Massage Parlors) and 6.41 (regulation of Massage Therapists) and replacing these sections with a new Section 6.41 entitled “Massage Therapist and Massage Establishment” for the regulation of all massage businesses under a single section and requiring only a single license for each location. The new section combines definitions from the prior language definitions from state statutes; clarifies what businesses, locations and providers are required to be licensed; and the licensing process and requirements for those required to be licensed. The permitted hours for massage services were modified be from 11 pm to 6 am only. Finally, references to sauna and sauna licenses were deleted and not replaced.

**COPIES OF ORDINANCE:** The above is only a summary of the essential elements of the ordinance. A printed copy of the full ordinance is available for inspection by any person during regular office hours at the Clerk’s Office located at 500 4<sup>th</sup> Avenue NE, Austin, Minnesota 55912, or at the Austin Public Library located at 323 4<sup>th</sup> Avenue NE, Austin, Minnesota 55912.

Passed by the Austin City Council this 1st day of July, 2024

YEAS

NAYS

ATTEST:

APPROVED:

\_\_\_\_\_

Tom Dankert, City Recorder

\_\_\_\_\_

Stephen M. King, Mayor

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

RESOLUTION NO.

ACCEPTING DONATIONS TO THE CITY OF AUSTIN

WHEREAS, the City has received gift as follows:

Gift	Donor	For
\$500.00	Friends of the Nature Center	Culture & Arts Commission
\$500.00	Cedar River Watershed District	Roosevelt Bridge Mural (Culture & Arts Commission)

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

Passed by a vote of yeas and nays this 1st day of July, 2024.

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

## Memorandum

**To:** Mayor and City Council

**Cc:** Karen Kay Nei  
1906 3<sup>rd</sup> Ave NE  
Austin, MN 55912

**From:** Holly Wallace, Planning & Zoning Administrator

**Re:** Hazardous Structure located at 1906 3<sup>rd</sup> Ave NE Austin MN 55912

**Date:** June 27, 2024

---

May I ask the City Council to review and approve this resolution classifying the property located at 1906 3<sup>rd</sup> Ave NE, Austin, Minnesota, as hazardous pursuant to Minnesota Statutes 463.15 – 463.261. City staff has been dealing with numerous complaints regarding this property and the owner has failed to repair these structural deficiencies. (See attached)

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

Thank You!

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION ORDERING SECURING AND RAZING OF A HAZARDOUS BUILDINGS  
LOCATED AT 1906 3<sup>RD</sup> AVE NE AUSTIN, MINNESOTA  
OWNED BY KAREN KAY NEI**

**WHEREAS**, Pursuant to Minnesota Statutes, Section 463.15 to 463.61, the City Council of Austin, Minnesota, finds the building located at 1906 3<sup>rd</sup> Ave NE to be a hazardous building for the following reasons:

- 1. Repair/Replace shingles on house and garage**
- 2. Protective treatment on exposed trim on garage**
- 3. Exterior walls on garage shall be maintained weatherproof and properly surfaced coated.**
- 4. Repair/Replace damaged gutters on house**
- 5. Repair/Replace broken windows on house and garage**

**WHEREAS**, The conditions listed above are more fully documented in the inspection report prepared by Brent Johnson on April 6<sup>th</sup>, 2023, April 4<sup>th</sup>, 2024 and May 23<sup>rd</sup>, 2024 a copy (or copies) of which is (are) attached to the resolution as Exhibit A.

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

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

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

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

YEAS \_\_\_\_\_ NAYS \_\_\_\_\_

ATTEST:

APPROVED:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

City of Austin  
Building Department



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

May 23<sup>rd</sup>, 2024

Karen Kay Nei  
1906 3<sup>rd</sup> Ave NE  
Austin, MN 55912

RE: Violations at 1906 3<sup>rd</sup> Ave NE Austin, MN 55912

Dear Karen:

The City of Austin Planning and Zoning Department has observed a violation of City Code on April 6<sup>th</sup>, 2023 and April 4<sup>th</sup>, 2024 your property. An investigation of this complaint was conducted on at this site, and the following issues need to be resolved:

1. **Repair/Replace shingles on house and garage**
2. **Protective treatment on exposed trim on garage**
3. **Exterior walls on garage shall be maintained weatherproof and properly surfaced coated.**
4. **Repair/Replace damaged gutters on house**
5. **Repair/Replace broken windows on house and garage (added)**

(No progress has been made)

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.

**304.2 Protective treatment.** Exterior surfaces, including but not limited to, doors, door and window frames cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

**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.

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,

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

Brent Johnson  
Zoning Inspector

City of Austin  
Building Department



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

April 4<sup>th</sup>, 2024

Karen Kay Nei  
1906 3<sup>rd</sup> Ave NE  
Austin, MN 55912

RE: Violations at 1906 3<sup>rd</sup> Ave NE Austin, MN 55912

Dear Karen:

The City of Austin Planning and Zoning Department has observed a violation of City Code on April 6<sup>th</sup>, 2023 and April 4<sup>th</sup>, 2024 your property. An investigation of this complaint was conducted on at this site, and the following issues need to be resolved:

1. **Repair/Replace shingles on house and garage**
2. **Protective treatment on exposed trim on garage**
3. **Exterior walls on garage shall be maintained weatherproof and properly surfaced coated.**
4. **Repair/Replace damaged gutters on house**

(No progress has been made)

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.

**304.2 Protective treatment.** Exterior surfaces, including but not limited to, doors, door and window frames cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

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

**304.7 Roofs and drainage.** The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or *deterioration* in the walls or interior portion of the structure. Roof drains, gutters and

downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

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,

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

Brent Johnson  
Zoning Inspector

City of Austin  
Building Department



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Austin, Minnesota 55912-3773  
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Fax: 507-437-7101  
[www.ci.austin.mn.us](http://www.ci.austin.mn.us)

April 6<sup>th</sup>, 2023

Karen Kay Nei  
1906 3<sup>rd</sup> Ave NE  
Austin, MN 55912

RE: Violations at 1906 3<sup>rd</sup> Ave NE Austin, MN 55912

Dear Karen:

The City of Austin Planning and Zoning Department has observed a violation of City Code on April 6<sup>th</sup>, 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 shingles on garage**
2. **Protective treatment on exposed trim on garage**
3. **Exterior walls on garage shall be maintained weatherproof and properly surfaced coated.**
4. **Repair/Replace damaged gutters on house**

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.

**304.2 Protective treatment.** Exterior surfaces, including but not limited to, doors, door and window frames cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

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

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

shall not be discharged in a manner that creates a public nuisance.

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,

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

Brent Johnson  
Zoning Inspector

TIME STAMP 

**June 26, 2024**  
**10:49 AM**



TIME STAMP 

**June 26, 2024**  
**10:49 AM**

