

Item 6A

HENRY COUNTY WATER AUTHORITY

RESOLUTION NO. 2023-02

RESOLUTION AUTHORIZING THE GRANT OF A CERTAIN DRAINAGE EASEMENT FROM HENRY COUNTY WATER AUTHORITY TO THE ENCLAVE AT BROOKSTONE, LLC.; AUTHORIZING THE EXECUTION OF A DRAINAGE EASEMENT; AUTHORIZING CHAIRMAN OR GENERAL MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO EFFECTUATE THIS RESOLUTION; AUTHORIZING AUTHORITY CLERK TO ATTEST SIGNATURES AND AFFIX THE OFFICIAL SEAL OF THE AUTHORITY, AS NECESSARY; REPEALING INCONSISTENT RESOLUTIONS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Henry County Water Authority ("Authority") is an authority duly organized and existing under the laws of the State of Georgia and is charged with providing public services to local residents; and

WHEREAS, the Authority is the owner of the property shown and/or described in Exhibit "A" which attached hereto and incorporated herein by reference as the "Property"; and

WHEREAS, The Enclave at Brookstone, LLC ("The Enclave") has requested from the Authority a drainage easement and a temporary easement for construction of the drainage facilities within the easement area (as depicted and/or described in Exhibit "B" attached hereto and incorporated herein as the "Drainage Easement") over, across, under and through the Property; and

WHEREAS, the value of said Drainage Easement and costs and expenses associated with this transaction has been determined to be \$3,080.00; and

WHEREAS, the Authority, in the exercise of its sound judgment and discretion, after giving thorough thought to all the implications involved, and keeping in mind the public interest and welfare of the citizens of Henry County, Georgia, hereby adopts the following Resolution.

NOW, THEREFORE, BE RESOLVED BY THE BOARD OF THE HENRY COUNTY WATER AUTHORITY, INCORPORATING THE PREAMBLE HEREIN, APPROVES AND AUTHORIZES THE FOLLOWING ACTIONS:

1. Approval of Value. The Authority does hereby approve said value of the Drainage Easement, based upon appraised valuation, inclusive of costs and expenses to the Authority for determining said value and for staff and legal review of documents associated with this transaction.

2. Approval and Authorization of Conveyance. The Authority does hereby approve the grant of the Drainage Easement including the temporary easement for construction
(Doc: 03243661.DOC)

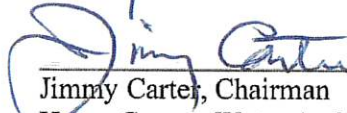
to The Enclave, as set out in Exhibit B hereto attached, upon receipt of \$3,080.00 from The Enclave.

3. **Documentation.** The Authority's Chairman or the General Manager are hereby authorized to execute documents necessary to effectuate the conveyance of the Drainage Easement from the Authority to The Enclave subject to the approval to form by the Authority's attorney. In addition, the Clerk of the Authority is authorized to execute, attest to, and seal any document which may be necessary to effectuate this Resolution, subject to approval as to form by the Authority's Attorney.

4. **Severability.** To the extent any portion of this Resolution is declared to be invalid, unenforceable, or non-binding, that shall not affect the remaining portions of this Resolution.

5. **Effective Date.** This Resolution shall take effect immediately.

SO RESOLVED, this 9th day of February, 2023.


Jimmy Carter, Chairman
Henry County Water Authority

Attest:


Karen Lake-Thompson, Clerk

Exhibit "A"

BOOK 189 PAGE 186

STATE OF GEORGIA, HENRY COUNTY

IN CONSIDERATION of the sum of TEN (\$10.00) DOLLARS AND OTHER CONSIDERATIONS to us paid, we, GEORGE HAMILTON and EMORY HAMILTON of the County of Henry do hereby sell and convey unto HENRY COUNTY, GEORGIA, its successors and assigns, a tract or parcel of land, which is described as follows:

All that tract or parcel of land lying and being in Land Lot 101 of the 7th District of Henry County, Georgia, according to a plat of survey for Henry County by Hensley-Schmidt, Inc., Consulting Engineers, dated August, 1973, and recorded in Plat Book 5, Page 216, Henry County Records and being more particularly described as follows:

BEGINNING at an iron pin which is on the eastern right-of-way line of Georgia Highway 42, forty and no hundredths feet (40.00') from a point on the centerline of said highway, said point also being northwesterly one hundred and no hundredths feet (100.0') as measured along the centerline of said highway, from the end of the existing bridge over Camp Creek; running thence North 34° 00' 00" West a distance of one hundred ninety-eight and eighty-three hundredths feet (198.83') along the easterly right-of-way of said highway to a point, said point being on the centerline of an unimproved county road; continuing thence North 34° 00' 00" West a distance of three hundred seventy-five and seven hundredths feet (375.07') along the easterly right-of-way of said highway to a point; running thence North 33° 26' 11" West a chord distance of one hundred thirty-two and ninety hundredths feet (132.90') and having a curve distance of one hundred thirty-two and ninety-five hundredths feet (132.95') along the easterly right-of-way of said highway to a point marked by an iron pin; running thence South 88° 04' 11" East along the North Land Lot line of Land Lot 101 a distance of six hundred twenty-six and thirty hundredths feet (626.30') to a point, said point being at the intersection of centerline of said unimproved county road with said Land Lot line; continuing thence South 88° 04' 11" East along the North Land Lot line of Land Lot 101 a distance of seven hundred fifty-nine and seventy-six hundredths feet (759.76') to a point marked by an iron pin; continuing thence South 88° 04' 11" East along the North Land Lot line of Land Lot 101 a distance of seventy-four and no hundredths (74.00') to a point, said point being the centerline of Camp Creek, said point also being North 88° 04' 11" West along the North Land Lot line of Land Lot 101 a distance of twenty-six and no hundredths feet (26.00') from an iron pin found on the east bank of creek; running thence southwesterly along the centerline and following the meanderings of said creek a distance of thirteen hundred and no hundredths feet, more or less (1300.00+) to a point, said point being on the easterly right-of-way of State Highway 42; running thence North 34° 00' 00" West a distance of one hundred thirty and no hundredths feet more or less (130.00'+) to an iron pin, said point being the point of beginning of said parcel.

Said tract of land as described above contains a total of eight and three hundredths acres more or less (8.03 acres+) excluding unimproved county road which contains fifty-four hundredths acres more or less (0.54 acres+).

Said unimproved county road being more particularly described as follows:

BEGINNING at a point which is on the easterly right-of-way line of Georgia Highway 42, said point being North $34^{\circ} 00' 00''$ West a distance of one hundred ninety-eight and eighty-three hundredths feet (198.83') from an iron pin on the easterly right-of-way of Georgia Highway 42, running thence North $54^{\circ} 13' 00''$ East along the centerline of said road a distance of three hundred seventy-seven and twenty hundredths (377.20') to a point. Running thence along the curve of said road, said curve having a delta angle of $65^{\circ} 52' 00''$, a tangent of eighty-eight and sixty hundredths feet (88.60') a radius of one hundred thirty-six and seventy-eight hundredths feet (136.78') said curve length being one hundred fifty-six and eighty hundredths feet (156.80') to a point; running thence North $11^{\circ} 35' 00''$ West a distance of sixty-two and twenty-nine hundredths feet (62.29') to a point; said point being South $88^{\circ} 04' 11''$ East along the North Line Lot Line of Land Lot 101 a distance of six hundred twenty-six and thirty hundredths feet (626.30') from an iron pin on the easterly right-of-way of State Highway 42, said point being the centerline of said unimproved county road; said road having a forty feet (40.0') right-of-way.

To Have and to Hold said land and appurtenances unto said

HENRY COUNTY, GEORGIA, its successors and assigns in fee simple.

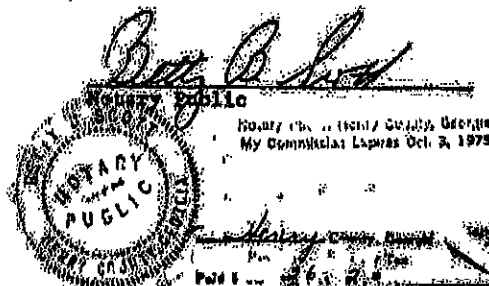
WE warrant the title to said land against the lawful claims of all persons.

IN WITNESS WHEREOF, we have hereunto set out hands and affixed our seals this the 20 day of Sept, 1973.

Signed, sealed and delivered in the presence of:

George Hamilton
George Hamilton

George Hamilton
George Hamilton



George Hamilton
George Hamilton
CLERK SUPERIOR COURT
HENRY COUNTY, GA.

SEP 21 8 48 AM '73

RECORDED
INDEXED
FILED

EXHIBIT 'B'

DRAINAGE EASEMENT

FOR AND IN CONSIDERATION OF THE SUM OF ONE DOLLAR (\$1.00), the HENRY COUNTY WATER AUTHORITY (hereinafter called "Grantor[s]") do/does hereby grant and convey to THE ENCLAVE AT BROOKSTONE, LLC, successors and assigns (all hereinafter referred to as "Grantee") over, through, and across certain property owned by Grantor described/depicted in Exhibit "A" attached hereto (referred to herein as the "Property") a drainage easement and temporary construction easement subject to the terms herein and as described/depicted in Exhibit "B-1" which is attached hereto and incorporated herein as the "Drainage Easement."

I. EASEMENT(S)

Drainage Easement shall be subject to the following conditions:

- (1) A permanent and uninterrupted easement, use, liberty and privilege of a right of way in, on, under and through the Property for the purposes of constructing, maintaining, and operating a line or lines of stormwater drainage, including all appurtenant structures, within the 20-foot wide area of the Drainage Easement described on Exhibit "B-1," and
- (2) A temporary construction easement of 10 feet on either side of the permanent easement area as depicted on Exhibit "B1" to allow for the construction and installation the stormwater drainage line and appurtenant structures contemplated to be installed within said 20-foot wide area of the Drainage Easement; provided, however, the duration of the temporary construction easement shall not exceed one hundred and eighty (180) days from the date of signature below; and
- (3) Grantor(s) agree(s) not to build, construct, or create, nor permit others to build, construct, or install any buildings or other structures on the herein granted permanent easement, and Grantor(s) further agree(s) not to grade or fill within the granted permanent easement without prior written approval of the Grantee or its assigns.

II. EXPENSE OF THE GRANTEE

All work shall be done at the expense of Grantee and with as little inconvenience to the Property as is consistent with reasonable progress. The Property shall be left in reasonably clean and good condition upon completion of the work. After completion of construction, Grantee shall reseed the easement area with grass seed. Promptly following completion of the construction, inspection, maintenance, repair and/or replacement of the storm drainage line, Grantee shall, at its sole cost and expense, restore the driveways, parking areas, sidewalks, curbs, landscaping and other surface improvements then located on Grantor's Property to a reasonable condition.

III. RELEASE & INDEMNIFICATION

Grantee and its successors in interest hereby forever release and hold harmless Grantor including its officers, members, employees, consultants, and contractors (collectively referred to herein as "Releasees") from and against any and all claim of damage or injury to property or person, whatsoever, including death, that results from Releasee's ownership or use of the Property including that portion of the Property included within the Drainage Easement. Grantee and its successors in interest hereby forever indemnify Releasees against any and all claim of damage or injury to property or person, whatsoever, including death, that results from Grantee's or Grantee's successors', contractors, agents, employees' use of or activities or omissions within the Drainage Easement. This indemnification shall include reasonable attorney's fees and costs.

IV. STORMWATER MAINTENANCE OVERSIGHT

Grantor(s) further hereby provides to the City of McDonough, Georgia, a permanent and uninterrupted easement, use, liberty and privilege of a right of way in, on, under and through the easement(s) area, as shown on Exhibit "B-1" attached, for the purposes of administering, facilitating and/or enforcing the City Code, and the City's rights and privileges under the City of McDonough Stormwater Facility Maintenance Agreement ("Stormwater Agreement") attached hereto and filed herewith. HCWA shall be a third party beneficiary to all obligations of Grantee under the Stormwater Agreement, including the obligation for all work to be done at the expense of the Grantee and with as little inconvenience as reasonable.

IN WITNESS WHEREOF, the undersigned has set his/her/their/its hand(s) and seal(s) this 9 day of February, 2023

Signed, sealed and delivered
In the presence of:

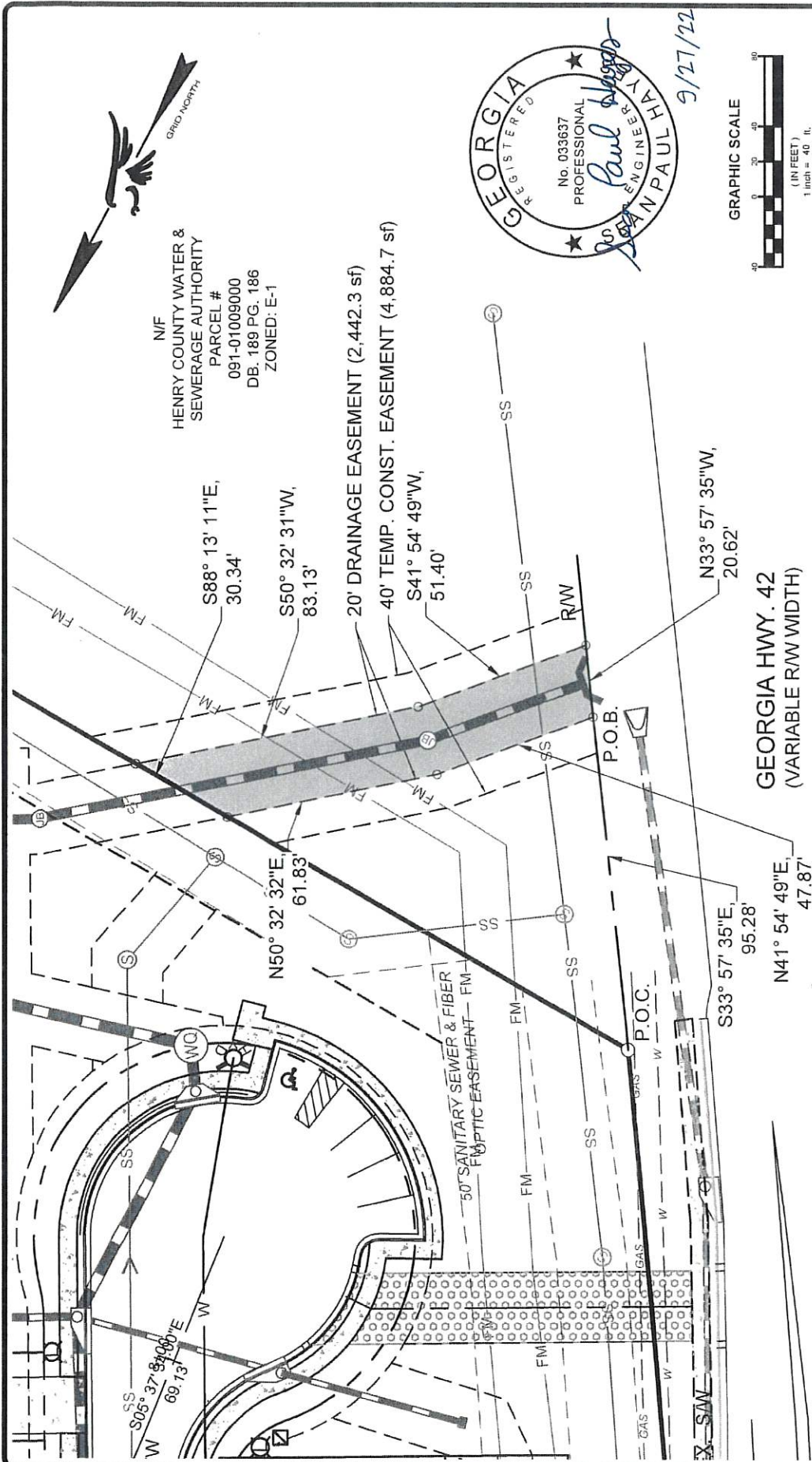
[Signature]
Unofficial Witness

[Signature] (L.S.)
GRANTOR

[Signature]
Notary Public
My Commission Expires: June 6, 2024

TONY V. CARNELL
Grantor Printed Name

EXHIBIT "B-1"



FALCON DESIGN CONSULTANTS, LLC. ALL RIGHTS ARE RESERVED. ANY POSSESSION, REPRODUCTION OR OTHER USE OF THIS DOCUMENT WITHOUT PRIOR WRITTEN PERMISSION FROM FALCON DESIGN CONSULTANTS, LLC. IS EXPRESSLY PROHIBITED.

FALCON DESIGN CONSULTANTS
CIVIL ENGINEERING
SURVEYING
LAND MANAGEMENT
ARCHITECTURE
CONSTRUCTION MANAGEMENT
LAND PLANNING

STATIONING OFFICE
2015 W. 10TH ST., SUITE 200
DALLAS, TEXAS 75201
(214) 750-1100
www.falcon-llc.com

DRAINAGE EASEMENT EXHIBIT
THE ENCLAVE
AT BROOKSTONE
CITY OF MCDONOUGH, GEORGIA
HENRY COUNTY
LAND LOT 101, DISTRICT 7

REVISIONS

1.	
2.	
3.	
4.	

Know what's below.
Call before you dig.
UTILITIES PROTECTION CENTER
1-800-735-7411 THROUGHOUT GEORGIA
OR 404-581-8111

DATE: 8/17/22
SCALE: 1"=40'
FILE NUMBER: 280.001
DRAWN BY: OH

THIS DOCUMENT IS NOT VALID UNLESS IT BEARS THE ORIGINAL SIGNATURE OF THE REGISTERED PROFESSIONAL ENGINEER'S SEAL.

SHEET NUMBER

1.0

**MEMORANDUM OF AGREEMENT BETWEEN
HENRY COUNTY AND THE CITY OF MCDONOUGH**

The Memorandum of MOA ("MOA") is entered into on this ____ day of _____ 2023, by and between Henry County, Georgia, a political subdivision of the State of Georgia, (hereinafter, "County") and the City of McDonough, also a political subdivision of the State Georgia (hereinafter, "City").

RECITALS

WHEREAS, the County owns property at 12 N Zack Hinton Parkway (known as the "Old BB&T Building") located City of McDonough, Georgia (hereinafter "Property"); and

WHEREAS, the Henry County Board of Commissioners purchased the Property to provide space for departments located in Henry County Judicial Center (hereinafter "Project"); and

WHEREAS, the Project shall include, but not limited to office spaces, meeting rooms, and parking lots; and

WHEREAS, the Property requires significant renovations and is expected to initiate the Project in 2023; and

WHEREAS, the County's Project will require extensive inspections, permitting, and plan review associated with the development of the County's Project; and

WHEREAS, the County has adequate budget, equipment, and personnel levels to handle all the inspections, permitting and plan review associated with the Project; and

WHEREAS, the County is willing to apply City standards when conducting inspections, permitting and plan review associated with the Project, where State law requires it to do so; and

WHEREAS, the County desires to conduct its own extensive inspections, permitting and plan review for County Project within the City's limit; and

WHEREAS, the City's budget, personnel, and equipment would be substantially impacted by the extensive inspection, permitting, and planning review associated with the development of the County's Project; and

WHEREAS, the City desires for the County to conduct inspections, permitting and planning and review for County Project; and

NOW THEREFORE, in consideration of the mutual benefits of both Parties, it is hereby agreed:

ARTICLE I: DUTIES

1. County's Duties:

- a. The County shall approve plan review and inspections of County's Project in all stages of development and construction, including but not limited to the following: grading, surveying, erosion, and sediment control, tree preservation, drainage, flood control, water quality, buffers, easements, set back, building, electricity, plumbing, mechanical, energy, fire prevention, life safety, and handicap accessibility.
- b. The County shall apply City standards when conducting inspections, permitting and plan review associated with the Project, where required to do so by state law.
- c. Upon request, the County will allow the City's inspector to observe the County's inspection during all stages of the Project development and construction. The City shall further be entitled to receive from the County all documentation related to the Project, within five (5) business days of the City's request to the County Manager for the same.

2. City's Duties:

- a. The City shall have the ability to share Project concerns with the County. The City may submit a written request for a meeting to address Project concerns, at which time the County shall schedule and cause for such meeting to occur between the City and County Manager, within two (2) business days of receipt of such written request from the City.
- b. The City shall not impose any impact, plan review, permitting, and/or inspection fee against the County.

ARTICLE II: TERM AND TERMINATION

1. Term: This MOA shall commence immediately upon the execution of this document and shall expire within one year of execution, with five (5) one-year automatic renewals.
2. Termination of MOA for Cause: Either party may terminate this MOA, in the event that the other party fails to perform in accordance with the provisions of the MOA, or the breaching party does not cure such default to the reasonable satisfaction of the non-breaching party within sixty (60) days of prior written notice to the other party.

ARTICLE III: GENERAL CONDITIONS

1. Modifications: Either party may initiate a request for modification to the MOA. Such modifications shall be in writing.
2. Notices: Official notices and correspondence to the County shall be delivered in person, transmitted by regular mail or by certified mail, postage prepaid to the following:

Henry County
Attention: Cheri Hobson-Matthews,
County Manager
140 Henry Parkway
McDonough, Georgia 30253

Official notices and correspondence to City shall be delivered in person, transmitted by regular mail or by certified mail, postage prepaid to the following:

City of McDonough
Attention: Mayor Sandra Vincent
136 Keys Ferry Street
McDonough, GA 30253

3. Defenses: Neither the County nor the City waives any defenses, immunities, or limits of liability available under applicable law as part of this MOA.
4. Entire MOA: This MOA constitutes the sole agreement between the parties. No representations oral or written, not incorporated herein, shall be binding on the parties.
5. Severability: In the event any provision of this MOA is held to be unenforceable for any reason, the remainder of the MOA shall be in full force and effect and enforceable in accordance with its terms.
6. Georgia Law Governs: This MOA shall be governed by and construed and enforced in accordance with the laws of Georgia.
7. Venue: This MOA shall be deemed to have been made and performed in Henry County, Georgia. For the purpose of venue, all suits or causes of action arising out of this MOA shall be brought in the courts of Henry County, Georgia.
8. Waiver: The failure of any party at any time to require performance by the other of any provision hereof shall in no way affect the right of the party thereafter to enforce the same. Nor shall the waiver by one party of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provisions or as a waiver of the provision itself.

THIS MOA SHALL become effective on the date where duly authorized Mayor and Chairman of the Parties, respectively, have set their hands and caused for the affixing of each Party's seals, as set forth on the signature block below:

HENRY COUNTY, GEORGIA

CITY OF MCDONOUGH

Carlotta Harrell, Chair
Board of Commissioners

Sandra Vincent
Mayor

Date: _____

Date: _____

ATTEST

ATTEST:

Stephanie Braun,
Clerk to the Commission

Secretary/
Assistant Secretary

(Affix County Seal)

(Affix Corporate Seal)

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Nancy Ladson Rowan, County Attorney

Emilia C. Walker, Esq.

1 STATE OF GEORGIA
2 CITY OF MCDONOUGH
3

4 **RESOLUTION NO. _____**
5

6 **A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT**
7 **WITH HENRY COUNTY FOR JUDICIAL FACILITY RENOVATIONS WITHIN THE**
8 **CITY OF MCDONOUGH AT OR ABOUT 12 N. ZACK HINTON PARKWAY AND FOR**
9 **OTHER LAWFUL PURPOSES**

10 **WHEREAS**, the City of McDonough ("City") is a municipal corporation duly organized
11 and existing under the laws of the State of Georgia;
12

13 **WHEREAS**, the duly elected governing authority of the City of McDonough, Georgia, are
14 the Mayor and Council ("City Council") thereof;
15

16 **WHEREAS**, the City Council is empowered under the Supplementary Powers Clause of
17 the Georgia Constitution to permit and authorize cross jurisdictional projects within the City;
18

19 **WHEREAS**, the City desires through this Resolution to enter into an agreement with
20 Henry County to facilitate permitting and inspection related activities with respect to land recently
21 purchased by the County at 12 N. Zack Hinton Parkway, near the County's judicial center, to
22 expand on office space for the judicial departments; and
23

24 **WHEREAS**, this Resolution is enacted to safeguard and promote the public health, safety,
25 and general welfare of the City.
26

27 **NOW, THEREFORE, BE IT RESOLVED**, by the governing authority of the City of
28 McDonough, Georgia, as follows:
29

30 **Section 1.** The Mayor and City Clerk, in consultation with the City Attorney, are hereby
31 authorized to negotiate and execute, in substantial form, the attached intergovernmental agreement
32 pertaining to permitting and inspection related activities at 12 N. Zack Hinton Parkway, near the
33 County's judicial center, relating to the expansion of office space for the judicial departments.
34

35 *****
36

37 **Section 2.** It is hereby declared to be the intention of the City Council that:

38 (a) All sections, paragraphs, sentences, clauses and phrases of this Resolution are or were,
39 upon their enactment, believed by the City Council to be fully valid, enforceable and
40 constitutional.

41 (b) To the greatest extent allowed by law, each and every section, paragraph, sentence,
42 clause or phrase of this Resolution is severable from every other section, paragraph,
43 sentence, clause or phrase of this Resolution. No section, paragraph, sentence, clause

44 or phrase of this Resolution is mutually dependent upon any other section, paragraph,
45 sentence, clause or phrase of this Resolution.

- 46 (c) In the event that any phrase, clause, sentence, paragraph or section of this Resolution
47 shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise
48 unenforceable by the valid judgment or decree of any court of competent jurisdiction,
49 it is the express intent of the City Council that such invalidity, unconstitutionality or
50 unenforceability shall, to the greatest extent allowed by law, not render invalid,
51 unconstitutional or otherwise unenforceable any of the remaining phrases, clauses,
52 sentences, paragraphs or sections of the Resolution.

53
54 **Section 3.** The City Attorney and the City Clerk are authorized to make non-substantive
55 editing and renumbering revisions to this Resolution for proofing and renumbering purposes.

56
57 **Section 4.** The effective date of this Resolution shall be the date of adoption, unless
58 provided otherwise by the City Charter, state and/or federal law.

59
60 **BE IT SO RESOLVED,** this ____ day of _____, 2023.

61
62
63 ATTEST:

CITY OF MCDONOUGH, GEORGIA:

64
65
66 _____
67 Christy L. Taylor, City Clerk

Sandra Vincent, Mayor

68
69 APPROVAL AS TO FORM:

70
71 _____
72 Emilia C. Walker, City Attorney

CONSENT AGENDA ITEM SUMMARY

Date: February 20, 2023

Item Number: 6C



Presented by: Jon Krapf

Department: Water/Sewer

ITEM SUMMARY:

Request approval to purchase 100 (one hundred) $\frac{3}{4}$ Neptune Water Meters with antennas.

SPECIAL CONSIDERATIONS OR CONCERNS:

This is a budgeted item. These meters will be used for new development, residential homes, and change outs.

STAFF RECOMMENDATION:

Staff recommends approving the request.

FINANCIAL IMPACT:

Total Cost: \$24,500.00

FUNDING SOURCE:

Line Item: 505-5.4440.53.1732

ATTACHMENTS:

Quote from Delta Municipal Company

OTHER DEPARTMENTAL REVIEW NEEDED:

X Yes

No

GOOD GOVERNANCE

Guiding Principle: Fiscal Responsibility, Accountability, Transparency

OTHER DEPARTMENTAL REVIEW

☒ Finance

Fire

Stormwater

☐ Highway and Streets

☐ Main Street

☐ Water Distribution

Human Resources

Police

☐ Water/Sewer Operations

☐ Community Development

☐ Technology Services

☐ Other

Department Name:

Comments:

GOOD GOVERNANCE

Guiding Principle: Fiscal Responsibility, Accountability, Transparency



DELTA

MUNICIPAL SUPPLY

Quote

408 Jesse Cronic Road
Braselton, GA 30517

Date	Quote #
2/14/2023	13710

Bill To
City of McDonough E-Mail ALL Invoices

Ship To
City of McDonough 305 Racetrack Rd. McDonough, GA 30252

Your No.	Terms	Rep	FOB	Ship Via
	Net 30 Days	JW		

Quantity	Description	Unit Price	Total
100	5/8" x 3/4" Neptune T-10 Water Meter ProCoder)R900i Pit GAL w/6' Ant	245.00	24,500.00

	Subtotal	\$24,500.00
	Sales Tax (0.00)	\$0.00
	Total	\$24,500.00

WE APPRECIATE YOUR BUSINESS! Please contact our office with any questions regarding this quote.
Pricing Subject to Change. Standard Quotes are valid for 30 Days. Copper Quotes are valid for 24 hours.

Phone: 770-277-0211 Fax: 770-277-2412 Toll Free: 1-800-273-0574

"We Supply Service"

Item 9



February 9, 2023

VIA EMAIL: Ms. Christy Taylor <CTaylor@McDonoughGa.org>

**Re: Proposals for Continued Site Operations
American Tower Site# 303415 / Kalves Creek, GA (the "Site")**

Dear Ms. Taylor,

To ensure that operations at this Site can continue beyond expiration of the current ground lease, American Tower is pleased to extend the following proposals:

Proposal #1 – Lease Extension:

- **\$5,000** one-time signing bonus, payable within 30 days of full execution of an amendment;
- Rent to remain paying **\$2,563.31** per month;
- **25% Revenue Share** for future collocators to continue;
- Rent to increase by **3% per year**, with the first escalation commencing on **June 29, 2023**;
- **Six (6)** additional lease periods of **five (5)** years each, commencing **June 29, 2023**;

Proposal #2 – Perpetual Easement:

- Upon full-execution of documentation memorializing terms, either–
 - (a) **One (1)** lump sum payment of **\$550,000**; or
 - (b) **One (1)** initial payment of **\$25,000** at closing, followed by **Eighty-Four (84)** monthly payments of **\$7,152**;
- A non-exclusive access and utility easement to the facility;
- Grant of a Perpetual Easement over the existing leased area.

Please feel free to reach out with any questions. I look forward to speaking with you.

Best regards,

Chris Flammer

Land Acquisitions

American Tower Corporation

Ph: 781-926-7112

Christopher.Flammer@americantower.com

*Please note, unless otherwise agreed by the parties, all proposals listed herein will expire within 15 days of the date of this letter (February 9, 2023). All proposals are good for a limited time and for discussion purposes only. The parties will not be bound in any respect and with regard to any proposal until and unless a written agreement is signed by all applicable parties. Further, All proposals are contingent upon American Tower's confirmation, review and approval, to its sole satisfaction of; 1) a title report and if necessary, a land survey of the property; and 2) final approval and authorization by American Tower's Executive Team.

COMMUNICATIONS SITE LEASE AGREEMENT (GROUND)

This Communications Site Lease Agreement (Ground) ("Agreement") is entered into this 29th day of May, 1998, between Nextel South Corp., a Georgia Corporation, d/b/a Nextel Communications ("Lessee"), and The City of McDonough, a Georgia municipal corporation ("Lessor").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** Lessor is the owner of a parcel of land (the "Land") located in the City of McDonough, County of Henry, State of Georgia. The Land is more particularly described in Exhibit A annexed hereto. Lessor hereby leases to Lessee, and Lessee leases from Lessor, approximately three thousand (3,000) square feet of the Land and all access and utility easements (the "Premises") as described in Exhibit B annexed hereto.

2. **Use.** The Premises may be used by Lessee for any activity in connection with the provision of communications services. Lessor agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.

3. **Tests and Construction.** Lessee shall have the right at any time following the full execution of this Agreement to enter upon the Premises for the purpose of: making appropriate engineering and boundary surveys, inspections, soil test borings, other reasonably necessary tests and constructing the Lessee Facilities (as defined in Paragraph 6(a) below).

4. **Term.** The term of this Agreement shall be five (5) years commencing on the first to occur of that date when the Lessee constructs and begins operating a communications tower on the Premises, or June 30, 1998, whichever first occurs ("Commencement Date") and terminating on the 5th anniversary of the Commencement Date (the "Term") unless otherwise terminated as provided in Paragraph 10. Lessee shall have the right to extend the Term for four (4) successive five (5) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term unless Lessee notifies Lessor of its intention not to renew prior to commencement of the succeeding Renewal Term.

5. **Rent Consideration.** Within 15 days of the Commencement Date and on the first day of each month thereafter, Lessee shall pay to Lessor rent of ONE THOUSAND and 00/100 DOLLARS (\$1,000.00) per month ("Rent"). The Rent for any fractional month at the beginning or at the end of the Term or any Renewal Term shall be prorated. The Rent shall be payable to Lessor at the City of McDonough, Attention: Accounts Payable, 88 Keys Ferry Street, P.O. Box 193, McDonough, Georgia 30253.

6. **Facilities; Utilities; Access.**

(a) Lessee has the right to erect, maintain and operate on the Premises radio communications facilities, including without limitation an antenna tower or pole and foundation, utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, radio transmitting and receiving antennas, supporting equipment and structures thereto ("Lessee Facilities"). In connection therewith, Lessee has the right to do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to the Lessee Facilities shall be held by Lessee. All of Lessee Facilities shall remain Lessee's personal property and are not fixtures. Lessee has the right to remove all Lessee Facilities

at its sole expense on or before the expiration or earlier termination of the Agreement; provided, Lessee repairs any damage to the Premises caused by such removal. Upon termination of this Agreement, Lessee shall not be required to remove any foundation more than one (1) foot below grade level.

(b) Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall have the right to draw electricity and other utilities from the existing utilities on the Land or obtain separate utility service from any utility company that will provide service to the Land (including a standby power generator for Lessee's exclusive use). Lessor agrees to sign such documents or easements as may be required by said utility companies to provide such service to the Premises, including the grant to Lessee or to the servicing utility company at no cost to the Lessee, of an easement in, over across or through the Land as required by such servicing utility company to provide utility services as provided herein. Any easement necessary for such power or other utilities will be at a location acceptable to Lessor and the servicing utility company.

(c) Lessee, Lessee's employees, agents, contractors, lenders and invitees shall have access to the Premises without notice to Lessor twenty-four (24) hours a day, seven (7) days a week, at no charge. Lessor grants to Lessee, and its agents, employees, contractors, guests and invitees, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across that portion of the Land described in Exhibit B.

(d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Lessor shall be responsible for maintaining and repairing such roadway, at its sole expense, except for any damage caused by Lessee's use of such roadways.

7. Interference.

(a) Lessee shall operate the Lessee Facilities in a manner that will not cause interference to Lessor and other lessees or licensees of the Land, provided that their installations predate that of the Lessee Facilities. All operations by Lessee shall be in compliance with all Federal Communications Commission ("FCC") requirements.

(b) Subsequent to the installation of the Lessee Facilities, Lessor shall not permit itself, its lessees or licensees to install new equipment on the Land or property contiguous thereto owned or controlled by Lessor, if such equipment is likely to cause interference with Lessee's operations. Such interference shall be deemed a material breach by Lessor. In the event interference occurs, Lessor agrees to take all reasonable steps necessary to eliminate such interference, in a reasonable time period.

8. Taxes. If personal property taxes are assessed, Lessee shall pay any portion of such taxes directly attributable to the Lessee Facilities. Lessor shall pay all real property taxes, assessments and deferred taxes on the Land.

9. Waiver of Lessor's Lien.

(a) Lessor waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent.

(b) Lessor acknowledges that Lessee has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Lessor (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

10. **Termination.** This Agreement may be terminated without further liability on sixty (60) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is ten (10) days from receipt of notice; or (ii) by Lessee for any reason or for no reason, provided Lessee delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; or (iii) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Facilities; or (iv) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference. Lessor may terminate this Agreement upon one hundred and eighty (180) days prior notice at any time after expiration of the Term, and the first Renewal Term, if applicable, for good cause shown.

11. **Destruction or Condemnation.** If the Premises or Lessee Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Lessee may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Lessor no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If Lessee chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

12. **Insurance.** Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Lessee Facilities, bodily injury and property damage insurance with a combined single limit of at least Three Million and 00/100 Dollars (\$3,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against all liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises, all as provided for herein. Lessor shall be named as an additional insured on Lessee's policy. Lessee shall provide to Lessor a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the Commencement Date.

13. **Waiver of Subrogation.** Lessor and Lessee release each other and their respective principals, employees, representatives and agents, from any claims for damage to any person or to the Premises or to the Lessee Facilities thereon caused by, or that result from, risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. Lessor and Lessee shall cause each insurance policy obtained by them to provide that the insurance company waives all right of recovery by way of subrogation against the other in connection with any damage covered by any policy. Neither Lessor nor Lessee shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by Paragraph 12.

14. **Assignment.** Lessee may not assign, sublet or otherwise transfer all or any part of its interest in this Agreement, or in the Premises, without the prior written consent of Lessor; provided, however, that Lessee may assign its interest to its parent company, any subsidiary or affiliate or to any successor-in-interest or entity

acquiring fifty-one percent (51%) or more of its stock or assets, subject to any financing entity's interest, if any, in this Agreement as set forth in Paragraph 9 above. Lessor may assign this Agreement upon written notice to Lessee, subject to the assignee assuming all of Lessor's obligations herein, including but not limited to, those set forth in Paragraph 9 above, and Lessee may license all or any portion of the Premises to one or more entities for communications uses only, without Lessor's consent. Notwithstanding anything to the contrary contained in this Agreement, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

15. **Warranty of Title and Quiet Enjoyment.** Lessor warrants that: (i) Lessor owns the Land in fee simple and has rights of access thereto and the Land is free and clear of all liens, encumbrances and restrictions; (ii) Lessor has full right to make and perform this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises.

16. **Repairs.** Lessee shall not be required to make any repairs to the Premises or the Land unless such repairs shall be necessitated by reason of the default or neglect of Lessee. Except as set forth in Paragraph 6(a) above, upon expiration or termination hereof, Lessee shall restore the Premises to the condition in which it existed upon execution hereof, reasonable wear and tear and loss by casualty or other causes beyond Lessee's control excepted.

17. **Hazardous Substances.** Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. Lessor represents, warrants and agrees (1) that to its best knowledge, but without investigation, neither Lessor nor, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (defined below) on, under, about or within the Land in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party (but excluding permitted assignees or licensees of Lessor), to use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Land is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

18. **Miscellaneous.**

(a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.

(b) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

MKT: Georgia
SITE #: GA 1513H

(c) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(d) Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

To Lessor: The City of McDonough
 Attention: William E. Schmid,
 City Administrator
 88 Keys Ferry Streets
 P.O. Box 193
 McDonough, Georgia 30253

To Lessee: Nextel South Corp. d/b/a Nextel Communications, Inc.
 6575 The Corners Parkway
 Suite 100
 Norcross, Georgia 30092
 Attn: Property Manager

with a copy to: Nextel Communications
 1505 Farm Credit Drive
 McLean, Virginia 22102
 Attn: Legal Dept., Contracts Manager

Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

(e) This Agreement shall be governed by the laws of the State of Georgia.

(f) Lessor acknowledges that a Memorandum of this Agreement will be recorded by Lessee in the official records of the County where the Land is located. In the event the Land is encumbered by a mortgage or deed of trust, Lessor agrees to obtain and furnish to Lessee a non-disturbance and attornment instrument for each such mortgage or deed of trust.

(g) Lessee may obtain title insurance on its interest in the Land. Lessor shall cooperate by executing documentation required by the title insurance company.

(h) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

(i) All Riders and Exhibits annexed hereto form material parts of this Agreement.

MKT: Georgia
SITE #: GA 1513H

(i) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:

The City of McDonough, Georgia

By: Richard Craig
Mayor, Richard Craig

Attest: James Craig
City Clerk

LESSEE:

Nextel South Corp.

By: U. Coe
Title: Area President

Sworn to and subscribed before
me this 5th day of June,
1998.

Dianne M. Lendon
Witness

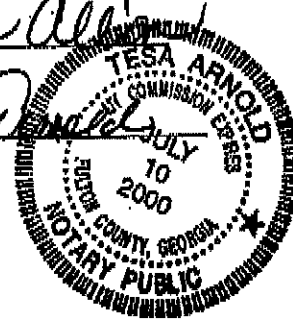
Daphne Wilkerson
Notary Public

Notary Public, Henry County, Georgia
My Commission Expires June 17, 2001

Sworn to and subscribed before
me this 10 day of June,
1998.

Kassandra Allen
Witness

Jess Arnold
Notary Public



MKT: Georgia
SITE #: GA 1513H

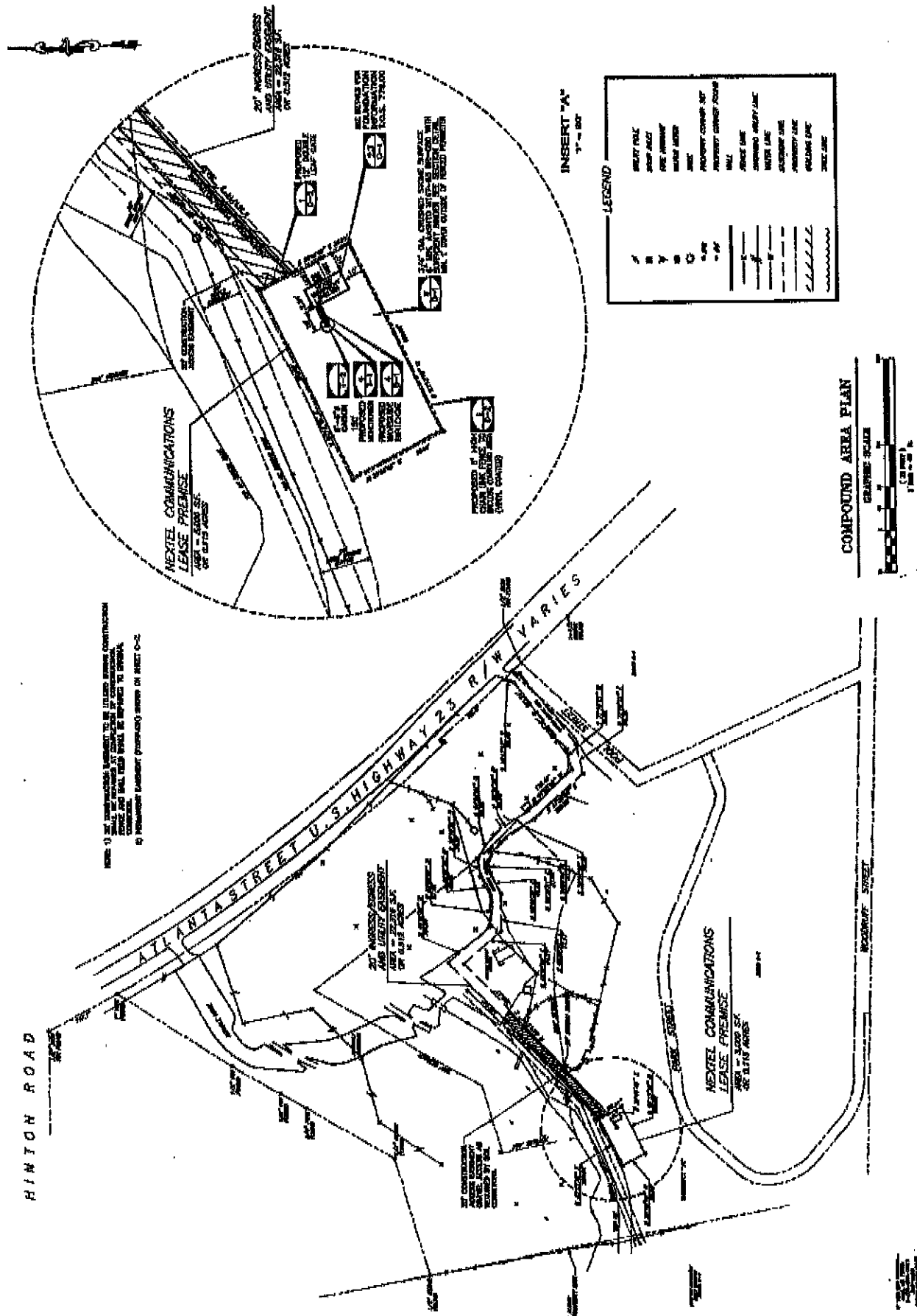
EXHIBIT A

DESCRIPTION OF LAND

to the Agreement dated May __, 1998, by and between the City of McDonough, Georgia, as Lessor,
and Nextel South Corp. d/b/a Nextel Communications, as Lessee.

The Land is described and/or depicted as follows (metes and bounds description): See Attachment A annexed
hereto.

[INTENTIONALLY LEFT BLANK]

[illegible]

MKT: Georgia
SITE #: GA 1513H

EXHIBIT B

DESCRIPTION OF Premises

to the Agreement dated May ____, 1998, by and between the City of McDonough, Georgia, as Lessor,
and Nextel South Corp. d/b/a Nextel Communications, as Lessee.

The Premises are described and/or depicted as follows:

See Attachment B annexed hereto, including Letter of Agreement concerning access.

[INTENTIONALLY LEFT BLANK]

Notes:

1. [INTENTIONALLY DELETED]
2. Setback of the Premises from the Land's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of any access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.

NEXTEL COMMUNICATIONS
Kalves Creek Site GA-1513 H
Lease Premise

ALL THAT TRACT or parcel of land lying and being in Land Lot 133 of the 7th District of Henry County, Georgia and being more particularly described as follows:
BEGINNING at a 1" pipe found at the intersection of the south right-of-way line of Hinton Road and the southwest right-of-way line of Atlanta Street (80 foot R/W);
Thence running in a southeasterly direction along the southwest right-of-way line of Atlanta Street, a distance of 790 feet to a point at which said right-of-way changes from an 80 foot right-of-way line to a 70 foot right-of-way line;
Thence continuing along said 70 foot right-of-way line, a distance of 166.42 feet to a point being the **TRUE POINT OF BEGINNING**;

Thence away from said right-of-way line South 16 Degrees 11 Minutes 12 Seconds West, a distance of 20.40 feet to a point;
Thence South 51 Degrees 40 Minutes 32 Seconds West, a distance of 161.94 feet to a point;
Thence South 77 Degrees 18 Minutes 31 Seconds West, a distance of 39.90 feet to a point;
Thence North 41 Degrees 35 Minutes 48 Seconds West, a distance of 112.44 feet to a point;
Thence North 32 Degrees 34 Minutes 10 Seconds West, a distance of 80.83 feet to a point;
Thence North 54 Degrees 54 Minutes 44 Seconds West, a distance of 52.99 feet to a point;
Thence South 82 Degrees 19 Minutes 51 Seconds West, a distance of 34.97 feet to a point;
Thence South 62 Degrees 41 Minutes 36 Seconds West, a distance of 42.56 feet to a point;
Thence North 88 Degrees 50 Minutes 07 Seconds West, a distance of 57.20 feet to a point;
Thence North 40 Degrees 52 Minutes 02 Seconds West, a distance of 104.91 feet to a point;
Thence South 46 Degrees 13 Minutes 14 Seconds West, a distance of 407.26 feet to a 1/2" rebar set at the northeast corner of the Nextel Communications Lease Premise;
Thence South 26 Degrees 46 Minutes 45 Seconds East, a distance of 50.82' feet to a 1/2" rebar set;
Thence South 63 Degrees 13 Minutes 15 Seconds West, a distance of 100.00 feet to a 1/2" rebar set;
Thence North 26 Degrees 46 Minutes 45 Seconds West, a distance of 50.00 feet to a 1/2" rebar set;
Thence North 63 Degrees 13 Minutes 15 Seconds East, a distance of 100.00 feet to a 1/2" rebar set;

The property herein described having an area of 5,000 square feet or 0.115 acres more or less as shown on a Boundary Survey for Nextel Communications by Hartrampf Engineering, Inc., dated August 19, 1997 last revised 2/5/98 and being a part of a parent tract owned by the City of McDonough.

NEXTEL COMMUNICATIONS
Kalves Creek Site GA-1513 H
Ingress/Egress and Utility Easement

ALL THAT TRACT or parcel of land lying and being in Land Lot 133 of the 7th District of Henry County, Georgia and being more particularly described as follows:

BEGINNING at a 1" pipe found at the intersection of the south right-of-way line of Hinton Road and the southwest right-of-way line of Atlanta Street (80 foot R/W);

Thence running in a southeasterly direction along the southwest right-of-way line of Atlanta Street, a distance of 790 feet to a point at which said right-of-way changes from an 80 foot right-of-way line to a 70 foot right-of-way line;

Thence continuing along said 70 foot right-of-way line, a distance of 166.42 feet to a point being the **TRUE POINT OF BEGINNING**;

Thence away from said right-of-way line South 16 Degrees 11 Minutes 12 Seconds West, a distance of 20.40 feet to a point;

Thence South 51 Degrees 40 Minutes 32 Seconds West, a distance of 161.94 feet to a point;

Thence South 77 Degrees 18 Minutes 31 Seconds West, a distance of 39.90 feet to a point;

Thence North 41 Degrees 35 Minutes 48 Seconds West, a distance of 112.44 feet to a point;

Thence North 32 Degrees 34 Minutes 10 Seconds West, a distance of 80.83 feet to a point;

Thence North 54 Degrees 54 Minutes 44 Seconds West, a distance of 52.99 feet to a point;

Thence South 82 Degrees 19 Minutes 51 Seconds West, a distance of 34.97 feet to a point;

Thence South 62 Degrees 41 Minutes 36 Seconds West, a distance of 42.56 feet to a point;

Thence North 88 Degrees 50 Minutes 07 Seconds West, a distance of 57.20 feet to a point;

Thence North 40 Degrees 52 Minutes 02 Seconds West, a distance of 104.91 feet to a point;

Thence South 46 Degrees 13 Minutes 14 Seconds West, a distance of 407.26 feet to a point;

set at the northeast corner of the Nextel Communications Lease Premise;

Thence South 26 Degrees 46 Minutes 45 Seconds East along the northeast line of said lease premise, a distance of 20.91 feet to a point;

Thence away from said lease premise line North 46 Degrees 13 Minutes 14 Seconds East, a distance of 392.33 feet to a point;

Thence South 40 Degrees 52 Minutes 02 Seconds East, a distance of 92.76 feet to a point;

Thence South 88 Degrees 50 Minutes 07 Seconds East, a distance of 71.17 feet to a point;

Thence North 62 Degrees 41 Minutes 36 Seconds East, a distance of 44.18 feet to a point;

Thence North 82 Degrees 19 Minutes 51 Seconds East, a distance of 23.68 feet to a point;

Thence South 54 Degrees 54 Minutes 44 Seconds East, a distance of 41.21 feet to a point;

Thence South 32 Degrees 34 Minutes 10 Seconds East, a distance of 78.46 feet to a point;

Thence South 41 Degrees 35 Minutes 48 Seconds East, a distance of 125.82 feet to a point;

Thence North 77 Degrees 18 Minutes 31 Seconds East, a distance of 56.25 feet to a point;

Thence North 51 Degrees 40 Minutes 32 Seconds East, a distance of 172.89 feet to a point;

Thence North 16 Degrees 11 Minutes 12 Seconds East, a distance of 14.72 feet to a point on the southwest right-of-way line of Atlanta Street;

Thence North 42 Degrees 41 Minutes 11 Seconds West along said right-of-way line, a distance of 23.36 feet to a point;

The property herein described being for a 20 foot wide Ingress/Egress and Utility Easement having an area of 22,289 square feet or 0.512 acres more or less as shown on a Boundary Survey for Nextel Communications by Hartrampf Engineering, Inc., dated August 19, 1997 last revised 2/5/98 and being a part of a parent tract owned by the City of McDonough.

ATTACHMENT B (Page 5 of 5)
Attachment B
(cont.)

GEARON COMMUNICATIONS
Wireless Network Development

GA Kalkas Creek 241
6960
TO Bill Mathieu

K. Allison
5/18

Letter of Agreement

Pursuant to the meeting held on March 23, 1998, between representatives of Nextel Communications and City of McDonough, the following outlines the discussed changes to the "Temporary Construction Access Easement" for use during the construction phase of the proposed cellular site. Nextel Communications or a subcontractor of Nextel will enter through the exit of Alexander Park against the flow of traffic and reach the site by crossing over a "Temporary Stream Crossing" throughout the duration of the construction phase. Nextel Communications will be responsible for setting up the "Temporary Stream Crossing" in accordance with all the requirements of the Manual for Erosion and Settlement Control for the state of Georgia. Upon completion of the project, the "crossing" will be removed by Nextel Communications. The contractor will take every precaution to minimize the impact of construction on Alexander Park and shall not leave any unsecured or unattended equipment, hazardous debris or material that may pose a potential safety hazard to the pedestrians or other users of the park.

Once the construction phase has been completed, the access easement will revert back to the original "Permanent Access Easement" as shown on the original approved site plan. The current utility easement will also remain the same as shown by the original approved site plan with the stipulation that during construction a "horizontal ditch drill" will be used so as not to disturb the playing field. All of the following above will be outlined on an attachment sheet to the site plan.

Kassandra Allison
Nextel Communications

4/8/98
Date

Richard Craig
City of McDonough Representative

6-2-98
Date

RIDER ONE

SPECIAL STIPULATIONS TO COMMUNICATION SITE LEASE AGREEMENT

1. Benefits to the City of McDonough. The installation of communications equipment owned by the Lessor hereunder, including antenna and cell facilities and related equipment, to enable the provision of mobile telecommunications and related services, may improve the quality and availability of such services to residents and businesses of the Lessors, as well as provide access to emergency services, health services, commercial businesses and residences, and will help control the unwanted proliferation of antenna and cellular facilities through careful siting and collocation requirements. In addition, the availability of such facilities may provide redundancy and route diversity and an alternative to traditional telephone services in the event of localized or greater disaster to the extent such facilities are still in operation as a result of such an event. The Premises are not being utilized for other public purposes inconsistent with installation of Lessee Facilities.

2. As Is. Except as expressly provided otherwise herein, Lessee is accepting the Premises "as is", and waives any right or claim against the Lessor arising out of same.

3. Facilities. Lessee Facilities shall include a monopole tower structure (the "Monopole Tower") not to exceed 185 feet in height above grade. Lessee shall provide to the Lessor prior to commencing construction of the Lessee Facilities a report from a professional structural engineer licensed in the State of Georgia documenting the following:

(a) Monopole Tower height and design, including reasonable technical, engineering and other pertinent factors governing selection of the proposed design. A cross-section of this structure shall be included;

(b) Total anticipated antenna capacity of the structure, including number and types of antennas which can be accommodated;

(c) Reasonable evidence of the structural integrity of the structure; and

(d) A summary of any failure characteristics of the structure, and of the reasonably anticipated surface area likely to be impacted by failure of the structure. Lessee Facilities shall be automated to the greatest extent economically possible to reduce traffic in the area. Except for the structure that will be part of the Lessee Facilities necessary to house Lessee's equipment, all accessory structures used in direct support or operation of the Lessee Facilities shall not be used for offices, vehicle storage, or other outdoor storage. Lessee has permission to clear trees, undergrowth and other obstructions and to trim, cut and keep trimmed and cut all trees or undergrowth which interferes with Lessee's use of the Lessee Facilities. Lessee agrees to seek approval in each instance from the Lessor prior to such clearing, which approval shall not be unreasonably withheld, delayed or conditioned.

4. Payment. All materials furnished for work done on the Premises by the Lessee shall be paid for at Lessee's sole cost and expense. Lessee agrees to protect the Premises and the Lessor, from any and all claims of its contractors, laborers and materialmen.

5. Utility Relocation. To the extent not already completed, Lessee shall, at its sole expense, place underground all existing above-ground utility lines on the Land, including but not limited to, power and telephone lines serving street lights, concession stands, and ball field lights. Lessee shall submit plans for the rerouting of such utility lines to the Lessor for prior approval, which approval shall not be unreasonably withheld, delayed or conditioned.

6. Rent Adjustment. At the Adjustment Date, as defined below, the Rent paid hereunder shall be raised in the amount of four percent (4%) of the existing Rent, or the percentage change in the Consumer Price Index or CPI, as defined hereinbelow, whichever is greater.

(a) The first anniversary of the Commencement Date, and each anniversary of the Commencement Date thereafter, is herein called an "Adjustment Date". The Rent shall be adjusted on each Adjustment Date and as adjusted shall be in effect from and including the Adjustment Date until the next Adjustment Date. As of each Adjustment Date, the Rent shall be adjusted to an amount equal to the greater of said four percent (4%) increase, or the product of multiplying the Rent in effect immediately prior to the Adjustment Date in question by a fraction, the numerator of which is the CPI, published for the month which is two months prior to the Adjustment Date in question, and the denominator of which is the CPI published for the month which is fourteen (14) months prior to the Adjustment Date in question.

(b) The term Consumer Price Index or CPI as used in this Agreement shall mean the Consumer Price Index for United States All Urban Consumers, All Items (1982-84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI shall hereinafter be converted to a different standard reference base or otherwise revised, the determinations based on the CPI hereunder after such conversion or revision shall be made with the use of such conversion factor, formula, or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if that is not published, then with the use of such conversion factor, formula, or table as may be published by any nationally recognized publisher of similar statistical information mutually agreeable to the parties.

7. Collocation. To the extent the Lessee offers use of space on the Monopole Tower that is part of the Lessee Facilities to any entity other than the Lessor or an entity related to Lessor, whether in connection with mobile service or for any other telecommunications related service, Lessee shall further pay additional monthly rent to Lessor in the form of a surcharge in the amount of twenty-five percent (25%) of the consideration received from each individual return from such additional user of the Lessee Facility. If the consideration received by Lessee from a third party cannot be reasonably quantified, then at a minimum, Lessee shall remit to Lessor for every third party using space on the Monopole Tower twenty-five percent (25%) of the prevailing market rate for use of a similar site. This surcharge will be in addition to, and not in lieu, regular Rent payable hereunder, and shall be made monthly simultaneously with regular payments of the Rent hereunder. Failure to remit such surcharge shall constitute a breach of the terms of this Agreement. Lessee agrees to give thirty (30) days prior written notice to Lessor of any proposed collocation, which notice shall identify the proposed parties, and the business terms upon which such collocation shall be accomplished. The Lessor shall have thirty (30) days from its receipt of such notice to approve or disapprove in writing such collocation, any such disapproval to contain specific reasons for the disapproval, and what steps must be taken to make such collocation acceptable. If Lessee complies with such requirements, then the Lessor shall approve such collocation. If the Lessor does not respond within the initial thirty (30) day period, then such collocation shall be deemed approved for all purposes.

J:\Wham\mactel\valued\grdlao.3

AGENDA ITEM SUMMARY
February 20, 2023 City Council Meeting
Item Number: | 0



Presented by: Brian Linton

Department: Technology Services

ITEM SUMMARY:

Request authorization to purchase 40 Microsoft M365 E3 licenses bundle

SPECIAL CONSIDERATIONS OR CONCERNS:

We currently have multiple versions of Microsoft Office suites, some of which are old and outdated, and do not provide the necessary security for today's computing needs. All employees should be on the same version.

This new Microsoft M365 provides all the security the City needs, and other software such as Teams, SharePoint, Mobile Device Management (MDM), 100g Mailboxes, the latest Office Suites, computer workstations, and server licenses will be added.

This will bring the City into compliance with Microsoft with all licenses, improve productivity

STAFF RECOMMENDATION:

Staff recommends moving to this platform, we will start with only 40 licenses and grow

FINANCIAL IMPACT:

This is a yearly subscription and will be paid from the General Fund at a cost of \$15,984.40, plus a one-time setup fee of \$8,000.00 for engineering services.

FUNDING SOURCE:

Line Item: 100.5.1535.52.1303

ATTACHMENTS:

Invoice and a description of the features

OTHER DEPARTMENTAL REVIEW NEEDED:

☒ Yes

☐ No

OTHER DEPARTMENTAL REVIEW

☒ Finance

Security Solutions Summarized

M365



Office 365 E3

Data Loss Prevention:
Identify, monitor and protect sensitive data leak

Conditional Access:
Protect against mobile devices threats by selective wipes

eDiscovery:
Search for data relevant to legal cases

Legal & litigation hold:
Preserve user data for legal cases or preservation purposes

Archiving & Record Retention:
Retain or automatically wipe out certain data to avoid liability

EMS E3

Azure AD Premium P1:
Single sign-on to cloud and on-premises applications. Basic conditional access security

Advanced Threat Analytics:
Identify suspicious activities & advanced attacks on premises

Azure Information Protection Premium P1:
Encryption for all files and storage locations. Cloud based file tracking

Windows E3/E5

Windows 10 E3:
Information Protection
Credential Guard
Device Guard

Windows 10 E5:
Windows Defender Advanced Threat Protection

EMS E5

Azure AD Premium P2:
Advanced risk based identity protection with alerts, analysis, & remediation

Microsoft Cloud App Security:
Bring enterprise-grade visibility, control, and protection to your cloud applications

Azure Information Protection Premium P2:
Intelligent classification, & encryption for files shared inside & outside your organization

O365 E5

Advanced Threat Protection:
Zero-day threat and malware protection

Advanced Security Management:
Enhanced visibility and control

Customer Lockbox:
Enhanced customer data access controls

Advanced eDiscovery:
Identifying the relevant data quickly

Advanced Data Governance:
Proactive policy recommendations, Automatic Data Classification

Threat Intelligence:
Threat Dashboard, Threat explorer, Incidents and powerful data analysis based on Microsoft security graph

O365 Message Encryption (OME)

Microsoft 365 E3

Microsoft 365 E5

Office 365 Enterprise capabilities



APPS Cloud Productivity & Mobility	SERVICES Security, Communication, and Collaboration	SECURITY Advanced Enterprise Protection	ANALYTICS Insights for Everyone	VOICE Complete Cloud Communication
Office Pro Plus: Office apps on up to 5 PCs & Macs Mobile Office Apps: Office Apps for Tablet & Smartphones	Exchange: Business-class email & Calendar OneDrive: Cloud Storage and file sharing SharePoint: Team sites & internal portals Skype for Business: Online Meetings, IM, video chat Yammer: Private social networking Security and Compliance Exchange Online Protection, Data Loss Prevention, Data Governance, Secure Score Office 365 Video (MS Stream) Business video streaming service Teams Persistent chat, collaboration, and communication amongst employees, projects, and teams.	Advanced Threat Protection: Zero-day threat and malware protection Advanced Security Management: Enhanced visibility and control Customer Lockbox: Enhanced customer data access controls Advanced eDiscovery: Identifying the relevant data quickly Advanced Data Governance Intelligently meet organizational compliance needs Advanced Threat Intelligence Providing actionable insights to global attack trends	Power BI Pro: Live business analytics and visualization My Analytics: Individual and team effectiveness	Audio Conferencing: Worldwide dial-in for your online meetings Cloud PBX or Phone System Business phone system in the cloud ----- PSTN Calling (Add-on) Cost effective cloud based dial tone Domestic/Int'l

Office 365 E3

Office 365 E5



Pricing Proposal
Quotation #: 23031970
Created On: 1/31/2023
Valid Until: 2/28/2023

GA-City of McDonough

Brian Linton

GA
United States
Phone: (770) 957-3915
Fax:
Email: blinton@mcdonoughga.org

Inside Account Executive

Lauren Rallis

290 Davidson Ave
Somerset, NJ 08873
Phone: 732-652-3086
Fax:
Email: lauren_rallis@shi.com

All Prices are in US Dollar (USD)

Product	Qty	Your Price	Total
1 Microsoft 365 E3 - Subscription license - 1 user - hosted - EA Subscription, Government Community Cloud - All Languages Microsoft - Part#: aad-34704	40	\$399.61	\$15,984.40
Total			\$15,984.40

Additional Comments

Please note, if Emergency Connectivity Funds (ECF) will be used to pay for all or part of this quote, please let us know as we will need to ensure compliance with the funding program.

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

The Products offered under this proposal are resold in accordance with the [SHI Online Customer Resale Terms and Conditions](#), unless a separate resale agreement exists between SHI and the Customer.

AGENDA ITEM SUMMARY
February 20, 2023 City Council Meeting
Item Number: 11



Presented by: Charles Reese

Department: Community Development

ITEM SUMMARY:

Request approval to amend and adopt Chapter 18.08, Post Development Stormwater Management for New Development and Redevelopment

SPECIAL CONSIDERATIONS OR CONCERNS:

The adoption of this ordinance is required to achieve compliance.

STAFF RECOMMENDATION:

Approval of the 2019 Model Ordinance

FINANCIAL IMPACT:

N/A

FUNDING SOURCE:

Line Item: N/A

ATTACHMENTS:

Post Development Stormwater Management for New Development and Redevelopment Ordinance

Runoff Reduction Practicability Policy

OTHER DEPARTMENTAL REVIEW NEEDED:

☒ Yes

☐ No

Department Name: Community Development

Comments: *In order to protect our natural resources and reduce the risk of flooding and damage to our infrastructure, the City of McDonough must follow best management practices required by the Environmental Protection Agency (EPA), and have the ability to enforce these practices and requirements by adopting this ordinance.*

CITY OF MCDONOUGH, GA

Policy on Practicability Analysis for Runoff Reduction

Introduction

Runoff reduction practices are stormwater Best Management Practices (BMPs) used to disconnect impervious and disturbed pervious surfaces from the storm drainage system. The purpose is to reduce post-construction stormwater runoff rates, volumes, and pollutant loads. Runoff reduction is more than simple infiltration. The Runoff Reduction Volume (RR_v) is the retention volume calculated to infiltrate, evapotranspire, harvest and use, or otherwise remove runoff from a post-developed condition to more closely mimic the natural hydrologic conditions.

Certain conditions, such as soils with very low infiltration rates, high groundwater, or shallow bedrock, may lead a local jurisdiction to waive or reduce the runoff reduction requirement for proposed site development on a case-by-case basis. If any of the stormwater runoff volume generated by the first 1.0" of rainfall cannot be reduced or retained on the site, due to site characteristics or constraints, the remaining volume shall be increased by a multiplier of 1.2 and shall be intercepted and treated in one or more best management practices that provide at least an 80 percent reduction in total suspended solids.

The Policy on Practicability Analysis for Runoff Reduction (practicability policy) was developed to provide guidance about the site conditions and supporting documentation that could justify a "Determination of Infeasibility" for the runoff reduction requirement. This practicability policy does not address infeasibility for linear transportation projects being constructed by the local jurisdiction, other local governments, or authorities.

The practicability policy is based on the following principles:

- It is designed to help administrators implement a process for granting a Determination of Infeasibility that supports efficient review of land development applications.
- It applies to new development and redevelopment projects for public and private post-construction stormwater BMPs. It is referenced in the *Model Ordinance for Post-Construction Stormwater Management for New Development and Redevelopment* (Model Ordinance) developed by the Metropolitan North Georgia Water Planning District (Metro Water District).
- It aligns with requirements for runoff reduction in the Georgia Environmental Protection Division's (EPD's) permit to discharge from the municipal separate storm sewer system (MS4) permit. The MS4 permit states that the stormwater management system shall be designed to retain the first 1.0 inch of rainfall on the site to the maximum extent practicable. Most Georgia Stormwater Management Manual (GSMM) BMPs include a runoff reduction component.
- It is focused on the typical site conditions and regulatory environment in the Metro Water District and may not be applicable for all of Georgia.
- It requires a pre-submittal meeting when pursuing a Determination of Infeasibility to ensure all attempts to provide 100% RR_v on site have been exhausted.

The local jurisdiction is responsible for the review of land development applications and determination that it is infeasible to apply the runoff reduction requirement on part or all of a proposed site development. Local jurisdictions may choose to make substantive changes or otherwise customize this practicability policy. These further changes and customizations are allowable so long as their substance meets the requirements of a local jurisdiction's MS4 permit. EPD is responsible for evaluating MS4 permit and District Plan compliance, which includes verifying whether changes and customizations are "at least as effective." EPD has reviewed this document and their comments have been incorporated.

Conditions that may warrant a Determination of Infeasibility

The GSMM provides broad guidance about conditions that may lead a local jurisdiction to waive or reduce the runoff reduction requirement. The following conditions may warrant a Determination of Infeasibility.

- **Soil Infiltration Rate:** The soil infiltration rate is less than 0.5 inch per hour as measured over a meaningful portion of the site. Consideration should be given to infiltration rates throughout the soil profile.
- **Water Table:** The seasonal high-water table is less than two feet from the bottom of an infiltration practice.
- **Shallow Bedrock:** Material that cannot be excavated except by drilling or blasting AND is less than two feet from the bottom of an infiltration practice.
- **Extreme Topography:** In the proposed final condition, as shown on the Stormwater Concept Plan with the proposed post-development condition, anything steeper than 3:1 slope for more than 50% of the site.
- **Karst Topography:** Any of the existing condition is karst.
- **Hotspots/ Contamination:** Reasonable suspicion that previous uses of the site have resulted in soil contamination.
- **Historic Resources:** Buildings, structures, or historic sites included in the Georgia Historic Preservation Division's Historic Resources Survey or listed in the National Register of Historic Places or that has been recommended as a historic resource by a Preservation Professional.
- **Site Constraints:** Sites where the density or nature of the proposed redevelopment would create irreconcilable conflicts for compliance between the on-site runoff reduction requirement and other requirements such as zoning, floodplains, stream buffers, or septic fields.
- **Economic Hardship:** The cost of retaining the first 1.0 inch of rainfall onsite using runoff reduction practices is a minimum of three times greater than the cost of providing water quality practices. This condition must be present with another site condition for a Determination of Infeasibility. Additionally, a Determination of Infeasibility for economic hardship may only be allowed for up to 50% runoff reduction volume.

Supplemental Materials

The District has prepared supplemental materials to support the implementation of this practicability policy. *Appendix A* is meant for internal use and provides an overview of the steps a local jurisdiction could take to implement the practicability policy and issue a Determination of Infeasibility. *Appendix B* has a template the local jurisdiction could use as a runoff reduction infeasibility form.

Appendix A:

Overview of Processing a Determination of Infeasibility

Overview of Processing a Determination of Infeasibility

Obtaining a Determination of Infeasibility

Determination of Infeasibility is not an all or nothing proposition. Designers must demonstrate that they have explored all avenues to meet the runoff reduction standard. If this is determined to be infeasible, they must attempt to provide the maximum percentage of RRV on site as feasible. Only after all attempts to provide any RRV on site are exhausted will the local jurisdiction consider a Determination of Infeasibility. The following process is recommended to:

1. identify conditions early,
2. provide flexibility,
3. support efficient land development application review, and
4. protect water quality to the maximum extent practicable.

Does the Site Qualify for a Determination of Infeasibility?

Answering “NO” to any of the following questions may indicate that the site qualifies for a Determination of Infeasibility:

1. Can GSMM runoff reduction BMPs fully meet the runoff reduction volume?
2. Does the site analysis show the conditions are supportive for managing the calculated runoff reduction volume needed for the site?
3. Can better site design practices (see GSMM, Volume 2, Section 2.3) be used to avoid challenging site conditions or constraints?
4. Can BMPs, such as green roofs and rainwater harvesting techniques, be used in ways that do not require infiltration into subsurface soils, but rather rely on evapotranspiration and reuse?
5. Can the installation of multiple runoff reduction BMPs, such as installing runoff reduction BMPs at higher elevations or in multiple sub watersheds, manage the calculated runoff reduction volume needed for the site?

Prior to Construction

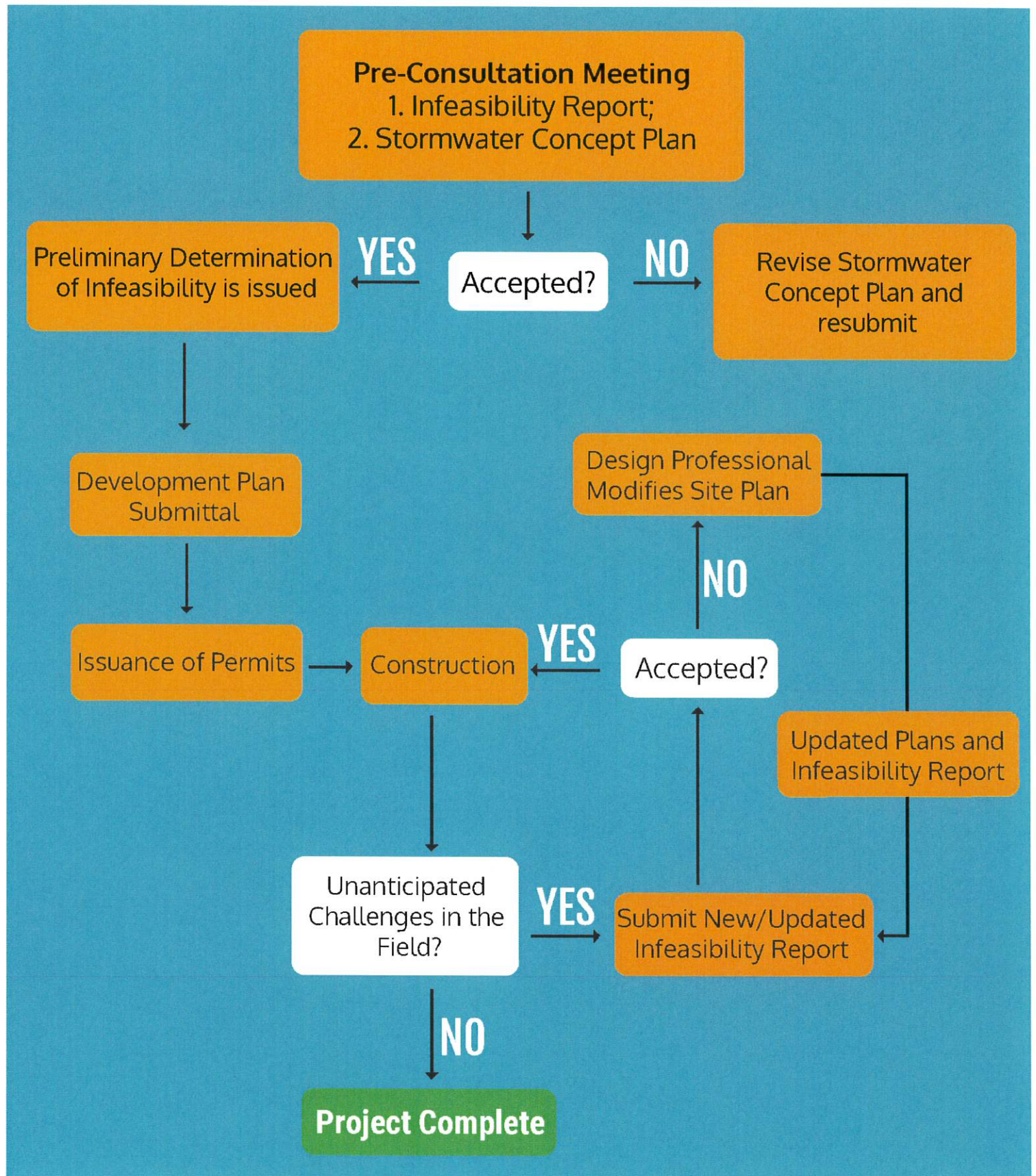
- 1) The design professional identifies conditions that limit using runoff reduction methods to retain 100% of the first 1.0 inch of rainfall onsite and initiates a pre-submittal meeting with the plan reviewer prior to submittal of the land development permit application. During the meeting, the following information will be reviewed:
 - Runoff Reduction Infeasibility Form to initiate the request and provide basic project information, confirmation that supporting documentation was submitted, and documentation of pre-submittal meeting outcomes.
 - Stormwater Concept Plan that has been developed based on site analysis, and natural resources inventory (including impracticability) in accordance with Section 2.4.2.5 of the GSMM.
- 2) The plan reviewer will evaluate the pre-submittal information on a case-by-case basis; coordinate with the design professional to understand site-specific issues; and (if possible) explore potential design strategies to achieve 100% RRV in compliance with the standards and specifications of the Post-Construction Stormwater Management Ordinance and GSMM.

- 3) Based on the pre-submittal information and meeting, the plan reviewer will provide one of the following determinations to the design professional:
 - Approval – preliminary Determination of Infeasibility issued
 - Approval with conditions – preliminary Determination of Infeasibility issued with conditions to incorporate plan reviewer comments into the Stormwater Concept Plan
 - Denial - revise the Stormwater Concept Plan to obtain 100% RRV
- 4) Design professional may either:
 - Submit the land development application with the Stormwater Management Plan and preliminary Determination of Infeasibility (as applicable).
 - Appeal the “denial” or “conditions” following the appeals process outlined in the local jurisdiction’s regulations.

During Construction

- 1) During the development process, the owner encounters a site condition that would prevent building stormwater BMPs as specified in the Stormwater Management Plan. The design professional will complete a Runoff Reduction Infeasibility Form and initiate a meeting with the local jurisdiction plan reviewer to discuss the findings. The designer must evaluate modifications to the proposed BMPs or installation of alternative BMPs that will provide some or all RRV in an alternative method.
- 2) The plan reviewer will evaluate the Runoff Reduction Infeasibility Form on a case-by-case basis; coordinate with the design professional to understand site-specific issues; and (if possible) explore potential design strategies to keep the stormwater BMPs identified in the Stormwater Management Plan.
- 3) Based on the Runoff Reduction Infeasibility Form and meeting, the plan reviewer will provide one of the following determinations to the design professional:
 - Approval – Determination of Infeasibility is issued and attached to the land development permit
 - Approval with conditions – preliminary Determination of Infeasibility issued with conditions to either:
 - i) Revise the design of runoff reduction methods (e.g., adding soil amendments or an underdrain to maximize runoff reduction volume) to retain the first 1.0 inch of rainfall onsite.
 - ii) Meet the stormwater runoff quality/reduction standard through a combination of Runoff Reduction and Water Quality.
- 4) Design professional may either:
 - Continue construction as outlined modified Stormwater Management Plan under the Permit Revision with approved Determination of Infeasibility.
 - Appeal the “conditions” following the appeals process as outlined in the local jurisdiction regulations.

Determination of Infeasibility Process



Appendix B:

Template for a Runoff Reduction Infeasibility Form

Date (submitted): _____

CITY OF MCDONOUGH, GA
Runoff Reduction Infeasibility (RRI) Form for
Determination of Infeasibility

Design Professional Primary Contact (Name/Email/Phone): _____

Description of Site/Land Development Application Number: _____

Address: _____

Size (acres): _____

Maximum Practicable Runoff Reduction Volume*: _____

**If any of the stormwater runoff volume generated by the first 1.0" of rainfall cannot be reduced or retained on the site, due to site characteristics or constraints, the remaining volume shall be increased by a multiplier of 1.2 and shall be intercepted and treated in one or more best management practices that provide at least an 80 percent reduction in total suspended solids.*

GENERAL SUPPORTING DOCUMENTATION

All General Supporting Documentation must be included with this RRI Form for the submittal for a Determination of Infeasibility to be considered complete. Please check each item below to confirm it has been included in the submittal package.

- ☐ Stormwater Concept Plan that has been developed based on site analysis, and natural resources inventory (including impracticability) in accordance with Section 2.4.2.5 of the GSMM
 - ☐ GSMM Stormwater Quality Site Development Review Tool for the Stormwater Concept Plan
 - ☐ Please include justification that the site cannot accommodate best management practices that rely on evapotranspiration and reuse such as rainwater harvesting or green roofs
-

SITE CONDITION APPLICABILITY(descriptions are in *Policy on Practicability Analysis for Runoff Reduction*)

Please check each applicable item below and confirm the supporting documentation has been included in the submittal for a Determination of Infeasibility.

Site Condition	Supporting Documentation
☐ Soil Infiltration Rate	Infiltration test(s), Soil Boring Log(s), and Report of results as interpreted by a Professional Engineer, Professional Geologist, or Soil Scientist licensed in Georgia
☐ Water Table	Soil Boring Log(s) and Report with results of the seasonal high-water table assessment as interpreted by a Professional Engineer, Professional Geologist, or Soil Scientist licensed in Georgia
☐ Bedrock	Soil Boring Log(s) and Report with results of the shallow bedrock assessment as interpreted by a Professional Engineer, Professional Geologist, or Soil Scientist licensed in Georgia
☐ Extreme Topography	Site survey showing 50% of the site is steeper than 3:1 slopes as interpreted by a Professional Engineer or Land Surveyor licensed in Georgia AND Stormwater Concept Plan showing the proposed post-development condition will not change from the site survey
☐ Karst Topography	Report developed by a Professional Engineer, Professional Geologist, or Soil Scientist licensed in Georgia
☐ Hotspots/ Contamination	Phase I Environmental Assessment Report
☐ Historic Resources	Documentation of the NAHRGIS listing OR Report of assessment from a Preservation Professional (including Archaeologist, Architectural Historian, Historian, Historic Preservationist, or Historic Preservation Planner)
☐ Site Constraints	Site Plan identifying all development requirements (e.g., zoning side/front setbacks, build-to-lines, stream buffers, floodplains, septic fields) that are creating irreconcilable conflicts with on-site runoff reduction
☐ Economic Hardship*	An estimated cost comparison of proposed runoff reduction practices compared to the proposed water quality practices must be included to demonstrate an economic hardship and must show the cost of providing runoff reduction is a minimum of three times greater than the cost of providing water quality practices

* Note: A Determination of Infeasibility cannot be granted solely for economic hardship and must be present with another site condition. Additionally, a Determination of Infeasibility for economic hardship may only be allowed for up to 50% runoff reduction volume.

STORMWATER RUNOFF QUALITY/ REDUCTION SUMMARY

Maximum Practicable Runoff Reduction Volume*: _____

Remainder of Volume treated by Water Quality Best Management Practice: _____

**If any of the stormwater runoff volume generated by the first 1.0" of rainfall cannot be reduced or retained on the site, due to site characteristics or constraints, the remaining volume shall be increased by a multiplier of 1.2 and shall be intercepted and treated in one or more best management practices that provide at least an 80 percent reduction in total suspended solids.*

Design Professional Printed Name _____

Design Professional Signature _____

FOR CITY OF MCDONOUGH USE ONLY

☐ APPROVED

☐ APPROVED with
conditions _____

☐ DENIED _____

Reviewer: _____

(Print Name)

(Signature)

(Date)

1 STATE OF GEORGIA
2 CITY OF MCDONOUGH

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3
4 ORDINANCE NO.

5
6 AN ORDINANCE AMENDING CHAPTER 18.08, POST DEVELOPMENT
7 STORMWATER MANAGEMENT FOR NEW DEVELOPMENT AND
8 REDEVELOPMENT, OF THE CITY OF MCDONOUGH, GEORGIA, CODE OF
9 ORDINANCES AND FOR OTHER LAWFUL PURPOSES

10
11 WHEREAS, the City of McDonough ("City") is a municipal corporation duly organized
12 and existing under the laws of the State of Georgia;

13
14 WHEREAS, the duly elected governing authority of the City are the Mayor and Council
15 ("City Council") thereof;

16
17 WHEREAS, the City is authorized pursuant to the Georgia Constitution and Section 1.12
18 of the City Charter to adopt ordinances, rules and regulations as the City Council deems necessary
and reasonable to insure a safe, healthy, and aesthetically pleasing community;

19
20 WHEREAS, promoting the general health, safety, and welfare of the community through
21 sustainable regulations is of high priority of the City;

22
23 WHEREAS, the City desires through this Ordinance to promote safe, positive and healthy
land development; and

24
25 WHEREAS, this Ordinance is in the best interest and general welfare of City residents,
the general public and City.

26
27 IT IS HEREBY ORDAINED BY THE GOVERNING AUTHORITY OF THE CITY
28 OF MCDONOUGH as follows:

29
30 Section 1. Title 18, Environment and Natural Resources, of the City of McDonough Code
31 of Ordinances is hereby amended by deleting chapter 18.08, Post-Development Stormwater
32 Management for New Development and Redevelopment, in its entirety, and replacing it with a
33 new chapter 18.08, Post-Development Stormwater Management for New Development and
Redevelopment, which shall read as follows:

34
35 TITLE 18 - ENVIRONMENT AND NATURAL RESOURCES

36
37 CHAPTER 18.08 - POST-DEVELOPMENT STORMWATER MANAGEMENT FOR
38 NEW DEVELOPMENT AND REDEVELOPMENT

City of McDonough Residential Subdivision Ordinance
TITLE 18 – ENVIRONMENT AND NATURAL RESOURCES
CHAPTER 18.08 POST-DEVELOPMENT STORMWATER MANAGEMENT FOR NEW
DEVELOPMENT AND REDEVELOPMENT

~~AN ORDINANCE OF THE CITY OF MCDONOUGH MAYOR AND CITY COUNCIL,
AMENDING CHAPTER 18.08, POST-DEVELOPMENT STORMWATER MANAGEMENT
FOR NEW DEVELOPMENT AND REDEVELOPMENT, AS AMENDED, TO DELETE
CHAPTER 18.08.005 TO 18.08.310, IN ENTIRETY, INCLUDING ANY AMENDMENTS
THERE TO, AND REPLACE IT WITH A NEW ARTICLE CHAPTER 18.08.005 to
18.08.200 POST-CONSTRUCTION STORMWATER MANAGEMENT FOR NEW
DEVELOPMENT AND REDEVELOPMENT TO REPEAL CONFLICTING
PROVISIONS; AND FOR OTHER PURPOSES~~

Sections:

18.08.005 - Findings.

Whereas, in adopting this Chapter, the Mayor and City Council of the City of McDonough find that:

- (a) Land development projects and other land use conversions, and their associated changes to land cover, permanently alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, which in turn increase flooding, stream channel erosion, and sediment transport and deposition;
- (b) Land development projects and other land use conversions also contribute to increased nonpoint source pollution and degradation of receiving waters;
- (c) The impacts of post-development and redevelopment stormwater runoff quantity and quality can adversely affect public safety, public and private property, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters;
- (d) These adverse impacts can be controlled and minimized through the regulation of stormwater runoff quantity and quality from new development and redevelopment, by the use of both structural facilities as well as nonstructural measures, such as the conservation of open space and greenspace areas. The preservation and protection of natural area and greenspace for stormwater management benefits is encouraged through the use of incentives or "credits." The Georgia Greenspace Program provides

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a mechanism for the preservation and coordination of those greenspace areas which provide stormwater management quality and quantity benefits;

- (e) Localities in the State of Georgia are required to comply with a number of both state and federal laws, regulations and permits which require a locality to address the impacts of post-development stormwater runoff quality and nonpoint source pollution;

Therefore, the city has established this set of stormwater management policies to provide reasonable guidance for the regulation of post-development and redevelopment stormwater runoff for the purpose of protecting local water resources from degradation. It has determined that it is in the public interest to regulate post-development and redevelopment stormwater runoff discharges in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion and sedimentation, stream channel erosion, and nonpoint source pollution associated with new development and redevelopment stormwater runoff.

18.08.010 Purpose and Intent.

The purpose of this articlechapter is to protect, maintain and enhance the public health, safety, environment, and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-construction stormwater runoff and nonpoint source pollution associated with new development and redevelopment. Proper management of post-construction stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment, and general welfare of the public, and protect water and aquatic resources. Additionally, the City of McDonough is required to comply with several State and Federal laws, regulations and permits and the requirements of the Metropolitan North Georgia Water Planning District's regional water plan related to managing the water quantity, velocity, and quality of post-construction stormwater runoff.

18.08.020 Definitions.

For this Articlechapter, the terms below shall have the following meanings:

Administrator means the person appointed to administer and implement this Articlechapter on Post-Construction Stormwater Management for New Development and Redevelopment in accordance with City Code Sec. 18.08.040, Designation of Administrator.

Applicant means a person submitting a land development application for approval. "BMP" or "best management practice" means both structural devices to store or treat stormwater runoff and non-structural programs or practices which are designed to prevent or reduce the pollution of the waters of the State of Georgia.

BMP landscaping plan means a design for vegetation and landscaping that is critical to the performance and functionand function of the BMP including how the BMP will be stabilized

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and established with vegetation. It shall include a layout of plants and plant names (local and scientific).

Channel means a natural or artificial watercourse with a definite bed and banks that conveys continuously or periodically flowing water.

Construction Sequencing Plan means a document noting the sequence of construction and identification of infiltration zones for protection during staged installation of permanent post-construction BMPs to ensure suitable site conditions such as avoiding soil compaction by heavy equipment in areas designated for infiltration BMPs.

Detention means the temporary storage of stormwater runoff in a stormwater detention facility for the purpose of controlling the peak discharge.

Detention Facility means a structure designed for the storage and gradual release of stormwater runoff at controlled rates.

Development means new development or redevelopment.

Extended Detention means the storage of stormwater runoff for an extended period of time.

Extreme Flood Protection means measures taken to prevent adverse impacts from large low-frequency storm events with a return frequency of 100 years or more.

Flooding means a volume of surface water that exceeds the banks or walls of a BMP, or channel; and overflows onto adjacent lands.

GSMM means the latest edition of the Georgia Stormwater Management Manual, Volume 2: Technical Handbook, and its Appendices.

Hotspot means a land use or activity on a site that has the potential to produce higher than normally found levels of pollutants in stormwater runoff. As defined by the administrator, hotspot land use may include gasoline stations, vehicle service and maintenance areas, industrial facilities (both permitted under the Industrial Stormwater General Permit and others), material storage sites, garbage transfer facilities, and commercial parking lots with high-intensity use.

Impervious Surface means a surface composed of any material that significantly impedes or prevents the natural infiltration of water into the soil.

Industrial Stormwater General Permit means the National Pollutant Discharge Elimination System (NPDES) permit issued by Georgia Environmental Protection Division to an industry for stormwater discharges associated with industrial activity. The permit regulates pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies based on Standard Industrial Classification (SIC) Code.

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176
177 *Infiltration* means the process of percolating stormwater runoff into the subsoil.
178

179 *Inspection and Maintenance Agreement* means a written agreement providing for the
180 long-term inspection, operation, and maintenance of the stormwater management system and its
181 components on a site.
182

183 *Land Development Application* means the application for a land development permit on a
184 form provided by the Community Development Director along with the supporting documentation
185 required in City Code Sec. 18.08.100, Application Procedures.
186

187 *Land Development Permit* means the authorization necessary to begin construction-
188 related, land-disturbing activity
189

190 *Land Disturbing Activity* means any activity which may result in soil erosion from water
191 or wind and the movement of sediments into state water or onto lands within the state, including
192 but not limited to clearing, dredging, grading, excavating, and filling of land. Land disturbing
193 activity does not include agricultural practices as described O.C.G.A. 12-7-17(5) or silvicultural
194 land management activities as described O.C.G.A. 12-7-17(6) within areas zoned for these
195 activities.
196

197 *Linear Feasibility Program* means a feasibility program developed by the City of
198 McDonough and submitted to the Georgia Environmental Protection Division, which sets
199 reasonable criteria for determining when implementation of stormwater management standards
200 for linear transportation projects being constructed by the City of McDonough is infeasible.
201

202 *Linear Transportation Projects* means construction projects on traveled ways including but
203 not limited to roads, sidewalks, multi-use paths and trails, and airport runways and taxiways.
204

205 *MS4 Permit* means the NPDES permit issued by Georgia Environmental Protection
206 Division for discharges from the City of McDonough's municipal separate storm sewer system.
207

208 *New Development* means land disturbing activities, structural development (construction,
209 installation, or expansion of a building or other structure), and/or creation of impervious surfaces
210 on a previously undeveloped site.
211

212 *Nonpoint Source Pollution* means a form of water pollution that does not originate from a
213 discrete point such as a wastewater treatment facility or industrial discharge, but involves the
214 transport of pollutants such as sediment, fertilizers, pesticides, heavy metals, oil, grease, bacteria,
215 organic materials, and other contaminants from land to surface water or groundwater via
216 mechanisms such as precipitation, stormwater runoff, and leaching. Nonpoint source pollution is
217 a by-product of land use practices such as agricultural, silvicultural, mining, construction,
218 subsurface disposal, and urban runoff sources.
219

220 *Overbank Flood Protection* means measures taken to prevent an increase in the frequency
221 and magnitude of out-of-bank flooding (i.e., flow events that exceed the capacity of the channel

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and enter the floodplain).

Owner means the legal or beneficial owner of a site, including but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm, or corporation in control of the site.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body, or any other legal entity.

Post-construction Stormwater Management means stormwater best management practices that are used on a permanent basis to control and treat runoff once construction has been completed in accordance with a stormwater management plan.

Post-development means the conditions anticipated to exist on site immediately after completion of the proposed development.

Practicability Policy means the latest edition of the Metropolitan North Georgia Water Planning District's Policy on Practicability Analysis for Runoff Reduction.

Pre-development means the conditions that exist on a site immediately before the implementation of the proposed development. Where phased development or plan approval occurs (preliminary grading, roads, and utilities, etc.), the existing conditions at the time before the first item being approved or permitted shall establish pre-development conditions.

Pre-development Hydrology means (a) for new development, the runoff curve number determined using natural conditions hydrologic analysis based on the natural, undisturbed condition of the site immediately before implementation of the proposed development; and (b) for redevelopment, the existing conditions hydrograph may take into account the existing development when defining the runoff curve number and calculating existing runoff, unless the existing development causes a negative impact on downstream property.

Previously Developed Site means a site that has been altered by paving, construction, and/or land disturbing activity.

Redevelopment means structural development (construction, installation, or expansion of a building or other structure), creation or addition of impervious surfaces, replacement of impervious surfaces not as part of routine maintenance, and land disturbing activities associated with structural or impervious development on a previously developed site. Redevelopment does not include such activities as exterior remodeling.

Routine Maintenance means activities to keep an impervious surface as near as possible to its constructed condition. This includes ordinary maintenance activities, resurfacing paved areas, and exterior building changes or improvements which do not materially increase or concentrate stormwater runoff, or cause additional nonpoint source pollution.

268
269 *Runoff* means stormwater runoff.
270

271 *Site* means an area of land where development is planned, which may include all or
272 portions of one or more parcels of land. For subdivisions and other common plans of development,
273 the site includes all areas of land covered under an applicable land development permit.
274

275 *Stormwater Concept Plan* means an initial plan for post-construction stormwater
276 management at the site that provides the groundwork for the stormwater management plan
277 including the natural resources inventory, site layout concept, initial runoff characterization, and
278 first round stormwater management system design.
279

280 *Stormwater Management Plan* means a plan for post-construction stormwater
281 management at the site that meets the requirements of City Code Sec. 18.08.080(d), Pre-Submittal
282 Meeting, Stormwater Concept Plan, and Stormwater Management Plan Requirements, and is
283 included as part of the land development application.
284

285 *Stormwater Management Standards* means those standards set forth in City Code Sec.
286 18.08.070, Stormwater Management Standards.
287

288 *Stormwater Management System* means the entire set of non-structural site design
289 features and structural BMPs for collection, conveyance, storage, infiltration, treatment, and
290 disposal of stormwater runoff in a manner designed to prevent increased flood damage, streambank
291 channel erosion, habitat degradation and water quality degradation, and to enhance and promote
292 the public health, safety, and general welfare.
293

294 *Stormwater Runoff* means flow on the surface of the ground, resulting from precipitation.
295 “subdivision” means the division of a tract or parcel of land resulting in one or more new lots or
296 building sites for the purpose, whether immediately or in the future, of sale, other transfer of
297 ownership or land development, and includes divisions of land resulting from or made in
298 connection with the layout or development of a new street or roadway or a change in an existing
299 street or roadway.
300

301 *Trout Stream* means waters designated by the Wildlife Resources Division of the Georgia
302 Department of Natural Resources as Primary Trout Waters or Secondary Trout Streams. Primary
303 Trout Waters are waters supporting a self-sustaining population of Rainbow, Brown, or Brook
304 Trout. Secondary Trout Streams are those with no evidence of natural trout reproduction but are
305 capable of supporting trout throughout the year.
306

307 Other terms used but not defined in this Article chapter, shall be interpreted based on how such
308 terms are defined and used in the GSMM and the City of McDonough’s MS4 permit.

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309
310 **18.08.030 Adoption and Implementation of the GSMM; Conflicts and Inconsistencies.**
311

- 312 (a) In implementing this **Articlechapter**, the City of McDonough shall use and require
313 compliance with all relevant design standards, calculations, formulas, methods, and
314 other guidance from the GSMM as well as all related appendices.
315
316 (b) This **Articlechapter** is not intended to modify or repeal any other **Articlechapter**,
317 ordinance, rule, regulation, or other provision of law, including but not limited to any
318 applicable stream buffers under state and local laws, and the Georgia Safe Dams Act
319 and Rules for Dam Safety. In the event of any conflict or inconsistency between any
320 provision in the City of McDonough's MS4 permit and this **Articlechapter**, the
321 provision from the MS4 permit shall control. In the event of any conflict or
322 inconsistency between any provision of this **Articlechapter** and the GSMM, the
323 provision from this **Articlechapter** shall control. In the event of any other conflict or
324 inconsistency between any provision of this **Articlechapter** and any other ordinance,
325 rule, regulation or other provision of law, the provision that is more restrictive or
326 imposes higher protective standards for human health or the environment shall control.
327
328 (c) If any provision of this **Articlechapter** is invalidated by a court of competent
329 jurisdiction, such judgment shall not affect or invalidate the remainder of this
330 **Articlechapter**.

331
332 **18.08.040 Designation of Administrator.**
333

334 The Community Development Director is hereby appointed to administer and implement
335 this **Articlechapter**.

336
337 **18.08.050 Applicability Criteria for Stormwater Management Standards.**
338

339 This **Articlechapter** applies to the following activities:

- 340
341 (a) New development that creates or adds 5,000 square feet or greater of new impervious
342 surface area or that involves land disturbing activity of 1 acre of land or greater;
343
344 (b) Redevelopment (excluding routine maintenance and exterior remodeling) that
345 creates, adds, or replaces 5,000 square feet or greater of new impervious surface area
346 or that involves land disturbing activity of 1 acre or more;
347
348 (c) New development and redevelopment if
349
350 (i) such new development or redevelopment is part of a subdivision or other
351 common plan of development, and
352
353 (ii) the sum of all associated impervious surface area or land disturbing activities
354 that are being developed as part of such subdivision or other common plan

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of development meets or exceeds the threshold in (a) and (b) above;

(d) Any commercial or industrial new development or redevelopment, regardless of size, that is a hotspot land use as defined in this ~~Article~~chapter; and

(e) Linear transportation projects that exceed the threshold in (a) or (b) above.

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18.08.060 - Exemptions from Stormwater Management Standards.

This ~~Article~~ ~~chapter~~ ~~shall~~ ~~does~~ not apply to the following activities:

- (a) Land disturbing activity conducted by local, state, authority, or federal agencies, solely to respond to an emergency need to protect life, limb, or property or conduct emergency repairs;
- (b) Land disturbing activity that consists solely of cutting a trench for utility work and related pavement replacement;
- (c) Land disturbing activity conducted by local, state, authority, or federal agencies, whose sole purpose is to implement stormwater management or environmental restoration;
- (d) Repairs to any stormwater management system deemed necessary by the administrator;
- (e) Agricultural practices as described O.C.G.A. 12-7-17(5) within areas zoned for these activities with the exception of buildings or permanent structures that exceed the threshold in City Code Sec. 18.08.050, Applicability Criteria for Stormwater Management Standards (a) or (b);
- (f) Silvicultural land management activities as described O.C.G.A. 12-7-17(6) within areas zoned for these activities with the exception of buildings or permanent structures that exceed the threshold in City Code Sec. 18.08.050, Applicability Criteria for Stormwater Management Standards (a) or (b);
- (g) Installations or modifications to existing structures solely to implement Americans with Disabilities Act (ADA) requirements, including but not limited to elevator shafts, handicapped access ramps and parking, and enlarged entrances or exits; and
- (h) Linear transportation projects being constructed by the City of McDonough to the extent the administrator determines that the stormwater management standards may be infeasible to apply, all or in part, for any portion of the linear transportation project. For this exemption to apply, an infeasibility report that is compliant with the City of McDonough linear feasibility program shall first be submitted to the administrator that contains adequate documentation to support the evaluation for the applicable portion(s) and any resulting infeasibility determination, if any, by the administrator.

18.08.070 - Stormwater Management Standards.

Subject to the applicability criteria in City Code Sec. 18.08.050, Applicability Criteria for Stormwater Management Standards, and exemptions in City Code Sec. 18.08.060, Exemptions from Stormwater Management Standards, the following stormwater management standards apply. Additional details for each standard can be found in the GSMM Section 2.2.2.2;

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409
410 (a) Design of Stormwater Management System: The design of the stormwater
411 management system shall be in accordance with the applicable sections of the GSMM
412 as directed by the administrator. Any design which proposes a dam shall comply
413 with the Georgia Safe Dams Act and Rules for Dam Safety as applicable.
414

415 (b) Natural Resources Inventory: Site reconnaissance and surveying techniques shall be
416 used to complete a thorough assessment of existing natural resources, both terrestrial
417 and aquatic, found on the site. Resources to be identified, mapped, and shown on
418 the Stormwater Management Plan, shall include, at a minimum (as applicable):
419

- 420 (i) Topography (minimum of 2-foot contours) and Steep Slopes (i.e., Areas with
421 Slopes Greater Than 15%),
422
- 423 (ii) Natural Drainage Divides and Patterns,
424
- 425 (iii) Natural Drainage Features (e.g., swales, basins, depressional areas),
426
- 427 (iv) Natural feature protection and conservation areas such as wetlands, lakes,
428 ponds, floodplains, stream buffers, drinking water wellhead protection areas
429 and river corridors,
430
- 431 (v) Predominant soils (including erodible soils and karst areas), and
432
- 433 (vi) Existing predominant vegetation including trees, high quality habitat and other
434 existing vegetation.
435

436
437 (c) Better Site Design Practices for Stormwater Management: Stormwater management
438 plans shall preserve the natural drainage and natural treatment systems and reduce the
439 generation of additional stormwater runoff and pollutants to the maximum extent
440 practicable. Additional details can be found in the GSMM Section 2.3.
441

442 (d) Stormwater Runoff Quality/Reduction: Stormwater Runoff Quality/Reduction shall be
443 provided by the applicant through Runoff Reduction. To the extent (A) Runoff
444 Reduction has been determined to be infeasible for all or a portion of the site
445 using the Practicability Policy, then (B) Water Quality shall apply for the remaining
446 runoff from a 1.2-inch rainfall event and must be treated to remove at least 80% of
447 the calculated average annual post-development total suspended solids (TSS) load or
448 equivalent as defined in the GSMM.
449

450 (A) Runoff Reduction - The stormwater management system shall be
451 designed to retain the first 1.0 inch of rainfall on the site using
452 runoff reduction methods, to the maximum extent practicable.
453

454 (B) Water Quality – The stormwater management system shall be designed
455 to remove at least 80% of the calculated average annual post-

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development total suspended solids (TSS) load or equivalent as defined in the GSMM for runoff from a 1.2-inch rainfall event.

If a site is determined to be a hotspot as detailed in City Code Sec. 18.08.050, Applicability Criteria for Stormwater Management Standards, the Community Development Director may require the use of specific or additional components for the stormwater management system to address pollutants of concern generated by that site.

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- (e) Stream Channel Protection: Stream channel protection shall be provided by using all of the following three approaches:
- (i) 24-hour extended detention storage of the 1-year, 24-hour return frequency storm event;
 - (ii) Erosion prevention measures, such as energy dissipation and velocity control; and
 - (iii) Preservation of any applicable stream buffer.
- (f) Overbank Flood Protection: Downstream overbank flood protection shall be provided by controlling the post-development peak discharge rate to the pre-development rate for the 25-year, 24-hour storm event.
- (g) Extreme Flood Protection: Extreme flood protection shall be provided by controlling the 100-year, 24-hour storm event such that flooding is not exacerbated.
- (h) Trout Stream Protection: Trout stream protection shall be provided by controlling temperature for receiving waters with trout stream designation. In streams designated as primary trout waters by the Wildlife Resources Division, there shall be no elevation of natural stream temperatures. In streams designated as secondary trout waters, there shall be no elevation exceeding 2°F of natural stream temperatures.
- (i) Downstream Analysis: Due to peak flow timing and runoff volume effects, some structural components of the stormwater management system fail to reduce discharge peaks to pre-development levels downstream from the site. A downstream peak flow analysis shall be provided to the point in the watershed downstream of the site or the stormwater management system where the area of the site comprises 10% of the total drainage area in accordance with Section 3.1.9 of the GSMM. This is to help ensure that there are minimal downstream impacts from development on the site. The downstream analysis may result in the need to resize structural components of the stormwater management system.
- (j) Stormwater Management System Inspection and Maintenance: The components of the stormwater management system that will not be dedicated to and accepted by the Community Development Director, including all drainage facilities, best management

practices, credited conservation spaces, and conveyance systems, shall have an inspection and maintenance agreement to ensure that they continue to function as designed. All new development and redevelopment sites are to prepare a comprehensive inspection and maintenance agreement for the on-site stormwater management system. This plan shall be written in accordance with the requirements in City Code Sec. 18.08.150. Maintenance by Owner of Stormwater Management Systems Predating Current GSMM.

18.08.080 - Pre-Submittal Meeting, Stormwater Concept Plan, and Stormwater Management Plan Requirements.

(a) Before a land development permit application is submitted, an applicant may request a pre-submittal meeting with the Community Development Director. The pre-submittal meeting should take place based on an early step in the development process such as before site analysis and inventory (GSMM Section 2.4.2.4) or the stormwater concept plan (GSMM Section 2.4.2.5). The purpose of the pre-submittal meeting is to discuss opportunities, constraints, and ideas for the stormwater management system before formal site design engineering. To the extent applicable, local, and regional watershed plans, greenspace plans, trails and greenway plans, and other resource protection plans should be consulted in the pre-submittal meeting. Applicants must request a pre-submittal meeting with the Community Development Director when applying for a Determination of Infeasibility through the Practicability Policy.

(b) The stormwater concept plan shall be prepared using the minimum following steps:

- (i) Develop the site layout using better site design techniques, as applicable (GSMM Section 2.3).
- (ii) Calculate preliminary estimates of the unified stormwater sizing criteria requirements for stormwater runoff quality/reduction, channel protection, overbank flooding protection and extreme flood protection (GSMM Section 2.2).
- (iii) Perform screening and preliminary selection of appropriate best management practices and identification of potential siting locations (GSMM Section 4.1).

(c) The stormwater concept plan shall contain:

- (i) Common address and legal description of the site,

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(ii) Vicinity map, and

(iii) Existing conditions and proposed site layout mapping and plans (recommended scale of 1" = 50'), which illustrate at a minimum:

(A) Existing and proposed topography (minimum of 2-foot contours),

(B) Perennial and intermittent streams,

(C) Mapping of predominant soils from USDA soil surveys,

(D) Boundaries of existing predominant vegetation and proposed limits of clearing and grading,

(E) Location and boundaries of other natural feature protection and conservation areas such as wetlands, lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.),

(F) Location of existing and proposed roads, buildings, parking areas and other impervious surfaces,

(G) Existing and proposed utilities (e.g., water, sewer, gas, electric) and easements,

(H) Preliminary estimates of unified stormwater sizing criteria requirements,

(I) Preliminary selection and location, size, and limits of disturbance of proposed BMPs,

(J) Location of existing and proposed conveyance systems such as grass channels, swales, and storm drains,

(K) Flow paths,

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(L) Location of the boundaries of the base flood floodplain, future-conditions floodplain, and the floodway (as applicable) and relationship of site to upstream and downstream properties and drainage, and

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(M) Preliminary location and dimensions of proposed channel modifications, such as bridge or culvert crossings.

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(d) The stormwater management plan shall contain the items listed in this part and be prepared under the direct supervisory control of either a registered Professional Engineer or a registered Landscape Architect licensed in the state of Georgia. Items (iii), (iv), (v), and (vi) shall be sealed and signed by a registered Professional Engineer licensed in the state of Georgia. The overall site plan must be stamped by a design professional licensed in the State of Georgia for such purpose. (GSMM Section 2.4.2.7)

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- (i) Natural Resources Inventory
- (ii) Stormwater Concept Plan
- (iii) Existing Conditions Hydrologic Analysis
- (iv) Post-Development Hydrologic Analysis
- (v) Stormwater Management System
- (vi) Downstream Analysis
- (vii) Erosion and Sedimentation Control Plan
- (viii) BMP Landscaping Plan
- (ix) Inspection and Maintenance Agreement
- (x) Evidence of Acquisition of Applicable Local and Non-Local Permits
- (xi) Determination of Infeasibility (if applicable)
- (xii) Construction Sequencing

(e) For redevelopment and to the extent existing stormwater management structures are being used to meet stormwater management standards the following must also be included in the stormwater management plan for existing stormwater management structures

- (i) As-built Drawings

- (ii) Hydrology Reports
- (iii) Current inspection of existing stormwater management structures with deficiencies noted
- (iv) BMP Landscaping Plans

18.08.090 Application Fee.

The fee for review of any land development application shall be based on the fee structure established by the City of McDonough, and payment shall be made before the issuance of any land disturbance permit or building permit for the development.

18.08.100 Application Procedures.

Land development applications are handled as part of the process to obtain the land disturbance permit pursuant to ~~Chapter~~chapter 18.06 – Soil Erosion, Sedimentation and Pollution Control and/or ~~Chapter~~chapter 15.04 – Construction Codes and Building Regulations, as applicable. Before any person begins development on a site, the owner of the site shall first obtain approval in accordance with the following procedure:

- (a) File a land development application with the Community Development Director on the designated form of application with the following supporting materials:
 - (i) the stormwater management plan prepared in accordance with City Code Sec. 18.08.080, ~~Pre-Submittal Meeting~~, Stormwater Concept Plan, and Stormwater Management Plan Requirements.
 - (ii) a certification that the development will be performed in accordance with the stormwater management plan once approved,
 - (iii) a Preliminary Determination of Infeasibility, as applicable, prepared in accordance with the practicability policy, and
 - (iv) an acknowledgement that applicant has reviewed the City of McDonough's form of inspection and maintenance agreement and that applicant agrees to sign and record such inspection and maintenance agreement before the final inspection.
- (b) The administrator shall inform the applicant whether the application and supporting materials are approved or disapproved.
- (c) If the application or supporting materials are disapproved, the administrator shall notify the applicant of such fact in writing. The applicant may then revise any item not meeting the requirements hereof and resubmit the same for the administrator to again consider and either approve or disapprove.

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- (d) If the application and supporting materials are approved, the Community Development Director may issue the associated land disturbance permit or building permit, provided all other legal requirements for the issuance of such permits have been met. The stormwater management plan included in such applications becomes the approved stormwater management plan.

18.08.110 Compliance with the Approved Stormwater Management Plan.

All development shall be:

- (a) consistent with the approved stormwater management plan and all applicable land disturbance and building permits, and
- (b) conducted only within the area specified in the approved stormwater management plan.

No changes may be made to an approved stormwater management plan without review and advanced written approval by the administrator.

18.08.120 Inspections to Ensure Plan Compliance During Construction.

Periodic inspections of the stormwater management system during construction shall be conducted by the Community Development Director. Inspections shall use the approved stormwater management plan and the construction sequencing plan for establishing compliance. All inspections shall be documented with written reports that contain the following information:

- (a) The date and location of the inspection;
- (b) Whether the stormwater management system is in compliance with the approved stormwater management plan;
- (c) Variations from the approved stormwater management plan; and
- (d) Any other variations or violations of the conditions of the approved stormwater management plan.

18.08.130 Final Inspection; As-Built Drawings; Delivery of Inspection and Maintenance Agreement.

Upon completion of the development, the applicant is responsible for:

- (a) Certifying that the stormwater management system is functioning properly and was constructed in conformance with the approved stormwater management plan and associated hydrologic analysis,
- (b) Submitting as-built drawings showing the final design specifications for all

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components of the stormwater management system as certified by a professional engineer,

- (c) Certifying that the landscaping is established and installed in conformance with the BMP landscaping plan, and
- (d) Delivering to the City of McDonough a signed inspection and maintenance agreement that has been recorded by the owner in the property record for all parcel(s) that make up the site.

The required certification under part (a) shall include a certification of volume, or other performance test applicable to the type of stormwater management system component, to ensure each component is functioning as designed and built according to the design specifications in the approved stormwater management plan. This certification and the required performance tests shall be performed by a qualified person and submitted to the Community Development Director with the request for a final inspection. The Community Development Director shall perform a final inspection with applicant to confirm applicant has fulfilled these responsibilities.

18.08.140 - Violations and Enforcement.

Any violation of the approved stormwater management plan during construction, failure to submit as-built drawings, failure to submit a final BMP landscaping plan, or failure of the final inspection shall constitute and be addressed as violations of, or failures to comply with, the underlying land disturbance permit pursuant to ~~Chapter~~chapter 18.06 - Soil Erosion, Sedimentation and Pollution Control and/or ~~Chapter~~chapter 15.04 - Construction Codes and Building Regulations, as applicable. To address a violation of this ~~Article~~chapter, the City of McDonough shall have all the powers and remedies that are available to it for other violations of building and land disturbance permits, including without limitation the right to issue notices and orders to ensure compliance, stop work orders, and penalties as set forth in the applicable ordinances for such permits.

18.08.150 - Maintenance by Owner of Stormwater Management Systems Predating Current GSMM.

For any stormwater management systems approved and built based on requirements predating the current GSMM and that is not otherwise subject to an inspection and maintenance agreement, such stormwater management systems shall be maintained by the owner so that the stormwater management systems perform as they were originally designed.

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759 **18.08.160 Inspection and Maintenance Agreements.**
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- 761 (a) The owner shall execute an inspection and maintenance agreement with the City of
762 McDonough obligating the owner to inspect, clean, maintain, and repair the
763 stormwater management system; including vegetation in the final BMP landscaping
764 plan. The form of the inspection and maintenance agreement shall be the form
765 provided by the City of McDonough. After the inspection and maintenance
766 agreement has been signed by the owner and the City of McDonough, the owner
767 shall promptly record such agreement at the owner's cost in the property record for
768 all parcel(s) that make up the site.
- 769
- 770 (b) The inspection and maintenance agreement shall identify by name or official title the
771 person(s) serving as the point of contact for carrying out the owner's obligations under
772 the inspection and maintenance agreement. The owner shall update the point of
773 contact from time to time as needed and upon request by the City of McDonough.
774 Upon any sale or transfer of the site, the new owner shall notify the City of
775 McDonough in writing within 30 days of the name or official title of new person(s)
776 serving as the point of contact for the new owner. Any failure of an owner to keep the
777 point of contact up to date shall, following 30 days' notice, constitute a failure to
778 maintain the stormwater management system.
- 779
- 780 (c) The inspection and maintenance agreement shall run with the land and bind all
781 future successors-in-title of the site. If there is a future sale or transfer of only a portion
782 of the site, then:
- 783
- 784 (d) The parties to such sale or transfer may enter into and record an assignment agreement
785 designating the owner responsible for each portion of the site and associated
786 obligations under the inspection and maintenance agreement. The parties shall record
787 and provide written notice and a copy of such assignment agreement to the City of
788 McDonough.
- 789
- 790 (e) In the absence of a recorded assignment agreement, all owners of the site shall be
791 jointly and severally liable for all obligations under the inspection and maintenance
792 agreement regardless of what portion of the site they own.

793
794 (e).

795 **18.08.170 Right of Entry for Maintenance Inspections.**

796 The terms of the inspection and maintenance agreement shall provide for the City of
797 McDonough's right of entry for maintenance inspections and other specified purposes. If a site
798 was developed before the requirement to have an inspection and maintenance agreement or an
799 inspection and maintenance agreement was for any reason not entered into, recorded, or has
800 otherwise been invalidated or deemed insufficient, then the Community Development Director
801 shall have the right to enter and make inspections pursuant to the City of McDonough's general
802 provisions for property maintenance inspections pursuant to ~~Chapter~~chapter 18.05 – Litter Control

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and/or ~~Chapter~~chapter 18.04 – Illicit Discharge and Illegal Connection, as applicable.

18.08.180 – Owner’s Failure to Maintain the Stormwater Management System.

The terms of the inspection and maintenance agreement shall provide for what constitutes a failure to maintain a stormwater management system and the enforcement options available to the City of McDonough. If a site was developed before the requirement to have an inspection and maintenance agreement or an inspection and maintenance agreement was for any reason not entered into, recorded, or has otherwise been invalidated or deemed insufficient, then:

- (a) An owner’s failure to maintain the stormwater management system so that it performs as it was originally designed shall constitute and be addressed as a violation of, or failure to comply with, owner’s property maintenance obligations pursuant to ~~Chapter~~chapter 18.05 – Litter Control and/or ~~Chapter~~chapter 18.04 – Illicit Discharge and Illegal Connection, as applicable, and
- (b) To address such a failure to maintain the stormwater management system, the City of McDonough shall have all the powers and remedies that are available to it for other violations of an owner’s property maintenance obligations, including without limitation prosecution, penalties, abatement, and emergency measures.

18.08.190 – Violations, Enforcement and Penalties.

Any action or inaction which violates the provisions of this ordinance, or the requirements of an approved stormwater management plan or permit may be subject to the enforcement actions outlined in this section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

- (a) Notice of violation. If the community development department determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved stormwater management plan or the provisions of this ordinance, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this ordinance without having first secured a permit therefor, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site. The notice of violation shall contain:
 - (i) The name and address of the owner or the applicant or the responsible person;
 - (ii) The address or other description of the site upon which the violation is occurring;
 - (iii) A statement specifying the nature of the violation;

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(iv) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the stormwater management plan or this ordinance and the date for the completion of such remedial action;

(b) Penalties. In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed.

(i) Stop work order: The community development department may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take necessary remedial measures to cure such violation or violations.

(ii) Withhold certificate of occupancy: The community development department may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(iii) Suspension, revocation or modification of permit: The community development department may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the community development department may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

(iv) Criminal penalties: For violations of this ~~article~~chapter, the community development department may issue a citation to the applicant or other responsible person, requiring such person to appear in the City of McDonough Municipal Court to answer charges for such violation. Upon conviction, such person shall be punished as provided in Section 1-8 of the Code of Ordinances of the City of McDonough. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

18.08.200 - Administrative Appeal and Judicial Review.

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- (a) Administrative appeal. Any person aggrieved by a decision or order of community development department, may appeal in writing within 30 days after the issuance of such decision or order. Such appeal shall be filed with the city administrator. A hearing before the city administrator to consider the appeal shall be held within 30 days of receipt of the written appeal. The city administrator shall issue a written decision within 30 days of the conclusion of the hearing.
- (b) Judicial review. The decision of the city administrator on an appeal under this articlechapter, shall be final unless appeal is made to the Superior Court of Henry County. The applicant may appeal a decision of the city administrator by filing a petition for writ of certiorari to the superior court in the manner provided by state law.

Section 2. Adoption of Runoff Reduction Practicability Policy. The City of McDonough *Policy on Practicability Analysis for Runoff Reduction*, attached hereto, is hereby adopted and made an official policy of the City.

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Section 3. It is hereby declared to be the intention of the City Council that:

(b) To the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. No section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

Section 4. The City Attorney and City Clerk are authorized to make non-substantive editing and renumbering revisions to this Ordinance for proofing and renumbering purposes.

BE IT SO RESOLVED, this _____ day of _____, 2023.

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Christy L. Taylor, City Clerk Sandra Vincent, Mayor

APPROVAL AS TO FORM:

Emilia C. Walker, City Attorney

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AGENDA ITEM SUMMARY
February 20, 2023 City Council Meeting
Item Number: 12



Presented by: Brandon Williams

Department: Stormwater Department

ITEM SUMMARY:

Approval to move forward with the mandatory 2023 Water Quality Monitoring for the City's Watershed Protection Plan required by the Georgia Environmental Protection Division.
Authorization for Mayor to sign all related documents

SPECIAL CONSIDERATIONS OR CONCERNS:

The proposal submitted by VHB includes water quality monitoring at the (5) five study locations.

STAFF RECOMMENDATION:

Staff recommends moving forward with VHB. (Vanassee Hangen Brustlin. Inc.)

FINANCIAL IMPACT:

Total cost: \$13,186.00

FUNDING SOURCE:

Line Item: 506-5.4970.52.3850

ATTACHMENTS:

Client Authorization and Scope Services from VHB (Vanassee Hangen Brustlin. Inc.)

OTHER DEPARTMENTAL REVIEW NEEDED:

☒ Yes

☐ No

OTHER DEPARTMENTAL REVIEW

☒ Finance



Phone: 404.214.6745
www.vhb.com

Engineers | Scientists | Planners | Designers

Vanasse Hangen Brustlin, Inc.
1355 Peachtree St, NE
Suite 100
Atlanta, Georgia 30309

Client Authorization

☒ **New Contract**

Date 2/2/23

☐ **Amendment No.**

Project No. 81026.23

Project Name Long Term Water Quality Monitoring
City of McDonough, GA

To:	City of McDonough c/o Turnipseed Engineers, Inc. 2255 Cumberland Pkwy, SE Bldg. 400A Atlanta, GA 30339	Cost Estimate	Amendment	Contract
				Total
		Water Quality Monitoring (Lump Sum)		\$13,186
	Email: kbryan@turnipseed.com			

As Requested By: Chris Crow

☒ Fixed Fee

☐ Time & Expenses

☐ Cost + Fixed Fee

☐ Other

This Agreement is composed of Part I, Part II. Part I includes details of the services to be performed, timing of the services, and compensation. Part II (attached) contains the Terms and Conditions of Agreement, which are proposed general terms of the engagement between City of McDonough, hereinafter called the "Client" and Vanasse Hangen Brustlin, Inc. (VHB). Turnipseed Engineers, Inc., will act as Client's representative in this Agreement.

SCOPE OF SERVICES

Water quality monitoring will be conducted at five (5) study locations in 2023. A total of four sampling events (three dry and one wet) will be conducted. At least two of the dry events will be collected during the warm summer season. A dry event is one with no rainfall for 72 hours prior to sampling. A wet event will be defined as > 0.2 inches of rainfall over previous 24 hours with dry conditions (no rainfall) for 72 hours prior. Rainfall information will be tracked (real-time) using the USGS website (<http://water.usgs.gov/realtime.html>) for nearby sites. Stream flow will be measured directly during dry sampling events at each site. Single, discreet grab samples will be collected for events. The wet sample will be collected on the rising limb of the hydrograph, whenever possible.

Samples from study sites will be analyzed in the laboratory (GEPD-approved) for the following parameters: COD, BOD5, TSS, alkalinity, hardness, total phosphorus and orthophosphate, TKN, ammonia, and nitrate-nitrite. Additionally, the wet sample will be analyzed for dissolved metals (Pb, Cu, Zn, and Cd), and the required filtering will be done at and by the laboratory. "Clean metals" sampling techniques will be employed for the wet/metals sampling. In addition to laboratory analyses, the following in situ parameters will be measured during sample collection: air and water temperature, dissolved oxygen (DO), % DO, salinity, pH, turbidity, and specific conductance.

In addition to the aforementioned parameters, bacteriological monitoring (E. coli only) will be monitored over two sampling periods. During each sampling period, a total of four grab samples will be collected on a regular schedule (regardless of weather) within a 30-day period. No sample will be collected within 24 hours of another sample. Sampling will be performed between the months of May – October to correspond to state standards. No flow measurements will be made during bacteriological monitoring.

A report will be provided that describes the methods used, results, and discussion of results and potential problem areas, and EPD spreadsheets will be completed and submitted for each year. The report will be provided to Turnipseed Engineers, Inc., in early 2024.

ASSUMPTIONS

It is understood that VHB will perform services under the sole direction of the Client. In the performance of these services, VHB will communicate its efforts with those of other project team members.

- No access problems to site(s) (site easily accessible)

SERVICES NOT INCLUDED

The following services have not been included in this Agreement at this time:

- No meetings

Should work be required in these areas, or areas not previously described, VHB will prepare a proposal or amendment, at the Client's request, that contains the Scope of Services, fee, and schedule required to complete the additional work items.

CLIENT FURNISHED INFORMATION

VHB will rely upon the accuracy and completeness of Client-furnished information in connection with the performance of services under this Agreement.

SCHEDULE

VHB will begin performance of the above services on the date written authorization to proceed is received. The schedule is also subject to timely delivery of information promised by the Client and is exclusive of Client and local review of interim products.

COMPENSATION

VHB will perform the Scope of Services contained in this agreement on a lump sum basis. VHB will invoice for the percentage of work completed based on the major components of the project. Invoices may be rendered upon documentation of completion of the following components of the project:

- Each wet and dry water quality sampling event, with laboratory reports provided
- Each 30-day bacteriological sampling period, with laboratory reports provided
- Final water quality report, data and data spreadsheets

Task	Lump Sum Fee	Hourly, Est. Fee
Water Quality Monitoring	\$13,186	
TOTAL	\$13,186	

Prepared By: ge/cwc

Department Approval: fponce

Please execute this Client Authorization for VHB to proceed with the above scope of services at the stated estimated costs. No services will be provided until it is signed and returned to VHB.

☒ Subject to attached terms & conditions.

☐ Subject to terms & conditions in our original agreement dated

Vanasse Hangen Brustlin, Inc. Authorization

Client Authorization (*Please sign original and return*)

By FAP

By _____

Fabricio Ponce

Title Managing Director, Atlanta

Title _____

Date _____

Date _____

GEORGIA ONLY

STANDARD TERMS AND CONDITIONS. The engagement of VHB by Client is under the following terms and conditions. These terms and conditions are an integral part of the collective Agreement between Client and VHB.

SCOPE OF SERVICES. VHB shall perform the services set forth in the attached Scope of Services. Requests for additional services and any associated fee adjustment must be authorized in writing before additional services can begin.

PERFORMANCE STANDARDS. VHB's services require decisions that are not based upon science, but rather upon judgmental considerations. In the performance or furnishing of professional services hereunder, VHB, and those it is responsible for, shall exercise the degree of skill and care ordinarily exercised by similarly practicing professionals performing similar services under similar conditions in the same locality ("Standard of Care"). VHB shall be entitled to rely on the accuracy and completeness of data, reports, surveys, requirements, and other information provided by Client.

SCHEDULE. VHB shall perform its services as set forth in the Scope of Services as expeditiously as consistent with the Standard of Care and the orderly progress of the Work. VHB shall not be responsible for failure to perform or for delays in the services arising out of factors beyond the reasonable control or without the fault or negligence of VHB.

PAYMENT. The fee estimate for the proposed Scope of Services is valid for 60 days from the date of Proposal. All schedules set forth in the attached Scope of Services commence upon receipt of a signed Agreement and, if requested, a retainer. Retainers will be applied to the last invoice. A RETAINER OF \$[] IS REQUIRED BEFORE SERVICES WILL COMMENCE.

Invoices will be rendered as indicated in the Client Authorization and are due upon receipt. Any invoice unpaid more than 30 days after date of invoice will bear interest at 1-1/2 percent per month.

If Client fails to pay any invoice within 45 days of the date of invoice, VHB may, without waiving any other claim or right against Client or incurring any liability for delay, suspend the services until VHB has been paid in full. Sealed plans, final documents, reports, and attendance at meetings/hearings will not be provided unless payment for services is current.

If VHB is performing services for Client under multiple projects, payments must be current on all projects for services hereunder to continue. Client acknowledges VHB's right to suspend services and withhold plans and documents, as provided above, if any

payments are overdue. If services are suspended for 30 days or longer, upon resuming services VHB shall be entitled to expenses incurred in the interruption and resumption of its services. If services are suspended for 90 days or longer, VHB shall be entitled to expenses incurred in the interruption and resumption of its services and fees for remaining services shall be equitably adjusted.

The parties agree to coordinate invoices to assure timely payment. At minimum, VHB's project manager and Client's representative will confer as often as necessary about any issues involving invoicing and collections. Client's representative will contact VHB's project manager forthwith upon receipt of an invoice about any questions or issues concerning invoiced amounts. If Client's representative and VHB's project manager are unable to resolve any questions or issues, Client's representative will line item any disputed or questionable amount and pay VHB. VHB, at its option, may revise and resubmit disputed amounts at a later date.

Should it become necessary to utilize legal or other resources to collect any or all monies rightfully due for services rendered under this Agreement, VHB shall be entitled to full reimbursement of all such costs, including reasonable attorneys' fees, as part of this Agreement.

OWNERSHIP OF WORK PRODUCT. All work products (whether in hard or electronic form) prepared by VHB pursuant to the Agreement are instruments of service with respect to the Project and are not authorized, intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other Project. Any reuse by Client or a third person or entity authorized by Client without written verification or adaptation by VHB for the specific application will be at Client's sole risk and without liability or legal exposure to VHB. Client shall release, defend, indemnify and hold harmless VHB from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle VHB to additional compensation at rates to be agreed upon by VHB and Client, third person, or entity seeking to reuse said documents.

Client recognizes that information recorded on or transmitted as electronic media, including CADD documents ("Electronic Documents") is subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the Electronic Documents are provided to Client for informational purposes only and are not represented as suitable for any use or purpose.

VHB retains the copyright in all work products produced in connection with this Agreement, unless otherwise agreed to in



writing by an authorized VHB representative. VHB licenses to Client on a non-exclusive basis the use of work products produced solely in connection with this Agreement. The license may be revoked for any failure of Client to perform under this Agreement.

CERTIFICATIONS. VHB shall not be required to sign any documents, no matter by whom requested, that would result in VHB having to certify, guarantee or warrant the existence of conditions whose existence VHB cannot wholly ascertain. Any certification provided by VHB shall be so provided based on VHB's knowledge, information, and belief subject to the preceding sentence, and shall reflect no greater certainty than VHB's professional opinion developed through and consistent with the Standard of Care. VHB shall be compensated for any work necessary to assess project compliance with regulatory standards for purposes of such certification.

INSURANCE. VHB agrees to carry the following insurance during the term of this Agreement:

- Workmen's Compensation and Employer's Liability Insurance in compliance with statutory limits
- Comprehensive General Liability Insurance including Products Completed, Contractual, Property, and Personal Injury coverage with combined single limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate
- Professional Liability Insurance with a limit of \$1,000,000 per claim and in the aggregate
- Automobile Liability Insurance including non-owned and hired automobiles with a combined single limit of \$1,000,000 per occurrence

Certificates of insurance will be furnished upon request. If Client requires additional insurance coverage, and it is available, Client agrees to reimburse VHB for such additional expense.

INDEMNITY. Client and VHB shall at all times indemnify and save harmless each other, their officers, and employees on account of damages, losses, expenses, reasonable counsel fees, and compensation arising out of any claims for damages, personal injuries and/or property losses sustained by any person or entity, to the extent caused by the negligent acts, errors or omissions of the indemnifying party, its employees, or subcontractors in connection with the Project, and/or under this Agreement.

Client agrees to the fullest extent permitted by law, to indemnify and hold harmless VHB, its officers, employees and subconsultants from and against any and all claims, suits, demands, liabilities costs including reasonable attorneys' fees, and defense costs caused by, arising out of, or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products, or material that exist on, about, or adjacent to the job site.

LIMITATION ON VHB'S RESPONSIBILITY AND JOBSITE

SAFETY. VHB will not be responsible for the acts or omissions of contractors or others at the Site, except for its own subcontractors and employees. Neither the professional activities of VHB nor the presence of VHB or its employees or subconsultants at a project site shall relieve the other parties on this project of their obligations, duties, and, including, but not limited to, construction means, methods, sequence, techniques, or procedures necessary for performing, superintending, and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. VHB and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. Client agrees that Contractor shall be solely responsible for job site safety and warrants that this intent shall be carried out in Client's contract with Contractor.

ALLOCATION OF RISK. In recognition of the relative risks and benefits of the Project to both Client and VHB, the risks have been allocated such that Client agrees that to the fullest extent permitted by law, VHB's total liability in the aggregate to Client and any persons or entities claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project and/or this Agreement from any cause or causes, including, but not limited to, VHB's negligence, errors, omissions, strict liability, statutory liability, indemnity obligation, breach of contract or breach of warranty shall not exceed the higher of \$50,000 (fifty thousand dollars), or ten (10) percent of the compensation actually paid to VHB. Client and VHB may agree to a higher limitation of liability for an increased fee.

DISPUTE RESOLUTION. All questions in dispute under this Agreement shall be submitted to non-binding mediation as a condition precedent to the institution of legal proceedings. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representative and shall meet within ten (10) days after the service of the notice. The parties shall then attempt to resolve the dispute within ten (10) days of meeting. Should the parties be unable to agree on a resolution of the dispute, then the parties shall proceed with mediation in accordance with the mediation rules of the American Arbitration Association. The cost of mediation shall be borne equally by both parties. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

LEGAL SUPPORT. To the extent VHB is required to respond to any dispute resolution process, including, but not limited to, requests for document production, discovery or a request to



appear in any deposition or legal proceeding, which is related to the Scope of Services but does not arise out of VHB's negligent acts, errors or omissions, Client shall compensate VHB for all costs incurred by VHB, including reasonable attorneys' fees.

DESCRIPTIVE HEADINGS AND COUNTERPARTS. The headings contained in this Agreement are for convenience of reference only and shall not constitute a part hereof, or define, limit or in any way affect the meaning of any of the terms or provisions hereof. This Agreement may be executed in two or more counterparts, and any party hereto may execute any such counterpart, which, when executed and delivered, shall be deemed to be an original and all of such counterparts taken together shall be deemed to be one and the same instrument.

EXCLUSIVE REMEDIES. In the event that any dispute is not remedied through the alternative dispute resolution procedures set forth herein, all claims, actions, and rights of action arising from or relating in any way to this Agreement or the services performed thereunder, whether in contract, tort, indemnity and all other rights of action whatsoever, shall be filed in a court of competent jurisdiction within three years of the completion of such services, or all such claims, actions and rights of action shall be waived. Recovery under this Agreement shall be limited by the parties' agreement on Allocation of Risk and the remainder of this section.

Notwithstanding any other provision of this Agreement, neither party shall be liable to the other for any liquidated, incidental, special, indirect or other consequential damages incurred, regardless of the nature of the cause or whether caused by Client or VHB, or their employees, subconsultants, or subcontractors. Consequential damages include, without limitation, loss of use, loss of profits, loss of production, or business interruption; however, the same may be caused.

VHB and Client waive all claims against each other arising out of or related to this Agreement or the services to the extent that losses, damages, and liabilities associated with such claims have been compensated by the proceeds of property insurance or any other insurance policy.

VHB makes no warranties or guarantees, express or implied, under this Agreement or any other contract document with respect to its provision of professional services. In entering into this Agreement, Client has relied only upon the representations set forth in this Agreement. No verbal warranties, representations, or statements shall be considered a part of this Agreement or a basis upon which Client relied in entering into this Agreement.

NO 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 Client or VHB. In

addition, nothing herein shall be construed as creating a contractual relationship between Client and any VHB employee, representative, or consultant. Client agrees that in the event of a dispute regarding this Agreement or the services rendered by VHB hereunder, Client shall only seek recourse against VHB and waives any right to pursue a claim against VHB's individual directors, officers or employees.

VHB's commitments as set forth in this Agreement are based on the expectation that all of the services described in this Agreement will be provided. In the event Client later elects to reduce VHB's Scope of Services, Client hereby agrees to release, hold harmless, defend, and indemnify VHB from any and all claims, damages, losses or costs associated with or arising out of such reduction in services.

SEVERABILITY. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

TAXES. Any taxes or fees, enacted by local, state, or federal government and based on gross receipts or revenues, will be invoiced to and payable by Client as an additional amount due under this Agreement.

PROJECT SPECIFIC PROVISIONS. To the extent the Scope of Services involves any of the following services/geographies, the following general provisions apply accordingly:

AMERICANS WITH DISABILITIES ACT (ADA). Client understands and agrees that ADA standards are evolving and subject to varying, potentially contradictory interpretations and applications. VHB will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances, and regulations as they apply to the project. VHB cannot and does not warrant or guarantee that Client's Project will comply with all ADA requirements or ADA interpretations or other applicable regulatory interpretations.

CLIMATE CHANGE/FLOOD ANALYSIS. Consultant shall not be responsible or liable for any damages, losses, litigation, expenses, counsel fees and compensation arising out of any claims, damages, personal injuries and/or property losses related to flooding conditions whether directly or indirectly due to flood water damage, and Client shall at all times indemnify and hold harmless VHB, its respective officers, agents and employees on account of any related claims, damages, losses, expenses and counsel fees related thereto.

CONSTRUCTION PHASE SERVICES

SITE VISITS. VHB shall make periodic site visits upon the request of Client or as otherwise agreed in writing by Client and VHB for the limited purpose of determining whether work is in general conformance with VHB's plans and specifications. Such visits are not intended to be an exhaustive check or a detailed inspection of Contractor's work. VHB shall not supervise or have control over Contractor's work nor have any responsibility for construction ways, means, methods, techniques, sequences, or procedures selected by Contractor nor for Contractor's safety precautions or programs in connection with the Work.

SHOP DRAWINGS. VHB's review and approval of submittals such as shop drawings, product data, samples, and other data, shall be for the limited purpose of checking for conformance with the design concept and the information in VHB's documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades, or construction safety precautions, all of which are the sole responsibility of Contractor and other unrelated parties. Review of a specific item shall not indicate that VHB has reviewed the entire assembly of which the item is a component. VHB shall not be responsible for any deviations from VHB's documents or other documents that are not brought to the attention of VHB in writing by Contractor. VHB shall not be required to review partial submissions or those for which submission of correlated items have not been received.

GEOTECHNICAL SERVICES. Client understands that VHB does not perform geotechnical services directly and, if requested, will retain a geotechnical subconsultant on behalf of Client, and VHB shall rely on the accuracy and completeness of data furnished as if the geotechnical services were contracted directly through Client.

TANK INSPECTION. Client will provide VHB with available underground storage tank (UST) documentation as necessary. VHB assumes that the documentation and site plans will be in order, be complete and meet regulatory compliance standards. VHB's inspection services are to fulfill regulatory requirements and do not include invasive testing or equipment calibration and testing. Accordingly, Client expressly agrees that VHB shall have no liability for equipment functioning or malfunctioning, product releases or spills.

LSP SERVICES – PROJECTS LOCATED IN MASSACHUSETTS. In accordance with the Massachusetts General Laws Chapter 21E, the performance of the services contained in this Agreement may require the engagement of a Licensed Site Professional (LSP) registered with the Commonwealth of Massachusetts under Massachusetts General Law Chapter 21A and the regulations

promulgated by the Massachusetts Department of Environmental Protection (MADEP) thereunder (collectively the LSP Program). These laws and regulations place upon the LSP certain professional obligations owed to the public, including in some instances a duty to disclose the existence of certain environmental contaminants to the MADEP. In the event that any site for which VHB has provided LSP services is audited by MADEP pursuant to the provisions of the Massachusetts Contingency Plan, VHB shall be entitled to additional compensation to provide such services as may be necessary to assist Client in its response to MADEP.

Client understands and acknowledges that in the event the LSP's obligations under the LSP Program conflict in any way with the terms and conditions of this Agreement or the wishes or intentions of Client, the LSP is bound by law to comply with the requirements of the LSP Program. Accordingly, Client recognizes that the LSP shall be immune for all civil liability resulting from any alleged and/or actual conflict with the LSP Program. Client also agrees to hold VHB and its LSP harmless for any claims, losses, damages, fines, or administrative, civil, or criminal penalties resulting from the LSP's fulfillment of its obligations under the LSP Program.

AGENDA ITEM SUMMARY
February 20, 2023 City Council Meeting
Item Number: 13



Presented by: William VonDenBosch

Department: Water/Sewer

ITEM SUMMARY:

Resolution authorizing City to enter into a sole source agreement with 120Water to help the City comply with Environmental Protection Agency rules related to lead and copper. This is a two-year project. Supporting details are attached. Quote for the first year of the project is \$14,369.00; budgeted funding source is 505-5.4440.52.3860 Lead/Copper Mandate Expenses.

SPECIAL CONSIDERATIONS OR CONCERNS:

This is a two-year program with a compliance date on October 16, 2024

STAFF RECOMMENDATION:

Staff recommends approving the request.

FINANCIAL IMPACT:

Total Cost: Year one \$14,369.00

FUNDING SOURCE:

Line Item: 505-5.4440.52.3860 Copper/Lead Mandate Expenses

ATTACHMENTS:

Quote from 120Water

OTHER DEPARTMENTAL REVIEW NEEDED:

☒ X Yes

☐ No

OTHER DEPARTMENTAL REVIEW

☒ X Finance

☐ Fire

☐ Stormwater

1 STATE OF GEORGIA
2 CITY OF MCDONOUGH

3
4 **RESOLUTION NO. _____**
5

6 **A RESOLUTION AUTHORIZING AN AGREEMENT WITH 120WATER TO HELP**
7 **THE CITY COMPLY WITH ENVIRONMENTAL PROTECTION AGENCY RULES**
8 **RELATED TO LEAD AND COPPER AND FOR OTHER LAWFUL PURPOSES**

9 **WHEREAS**, the City of McDonough ("City") is a municipal corporation duly organized
10 and existing under the laws of the State of Georgia;
11

12 **WHEREAS**, the duly elected governing authority of the City of McDonough, Georgia, are
13 the Mayor and Council ("City Council") thereof;
14

15 **WHEREAS**, the City Council is empowered under section 1.12(34) of the City Charter
16 "to enter into contracts and agreements with other governmental entities and with private persons,
17 firms, and corporations";
18

19 **WHEREAS**, the City desires through this Resolution to negotiate and enter into a sole
20 source agreement with 120Water to help the City comply with Environmental Protection Agency
21 rules related to lead and copper; and
22

23 **WHEREAS**, this Resolution is enacted to safeguard and promote the public health, safety,
24 and general welfare of the City.
25

26 **NOW, THEREFORE, BE IT RESOLVED**, by the governing authority of the City of
27 McDonough, Georgia, as follows:
28

29 **Section 1.** The Mayor and City Clerk, in consultation with the City Attorney, are hereby
30 authorized to negotiate and execute a sole source agreement with 120Water to help the City comply
31 with Environmental Protection Agency rules related to lead and copper.
32

33 *****

34 **Section 2.** It is hereby declared to be the intention of the City Council that:

- 35 (a) All sections, paragraphs, sentences, clauses and phrases of this Resolution are or were,
36 upon their enactment, believed by the City Council to be fully valid, enforceable and
37 constitutional.
38 (b) To the greatest extent allowed by law, each and every section, paragraph, sentence,
39 clause or phrase of this Resolution is severable from every other section, paragraph,
40 sentence, clause or phrase of this Resolution. No section, paragraph, sentence, clause
41 or phrase of this Resolution is mutually dependent upon any other section, paragraph,
42 sentence, clause or phrase of this Resolution.
43 (c) In the event that any phrase, clause, sentence, paragraph or section of this Resolution
44 shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise

unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the City Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Resolution.

Section 3. The City Attorney and the City Clerk are authorized to make non-substantive editing and renumbering revisions to this Resolution for proofing and renumbering purposes.

Section 4. The effective date of this Resolution shall be the date of adoption, unless provided otherwise by the City Charter, state and/or federal law.

BE IT SO RESOLVED, this ____ day of _____, 2023.

ATTEST:

CITY OF MCDONOUGH, GEORGIA:

Christy L. Taylor, City Clerk

Sandra Vincent, Mayor

APPROVAL AS TO FORM:

Emilia C. Walker, City Attorney



120Water
250 S. Elm Street
Zionsville, IN 46077
September 14th,, 2022

To Whom It May Concern:

This letter is submitted by request from McDonough, GA, as confirmation that 120Water is the sole provider of an end-to-end Lead and Copper Compliance program solution.

The regulatory revisions to the Lead and Copper Rule, finalized in January 2021, have more than doubled the efforts required for McDonough, GA to comply with the updated Lead and Copper Rule, including increasing sampling requirements, requiring a digitized inventory, and automated public reporting.

120Water is a technical services company that helps state agencies, schools, and public water utilities plan, manage, and effectively communicate the results of water sampling programs. 120Water is the only company with a cloud-based technology platform and complementary services to manage the full life cycle of water testing programs at the point of use. 120Water is used to run the full lifecycle of drinking water voluntary and compliance programs, including Lead and Copper Rule, Lead Service Line Inventory, Lead Service Line Replacement, Facilities Sampling, Pitcher/Filter Distribution, and Wastewater Monitoring across 30 states.

120Water is the only organization that manages full outsourcing of lead & copper sampling programs today, including out of the box, ready to implement technology solutions to support adherence to all of the updated Lead and Copper Rule revision requirements.

Sincerely,

Sarah Young
Vice President of Sales
sarah@120water.com



MASTER SERVICES AGREEMENT

This Master Services Agreement (together with all Order Forms, the “**Agreement**”) is made by and between 120 Water Audit, Inc. d/b/a 120Water (“**120Water**”), and the customer identified on the Order Form (“**Customer**”) and is effective as of the date of last execution by the parties of the initial Order Form (“**Effective Date**”) 120Water and Customer are each also referred to hereunder as a “**party**” and together as the “**parties**”.

In consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

- 1.1. “**Authorized Users**” means personnel authorized by Customer to use the Service solely for the internal use of Customer, subject to the terms and conditions of this Agreement.
- 1.2. “**Customer Data**” means all electronic data or information uploaded by Customer to the 120Water Platform.
- 1.3. “**Deliverables**” means the deliverables (e.g., any custom reports) specified in an applicable Order Form that are expressly created for Customer.
- 1.4. “**Derivative Data**” means collectively, (i) information derived or generated from or based on Customer Data, but not containing Customer Data, (ii) Customer Data which has been de-identified or anonymized so that it no longer identifies a specific individual or Customer; and, (iii) Customer Data which has been aggregated with other data but which no longer identifies a specific individual or Customer.
- 1.5. “**Documentation**” means the user guides and specifications for the SaaS Services that are made available from time to time by 120Water in electronic or tangible form, but excluding any sales or marketing materials.
- 1.6. “**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful files, scripts, agents or programs.
- 1.7. “**120Water Platform**” means 120Water’s proprietary online hosted software, website, operating systems, hardware and other technical resources used by 120Water to provide the SaaS Services.
- 1.8. “**Order Form**” means 120Water’s quote accepted by Customer via an ordering document submitted to 120Water, the initial Order Form being attached hereto as Exhibit A and incorporated herein.

- 1.9. **"Personal Data"** means Customer Data which identifies a specific identifiable individual.
- 1.10. **"Professional Services"** means any implementation, integration, consulting and other related services specifically described in an Order Form, other than the SaaS Services.
- 1.11. **"Project Start Date"** means a date mutually agreed upon by the parties following execution of an Order Form, upon which date 120Water shall commence provision of implementation or other Professional Services.
- 1.12. **"SaaS Services"** means the water test administration and reporting services made available to web-based and mobile users via the 120Water Platform hosted by 120Water, as set forth in the LSLI Scope of Work attached hereto as Exhibit B and incorporated herein.
- 1.13. **"Services"** means, together, the SaaS Services and Professional Services.
- 1.14. **"Site"** means the 120wateraudit.com website.
- 1.15. **"Subscription Start Date"** means the date on which 120Water shall make the SaaS Services available to Customer as set forth in an applicable Order Form.
- 1.16. **"Subscription Term"** means the period of time during which Customer is subscribed to the SaaS Services, as specified in an Order Form.
- 1.17. **"Usage Data"** means statistical data related to Customer's access to and use of the SaaS Services and data derived from it, that is used by 120Water, including to compile statistical and performance information related to the provision and operation of the SaaS Services.

2. **SERVICES AND RESPONSIBILITIES OF THE PARTIES**

2.1. 120Water Responsibilities.

- A. During the Subscription Term, 120Water shall make the SaaS Services available to Customer and shall provide maintenance and support to Customer in accordance with its standard support policies and procedures. The SaaS Services further include developing, training, testing, correcting, and improving the 120Water Platform, such activities for which may include the use of Customer Data. 120Water will use commercially reasonable efforts to maintain the SaaS Services' availability, except for planned downtime for maintenance or upgrades, or any unavailability caused by circumstances beyond 120Water's reasonable control. 120Water reserves the right to modify the SaaS Services at any time. The parties may, from time to time, execute an Order Form describing Professional Services that 120Water shall provide to Customer, the duration of such Professional Services if applicable, the compensation to be paid for the Professional

Services, and any other terms applicable to the project. A list of specific deliverables, a timetable, and/or a detailed specification may be attached as Exhibits to any Order Form.

- B. Subcontractors. 120Water may engage subcontractors to perform or to support 120Water's performance of portions of the Services provided or made available to substantially all of 120Water's customers (e.g., data hosting service providers), provided that 120Water may not subcontract any custom Services or Deliverable specifically purchased only by Customer (and set forth in a separate statement of work) without Customer's prior written consent, such consent not being unreasonably withheld, delayed, or conditioned.

- 2.2. Customer Responsibilities. Customer is responsible for all activities that occur in Customer's account(s). Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (b) prevent unauthorized access to, or use of, the SaaS Services, and notify 120Water in writing immediately upon becoming aware of any such unauthorized access or use; (c) comply with all applicable laws and regulations in using the SaaS Services; and (d) procure for 120Water, at Customer's sole expense, all rights and consents necessary for 120Water and its contractors to access, use, disclose, store, and retain all Customer Data pursuant to this Agreement. Customer is solely responsible for ensuring: (i) that only appropriate Authorized Users have access to the SaaS Services, and (ii) confidentiality and proper usage of passwords and access procedures with respect to logging into the SaaS Services. Customer is solely responsible for all acts and omissions of the Authorized Users, and for ensuring that the Authorized Users comply with this Agreement.

- 2.3. Use Restrictions. Customer shall use the SaaS Services solely for its internal business purposes as contemplated by this Agreement and shall not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the SaaS Services available to any third party except as contemplated by this Agreement; (b) send via, or store within, the SaaS Services infringing, obscene, threatening, defamatory, fraudulent, abusive, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (c) send via the SaaS Services any unsolicited commercial or non-commercial communication; (d) send via, upload to, or store within the SaaS Services any Malicious Code; or (e) attempt to gain unauthorized access to the SaaS Services or its related systems or networks. In addition, Customer shall not directly or indirectly: (i) remove any notice of proprietary rights from the SaaS Services or 120Water Platform; (ii) decompile, reverse engineer, or attempt to derive the source code or underlying ideas or algorithms of any part of the SaaS Services or 120Water Platform (except to the limited extent applicable laws specifically prohibit such restriction); (iii) copy, modify, translate or otherwise create derivative works of any part of the SaaS Services or 120Water Platform; (iv) upload to the 120Water Platform or otherwise provide to 120Water any personal health, credit card, or financial data or other such

sensitive data (collectively, “**Inadvertent Data**”); (v) use any of 120Water’s Confidential Information (defined below) to create any service, software, documentation or data that is similar or competitive to any aspect of the SaaS Services; (vi) interfere or attempt to interfere with the proper working of the SaaS Services or any activities conducted on the SaaS Services or 120Water Platform, or modify another website so as to falsely imply that it is associated with the SaaS Services; or (vii) permit any third party to engage in any of the foregoing proscribed acts set forth in this Section 2.3 (with the restrictions set forth in this Section 2.3, collectively, referred to as the “**Use Restrictions**”). In the event Customer provides to 120Water any Inadvertent Data, Customer shall immediately notify 120Water in writing of such disclosure. 120Water shall treat Inadvertent Data as Customer’s Confidential Information, but not as Personal Data, and will not be liable for any such unauthorized disclosure, access, loss, or use of Inadvertent Data. 120Water shall promptly delete all Inadvertent Personal Data it receives and becomes aware of.

- 2.4. Acceptance Procedure for Custom Deliverables. Unless expressly stated otherwise in a statement of work all custom-developed Deliverables shall be subject to the following acceptance procedure. Customer has 30 days (the “**Testing Period**”) from receipt of a Deliverable to test the Deliverable. The “**Acceptance Criteria**” is whether the Deliverable materially conforms with the applicable Specifications. During the Testing Period, Customer will notify 120Water of any material noncompliance of the Deliverable with the Specifications (“**Material Error**”) that Customer discovers. When it receives this notice, 120Water will promptly correct the Material Error and redeliver the Deliverable within 30 days unless otherwise agreed to in writing by the Parties. The Testing Period will be extended for the period of time used by 120Water to correct a Material Error. If 120Water is unable to correct a Material Error within the 30 day period (or other time period agreed to in writing by the Parties), Customer may terminate this Agreement, and 120Water will promptly return to Customer all monies paid by Customer under the applicable Statement of Work.
- 2.5. SaaS Services Platform. 120Water and its third party service providers will use commercially reasonable efforts to maintain the availability of the SaaS Services. 120Water will comply with the Service Level Agreement set forth in Exhibit C attached hereto and incorporated herein.
- 2.6. Purchase of Goods. Purchases of goods, including without limitation, water testing kits and water pitcher filters, from 120Water are governed by the Terms of Sale available at <https://120water.com/terms-of-sale/>, and which may be amended from time to time by 120Water and effective when posted, and which is incorporated herein by reference.

3. **FEES; PAYMENT; TAXES**

- 3.1. Service Fees. 120Water will invoice Customer for the Services as set forth in the applicable Order Form or as otherwise agreed by the parties in writing in a

statement of work. Except as otherwise specified in an Order Form, fees are based on the Services purchased and not actual usage; payment obligations are non-cancellable; fees paid are non-refundable; and the Services purchased cannot be decreased during the relevant Subscription Term. 120Water may adjust its fees applicable to the Services upon renewal of a Subscription Term. Customer may add subscriptions for SaaS Services during a Subscription Term at the same pricing as the underlying subscription pricing set forth in the most recent Order Form, prorated for the portion of that Subscription Term remaining at the time the subscriptions are added, and any added subscriptions will terminate on the same date as the underlying subscriptions. For all other additional goods or services purchased by Customer during the Subscription term, such purchases will be made at the then-current prices of such goods or services.

- 3.2. Overdue Payments. Customer's failure to pay fees as set forth herein shall constitute a material breach of this Agreement. Any fees hereunder not paid when due will be subject to a late charge of one and one-half percent (1½%) per month on the unpaid balance or the maximum rate allowed by law, whichever is less. If Customer's account is fifteen (15) days or more overdue, 120Water may, in addition to any of its other rights or remedies, suspend Customer's access to the SaaS Services and/or suspend provision of Professional Services until such amounts are paid in full. If such failure to pay has not been cured within thirty (30) days of the due date, then upon written notice 120Water may terminate this Agreement and any or all outstanding Order Forms.
- 3.3. Taxes. Unless Customer is tax exempt and provides written certification of such status to 120Water, Customer shall be responsible for payment of all taxes due in connection with the Services provided hereunder (other than taxes owed by 120Water based on its income), whether or not collected by 120Water. 120Water may collect such taxes from Customer, and Customer shall remit to 120Water all applicable taxes required to be collected by 120Water, or if such taxes have previously been paid by Customer, provide 120Water with the appropriate documentation of such payments.
- 3.4. Future Functionality. The Parties agree and acknowledge that Customer's purchases hereunder are not contingent on the delivery of any future Service functionality or features, or dependent on any oral or written public comments made by 120Water regarding future functionality or features of any Service.

4. PROPRIETARY RIGHTS

- 4.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, 120Water reserves all rights, title and interest in and to the SaaS Services and 120Water Platform, including all software, technology and other materials associated therewith, all Documentation and content (excluding Customer Data), and all copies, modifications and derivative works thereof, and all 120Water trademarks, names, logos, and all rights to patent, copyright, trade secret and other proprietary or intellectual property rights therein. No rights are granted to Customer

hereunder other than as expressly set forth herein. As between 120Water and Customer, Customer owns all Customer Data. Customer shall procure all rights and consents necessary to enable 120Water and its third party service providers to access and use Customer Data pursuant to this Agreement. Customer hereby grants 120Water a worldwide, non-exclusive, royalty-free, fully paid-up license to use, reproduce, perform, display, modify, and distribute the Customer Data in connection with providing the Services to Customer hereunder. 120Water may use the trademarks and trade name of Customer in connection with provision of the Services.

- 4.2. Feedback. If Customer provides or otherwise makes available to 120Water any feedback, suggestions, recommendations, data, or other input regarding the Services or resulting from Customer's use thereof ("**Feedback**"), Customer hereby grants to 120Water a perpetual, irrevocable, royalty-free right and license to use such Feedback for any purpose, including to improve and enhance the Services or any component thereof, to develop new features or functionality, and to otherwise use and exploit such Feedback for 120Water's business purposes. Customer acknowledges that any 120Water products or materials incorporating any such Feedback shall be the sole and exclusive property of 120Water. Consultant agrees to indemnify, defend and hold harmless Owner for any use by Consultant of any Feedback.
- 4.3. Improvements; Deliverables. 120Water shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the SaaS Services and 120Water Platform, and, unless expressly stated otherwise in a statement of work, in and to any Deliverables or new programs, upgrades, modifications or enhancements developed by 120Water in connection with rendering the Services to Customer, even when Deliverables, refinements or improvements result from Customer's request. 120Water shall own all right, title, and interest in and to all Usage Data.

5. CONFIDENTIALITY

- 5.1. Definition of Confidential Information. "**Confidential Information**" means all confidential, proprietary, or nonpublic information of a party (or its customers) ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**") that (a) if disclosed orally is designated as confidential at the time of disclosure, (b) if disclosed in writing is marked as "Confidential" and/or "Proprietary" or (c) that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information shall consist of the Customer Data. 120Water's Confidential Information includes any nonpublic information relating to the SaaS Services or the software, Order Forms, pricing, technology or content underlying the SaaS Services, or relating to any other of 120Water's or its business partners' products or services (including any beta version of a service), software, technology, customers, business plans, and other business affairs. Notwithstanding the foregoing, each party may disclose the existence and terms of this Agreement, in

confidence, to a potential purchaser of or successor to any portion of such party's business resulting from the reorganization, spin-off, or sale of all or a portion of all of the assets of any business, division, or group of such party. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach by the Receiving Party of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

- 5.2. Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission or if required by applicable law or judicial order. The Receiving Party shall use the same degree of care to protect the Confidential Information as it uses to protect its own information of a confidential and proprietary nature, but in no event shall it use less than a reasonable degree of care. 120Water may disclose Customer's Confidential Information to those of its employees and contractors who need to know such information for purposes of performing the Services. Notwithstanding the foregoing, and as permitted by applicable law, 120Water shall be permitted to retain Customer Data and use the same for statistical, analytical, and similar purposes internally, through publications, and with 120Water's other customers; provided, that any distribution to third parties of the results of such usage will include Customer Data in aggregate form only and will not identify Customer or its Authorized Users as the source of any such data. Further, 120Water may store, reproduce, distribute, create derivative works (including compilations and statistical summaries and analyses), transmit, display and otherwise make available certain test results (and related data) and location information to third party individuals and organizations as reasonably necessary in order for 120Water to perform Services hereunder.
- 5.3. Compelled Disclosures; Open Records Requests. If the Receiving Party is compelled by law an order issued by a judge or public competent authority to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. In the event a third party makes a request of Customer for information under any open records act for documents or information related to this Agreement which may be subject to exclusion from disclosure based on confidential information or trade secrets, Customer will provide 120Water with a timely opportunity to object to disclosure of such documents and information.
- 5.4. Survival. The Confidentiality obligations as are set forth in this Section 5 shall remain in force and effect at all times during this Agreement, and (i) with respect to Confidential Information that constitutes a trade secret under applicable law, for

so long as such trade secret status has not been lost; and (ii) with respect to Confidential Information that does not constitute a trade secret, for five (5) years after termination or expiration of this Agreement, and (iii) with respect to Personal Data held by 120Water, forever.

6. DATA SECURITY

- 6.1. 120Water shall use commercially reasonable efforts to store, maintain, and protect the confidentiality of Customer Data uploaded by Customer and its Authorized Users to the Software or otherwise disclosed or transmitted to, or received or accessed by 120Water. 120Water is not liable for the confidentiality or security of any Personal Data through no fault of 120Water in the event of unauthorized access, theft, use or disclosure of such Personal Data, either by or due to Customer's Authorized Users by users or third parties who have obtained unauthorized access to an Authorized User's Login Credentials. 120Water shall not be responsible for any suspected or actual unauthorized access, theft, use or disclosure, or Security Breach of Customer Data due to Customer's breach of this Agreement, Customer's (or its contractors' or providers') failure to use reasonable care in securing Customer Data or due to Customer's Authorized Users acts or omissions that are the proximate cause of any data Security Breach related to the Services or 120Water Platform. "**Security Breach**" means any accidental, unauthorized, or unlawful access, use, destruction, loss, alteration, lockup (i.e., encryption or rendering unavailable), loss of confidentiality, or disclosure of Personal Data stored or otherwise processed by or in 120Water's (or its service providers' or contractors') possession or control; but, shall not include: (a) "pings" on an information system firewall; (b) port scans; (c) attempts to log on to an information system or enter a database with an invalid password or user name; or, (d) denial-of-service attacks that do not result in a server being taken offline.
- 6.2. 120Water will be responsible for any Security Breach of Customer Data successfully uploaded to the 120Water Platform where caused by the acts or omissions of 120Water or its agents, hosting services or other contractors, except to the extent due to any acts, omissions, or negligence of Customer, its agents, or contractors ("**120Water Security Breach**").
- 6.3. Customer shall be responsible for any Security Breach of Customer Data due to the acts or omissions of Customer, its contractors (other than 120Water, its agents or contractors), its then-current employees, former employees who were previously Authorized Users, other than to the extent directly due to the negligence of 120Water or its agents, hosting services and other contractors ("**Customer Security Breach**"). Notwithstanding the previous sentence, former employees or contractors of Customer whose Authorized User credentials have been properly deactivated by Customer, but who subsequently cause a Security Breach through methods that do not include the use of their Authorized User credentials, does not constitute a Customer Security Breach.

7. DATA OWNERSHIP AND USE

- 7.1. Ownership of Customer Data. As between Customer and 120Water, Customer owns all Customer Data.
- 7.2. Use of Customer Data. Customer hereby grants 120Water and its contractors a limited, nonexclusive right and license to use all Customer Data during this Agreement, and, after expiration or termination as permitted herein.
- 7.3. Use of Customer Data after Expiration or Termination. After any expiration or termination of this Agreement 120Water shall handle Customer Data as set forth in Section 11.3.B.
- 7.4. Derivative Data and Usage Data. “**Derivative Data**” means collectively, (i) information derived or generated from or based on Customer Data, but not containing Customer Data, (ii) Customer Data which has been de-identified or anonymized so that it no longer identifies an specific individual; and, (iii) Customer Data which has been aggregated with other data but which no longer identifies a specific individual or Customer. “**Usage Data**” means statistical data related to Customer’s access to and use of the SaaS Services and data derived from it, that is used by 120Water, including to compile statistical and performance information related to the provision and operation of the SaaS Services. 120Water shall irrevocably own all Derivative Data and Usage Data and may use or disclose it in any way it chooses. This Section 7.4 shall survive any expiration or termination of this Agreement.

8. WARRANTIES AND DISCLAIMERS

- 8.1. 120Water Warranties. 120Water warrants that: (a) the functionality of the SaaS Services will not be materially decreased during a Subscription Term; (b) 120Water shall take commercially reasonable measures to protect against the SaaS Services or any deliverables containing or transmitting Malicious Code to Customer; (c) the Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards (collectively referred to as the “**Service Warranty**”). Customer must report to 120Water in writing any failure of the Professional Services to materially conform to the Service Warranty within 90 days of performance of such Professional Services in order to receive warranty remedies. For any breach of the Service Warranty, Customer’s exclusive remedy, and 120Water’s entire liability, shall be the re-performance of the Professional Services, and, if 120Water is unable to re-perform the Professional Services as warranted within thirty (30) days of receipt of notice of breach, Customer shall be entitled to recover the fees paid to 120Water for the deficient Professional Services.
- 8.2. Warranties for third-party products are governed under the applicable third party warranty terms, and Customer expressly acknowledges that 120Water has no obligations with regard to third-party products.

- 8.3. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED HEREIN, 120WATER PROVIDES ALL SERVICES AS-IS, AND 120WATER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.
- 8.4. Customer acknowledges and agrees that the SaaS Services, the Services, the 120Water Platform, Deliverables, and any other services or products provided hereunder are intended to provide Customer with a means of sampling, testing, and monitoring water for contaminants. 120Water uses third-party labs and service providers to perform certain components of the Services and, while 120Water endeavors to maintain relationships with dependable, accurate and timely third party service providers, 120WATER DOES NOT CONTROL SUCH SERVICE PROVIDERS, AND THEREFORE HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND LIABILITY FOR ANY INACCURATE, UNTIMELY, OR OTHERWISE ERRONEOUS DELIVERABLES INCLUDING DATA, ALERTS, OR INFORMATION ATTRIBUTABLE TO SUCH SERVICE PROVIDERS. 120Water is not responsible for any contaminants or other harmful conditions present in water or other materials tested hereunder.

9. INDEMNIFICATION

- 9.1. By 120Water. 120Water shall indemnify, defend, and hold harmless Customer and its officers, directors, employees, agents, and affiliates from and against any and all third-party claims, actions, or causes of action (“**Claims**”) for any liabilities, damages, penalties, fines, assessments, costs, and expenses, including reasonable attorneys’ fees and costs (collectively, “**Losses**”) arising or related to (a) an allegation by a third party alleging that the Services or use of the 120Water Platform infringes any United States patent, and/or any copyright, trade secret or other property right held by such a third party; (b) 120Water’s breach of this Agreement; (c) any failure by 120Water or its employees, agents, service providers, or subcontractors to comply with applicable law or regulation; (d) 120Water’s use of any Feedback provided by Customer; or (e) damage to or loss of real or tangible property, or personal injury, resulting from the gross negligence or willful misconduct of 120Water, its agents, service providers, or subcontractors. The above shall apply provided that 120Water is notified promptly by Customer of any such Claim (including any threatened claim) and 120Water shall have sole control of the defense with respect to same (including without limitation, the negotiations and settlement of such claim). If a Claim pursuant to clause (a) has occurred or, in 120Water’s opinion, is likely to occur, 120Water shall, at 120Water’s option and expense, (i) procure the right to continue providing the Services or the 120Water Platform, (ii) re-perform or replace the potentially infringing portion of the Services or the 120Water Platform, or (iii) modify the Services or the 120Water Platform so that infringement is avoided. If, after using commercially reasonable efforts, none of the foregoing three alternatives is reasonably available, 120Water may terminate this Agreement, and Customer shall be entitled to a pro-rated refund of pre-paid but

unearned fees. 120Water shall have no such indemnification obligation to the extent such infringement under clause (a) above: (w) relates to use of the Services or the 120Water Platform or any Deliverable in combination with other software, data products, processes, or materials not provided by 120Water and the infringement would not have occurred but for such combination; (x) arises from or relates to modifications to the SaaS Services, the 120Water Platform, or any Deliverable not made by 120Water; (y) relates to Customer Data or any third-party product or service, or (z) where Customer continues the activity or use constituting or contributing to the infringement after notification thereof by 120Water.

- 9.2. By Customer. Customer shall indemnify, defend, and hold harmless 120Water and its officers, directors, employees, agents, affiliates and service providers from and against any and all Losses based on any Claims relating to (a) the possession or use of the SaaS Services, the Professional Services, the 120Water Platform, Deliverables, or any other materials provided hereunder, or their failure, or (b) for Customer's failure to comply with the terms of this Agreement, or (c) from any allegation that Customer Data or 120Water's possession or use thereof violates or infringes the rights of any third party.
- 9.3. Indemnification Procedure. As an express condition to the indemnifying party's obligation under this Section 9, the party seeking indemnification must: (a) promptly notify the indemnifying party in writing of the applicable Claim for which indemnification is sought (except that any delay on the part of the indemnified party in providing such notice shall not relieve the indemnifying party of its indemnification obligation except to the extent the it is prejudiced thereby); and (b) provide the indemnifying party with all reasonable non-monetary assistance, information and authority reasonably required for the defense and settlement of such Claim. No settlement or compromise that imposes any liability or obligation on the indemnified party will be made without the indemnified party's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned.

10. LIMITATION OF LIABILITY

- 10.1. Limitation of Liability. SUBJECT TO SECTION 10.3, IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY CUSTOMER UNDER THE ORDER FORM FOR THE SERVICES FOR WHICH LIABILITY IS CLAIMED IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.
- 10.2. Exclusion of Consequential Damages. SUBJECT TO SECTION 10.3, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE HOWEVER CAUSED, INCLUDING WITHOUT

LIMITATION DAMAGES FOR LOSS OF GOOD WILL, SUBSTITUTE GOODS OR SERVICES, WORK STOPPAGE, DATA LOSS, LOST PROFIT OR COMPUTER FAILURE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 10.3. The restrictions on the types and amounts of damages for which a party may be liable hereunder shall not apply to Customer's liability for breach of 120Water's proprietary rights or confidentiality, or a party's indemnification obligations.

11. TERM AND TERMINATION

- 11.1. Term and Renewal. This Agreement commences on the date both parties execute an initial Order Form (the "**Effective Date**"), and continues through the expiration of all Order Forms in effect between the parties hereunder (including any renewals as set forth below) unless earlier terminated as set forth in this Section 11 (the "**Term**"). Subscriptions to the SaaS Services commence on the Subscription Start Date and continue for the Subscription Term specified in the applicable Order Form. Thereafter, the Subscription Term shall automatically renew for successive twelve (12) month renewal terms unless a party provides the other party notice of its intent not to renew at least thirty (30) days in advance of the end of the then-current Term.
- 11.2. Termination. Either party may terminate this Agreement for cause upon written notice of a material breach to the other party if such breach remains uncured (if curable using commercially reasonable efforts) for thirty (30) days from such notice. 120Water may terminate this Agreement or any Order Form for non-payment in accordance with Section 3.2, and no opportunity to cure shall apply. 120Water may immediately terminate this Agreement for cause, without the opportunity to cure, if Customer breaches any of the Use Restrictions set forth in Section 2.3. In addition, 120Water may terminate this Agreement, in whole or in part, or cease provision of Services if required to comply with applicable law or regulation. Upon termination for cause by 120Water, Customer shall remain obligated to pay all fees owed for the remainder of the then current- subscription Term, all of which fees shall become immediately due and payable in full.
- 11.3. Effects of Termination.
- A. Upon expiration or termination of this Agreement, all rights granted by 120Water under this Agreement shall terminate, and Customer's access to the 120Water Platform shall be terminated. Termination of this Agreement shall not affect either Customer's obligation to pay any sums due hereunder, including Service Fees for the remainder of the then-current Subscription Term. In the event Customer prepays any fees and receives a discount and Customer fails to make timely orders as required to receive such discount, Customer agrees to pay Provider within thirty (30) days of such termination

the non-discounted fee for such orders. Pre-payments or deposits will not be refunded to Customer.

- B. Within thirty (30) days after the termination or expiration of this Agreement, 120Water will provide Customer with a copy of Customer Data held by 120Water. Upon expiration of such thirty (30) day period, 120Water shall convert Customer's account to an inactive status. 120Water may, but shall not be obligated to, delete all Customer Data after Customer's account converts to inactive status.

12. INSURANCE

- 12.1. Insurance. During the Term, 120Water shall, at its own expense, maintain and carry in full force and effect insurance policies with financially sound and reputable insurers having limits of liability of not less than the following:

Type	Limits
Commercial General Liability	(a) \$1,000,000 per occurrence for bodily injury and property damage; (b) \$1,000,000 per occurrence for personal and advertising injury; (c) \$2,000,000 aggregate for products and completed operations; and, (d) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
Commercial Automobile Liability	(a) \$1,000,000 per accident for bodily injury and property damage.
Workers' Compensation Insurance	as required by the State of Indiana with statutory limits
Employer's Liability	(b) \$1,000,000 each accident for bodily injury; (c) \$1,000,000 disease each employee; and, (d) \$1,000,000 disease policy limit.
Technology Professional Liability	(a) \$1,000,000 per claim/occurrence; and, (b) \$2,000,000 policy aggregate.

- 1.2. In the event 120Water purchases an umbrella or excess insurance policy to meet the minimum limits of insurance set forth in this Section 12, such insurance policy shall afford no less coverage than the primary insurance policy. Upon Customer's request, 120Water shall provide Customer with a certificate of insurance evidencing the insurance coverage specified in this Section 12. The certificate of insurance shall name Customer as an additional insured and loss payee. 120Water shall provide Customer with thirty (30) days' advance written notice in the event of a cancellation or material change in such insurance policy. 120Water waives and 120Water shall cause its insurers to waive, any right of subrogation or other recovery against Customer.

2. FORCE MAJEURE

- 2.1. Definition. A “**Force Majeure Event**” means a cause or event beyond the reasonable control of the party claiming delay of performance, including, but not limited to, (i) labor disputes, strikes, or lockouts (but excluding nonunion labor shortage or disputes), or labor unavailability or workplace closure or restrictions or travel restrictions as required or recommended by government or agency (or implemented as company-wide policy by the party suffering the delay in performance) due to pandemic, epidemic, or other widespread health emergency (e.g., viruses or other diseases, such as, but not limited to, COVID-19, SARS, etc.); (ii) riots, war, acts of terrorism, or other civil disturbance; (iii) fire, flood, earthquake, tornado, hurricane, snow, ice, lightning, or other natural disasters, elements of nature or acts of God, (iv) outages, cable cuts, power crisis shortages, infrastructure outages or failures, internet failures, interruption or failure of telecommunications carriers or digital transmission links, network congestion, computer equipment failures, telecommunication equipment or other equipment failures, electrical power failures, loss of or fluctuations in heat, light, or air conditioning, all of the foregoing in this Subsection (iv) being of or due to third party providers or utility service providers; (v) acts of computer, system, or network sabotage or file lockup (e.g., ransomware attack), DDOS or other network attacks, intrusion, or other failures not arising out of a breach of Provider’s data security obligations set forth in this Agreement; (vi) any law, order, regulation, direction, action or request of the United States, state or local governmental agency, department, commission, court, bureau, corporation or other instrumentality of any one or more of such instrumentality, or of any civil or military authority, or national emergencies, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown; (vii) change in law or regulation making performance impracticable without having material impact on such party’s ability to perform under this Agreement without material increase in cost, resources, or time; or, (viii) national or regional shortage of adequate power or telecommunications or transportation, or, (ix) supply chain interruption due to any of the foregoing.
- 2.2. If a Force Majeure Event occurs, the party who’s performance is delayed or prevented (the “**Affected Party**”) shall be entitled to (i) relief from its performance obligations under this Agreement to the extent the occurrence of the Force Majeure Event prevents or adversely affects that Affected Party’s performance of such obligations, and (ii) an extension of schedule to perform its obligations under this Agreement to the extent the occurrence of the Force Majeure Event prevents or adversely affects that Affected Party’s ability to perform such obligations in the time specified in this Agreement. The occurrence of a Force Majeure Event shall not, however, excuse or delay the other Party’s obligation to pay monies previously accrued and owing to the Affected Party under this Agreement or excuse or delay the Affected Party’s performance of any obligation under this Agreement not affected by the occurrence of the Force Majeure Event. Upon the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party promptly after the Affected Party’s performance has been delayed or prevented. The Affected

Party shall use commercially reasonable efforts to reduce costs resulting from the occurrence of the Force Majeure Event, fulfill its performance obligations under the Agreement and otherwise mitigate the adverse effects of the Force Majeure Event. The Affected Party shall also provide prompt written notice to the other Party of the cessation of the Force Majeure Event. If the Force Majeure Event renders the Services completely unavailable for more than thirty (30) consecutive days, Customer may terminate the Agreement upon written notice to 120Water, and Customer will receive a refund of prepaid fees starting from the beginning of the period of unavailability due to such conditions.

3. GENERAL PROVISIONS

- 3.1. Relationship of the Parties. The relationship between the parties created by this Agreement is one of independent contractors and neither party shall have the power or authority to bind or obligate the other except as expressly set forth in this Agreement. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third-party beneficiaries to this Agreement.
- 3.2. Use of Customer Name and Logo. Customer hereby agrees that: (a) 120Water may use Customer's name and logo in 120Water's published customer list, on 120Water's website, and in 120Water's marketing materials; and, (b) subject to Customer's review and approval, which approval shall not be unreasonably withheld or delayed, allow 120Water to reference Customer in a press release that announces Customer's decision to use 120Water Services.
- 3.3. Assignment. 120Water may not assign, convey, or transfer (whether by contract, merger or operation of law) (collectively "assign" and its cognates) any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Customer, other than in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of 120Water's assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any assignment in violation of this Agreement shall be of no power or effect.
- 3.4. Governing Law. This Agreement shall be governed exclusively by the laws of the State of Customer's primary business office, without regard to its conflicts of laws rules.
- 3.5. Miscellaneous. This Agreement and the Exhibits attached hereto and Order Forms either attached hereto or entered into during this Agreement are incorporated herein and collectively set forth the entire understanding and agreement between the parties regarding the subject matter of this Agreement and supersede all prior or contemporaneous proposals or communications, oral or written, between the parties relating to the subject matter of this Agreement. The background recitals form a material part of this Agreement. No modification of this Agreement shall be binding unless it is in writing and is signed by authorized representatives of both parties. If

any provision in this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect. No waiver of any right under this Agreement shall be deemed effective unless contained in writing signed by a duly authorized representative of the party against which the waiver is sought to be enforced, and no waiver of any past or present right arising from any breach or failure to perform shall be deemed to be a waiver of any future right arising under this Agreement. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which together shall constitute one agreement. The signature page of either party to any counterpart, and photocopies and electronic facsimiles thereof, may be appended to any other counterpart and when so appended, shall constitute an original.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Agreement effective as of the Effective Date.

120 Water Audit, Inc.

Customer:

By

By

Print Name

Print Name

Title

Title

EXHIBIT A
ORDER FORM

EXHIBIT B
LSLI SCOPE OF WORK

EXHIBIT C

SERVICE LEVEL AGREEMENT

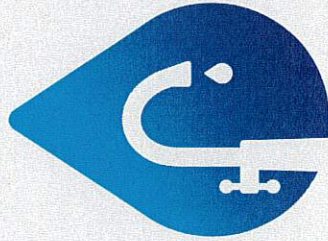
This Service Level Agreement (“SLA”) sets forth 120Water’s performance objectives for the availability of its hosted software platform (“**120Water Platform**”). The remedies set out in this SLA are Customer’s sole and exclusive remedy for issues covered by the SLA. While 120Water will not modify this SLA arbitrarily, 120Water may do so from time-to-time. Should 120Water make a change to this SLA, 120Water shall notify Customer. The notification will set out the effective date of any changes.

1. **Availability.** 120Water will use commercially reasonable efforts to maintain availability of the 120Water Platform for Customer’s use 24x7, except in the event of any of the following, during which the 120Water Platform may be partially or totally unavailable:
 - A. **“Scheduled Maintenance”:** Scheduled maintenance, which includes updates and other routine maintenance, will be conducted between 7 p.m. – 2 a.m. (Eastern US Time) weekdays, weekends and/or holidays. However, maintenance may also occur at any other time as is necessary to provide top tier service to 120Water’s customers. 120Water may change planned maintenance windows at its sole discretion and will notify Customer of any such changes that affect previously notified plans, provided such maintenance is done during low-volume times. 120Water will use commercially reasonable efforts to provide Customer with at least 24 hours’ prior notice if Scheduled Maintenance downtime will occur at such other time.
 - B. **“Unscheduled Maintenance”:** Maintenance not previously planned which is needed to resolve issues that are critical for customers and/or performance of the 120Water Platform. 120Water will notify Customers when possible via email prior to the unscheduled maintenance. When and where practicable, 120Water will try to conduct unscheduled maintenance between 9:00 p.m. and 2:00 a.m. (Eastern US Time).
 - C. Force Majeure Events (as defined in the Agreement).
 - D. Unauthorized use or misuse of the 120Water Platform by Customer or anyone using any of Customer’s authorized user’s login credentials.
2. **“Availability Goal”:** 120Water will use commercially reasonable efforts to make the 120Water Platform available 99.5% of the time, measured on an average monthly basis, exclusive of the following:
 - A. The events set forth in Section 1.A-1.D. of this SLA;
 - B. Any outage lasting less than 5 minutes;
 - C. Any outage 120Water determines to be a result of Customer’s breach of the Agreement or other acts or omissions of Customer;
 - D. Force Majeure Events, provided that 120Water timely implements its disaster recovery

plan; and,

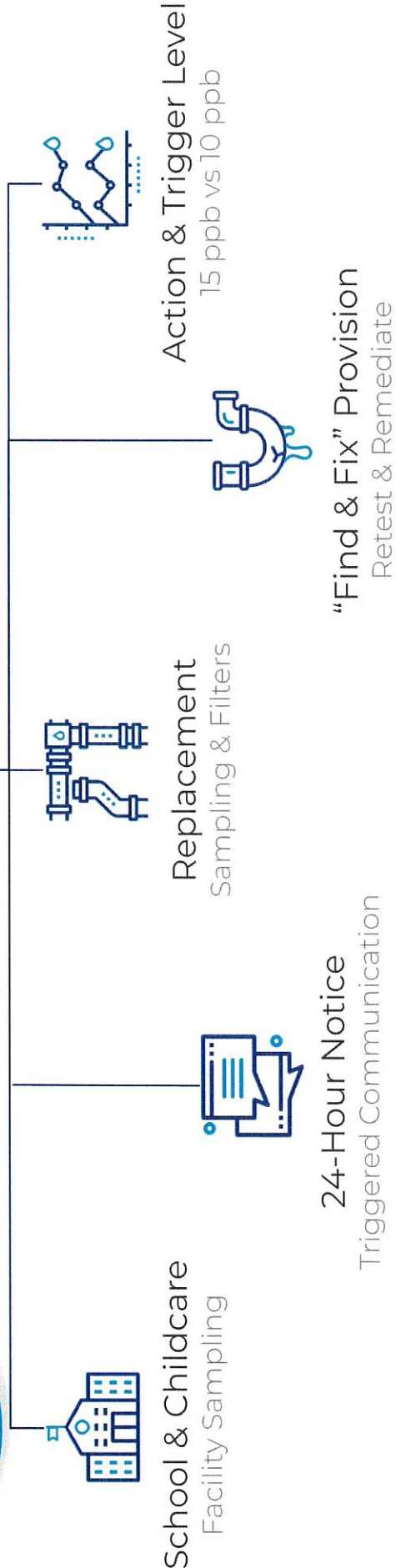
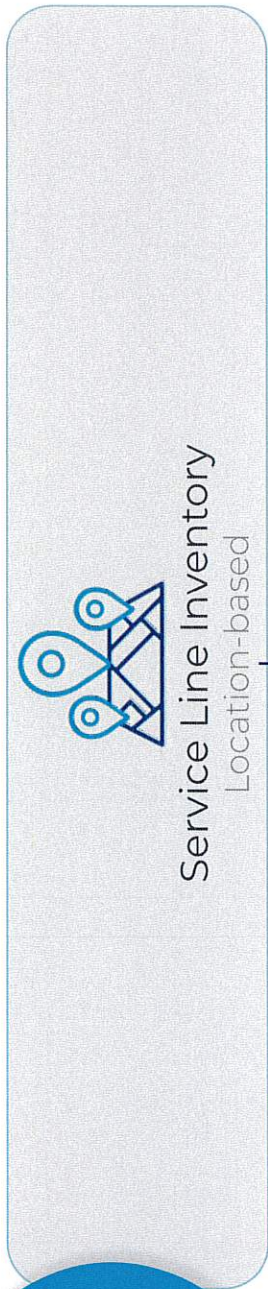
- E. Any outage determined to be a result of a failure of outside services or equipment not within the control of 120Water, including Customer's hardware and software.
- 3. Technical Support. 120Water provides technical support 24/7 by email to support@120water.com, and by telephone at 800-674-7961.
- 4. Response Time. 120Water endeavors to respond to support requests within 2 hours.

Lead and Copper Rule Compliance



120Water™

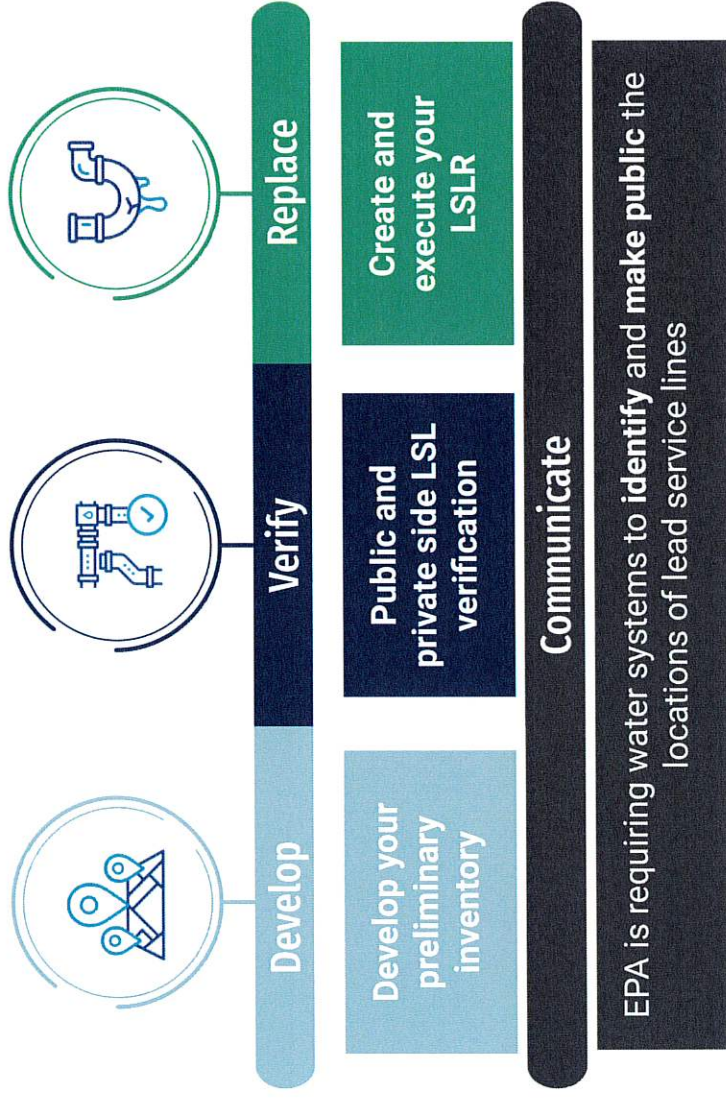
**Foundation
for achieving
LCRR
compliance**



<u>Key Dates</u>		
December 16, 2021 LCRR Effective Date	October 16, 2024 LCRR Compliance Date	Prior to October 16, 2024 EPA Finalizing Lead and Copper Rule Improvements (LCRI)

Service Line Inventory

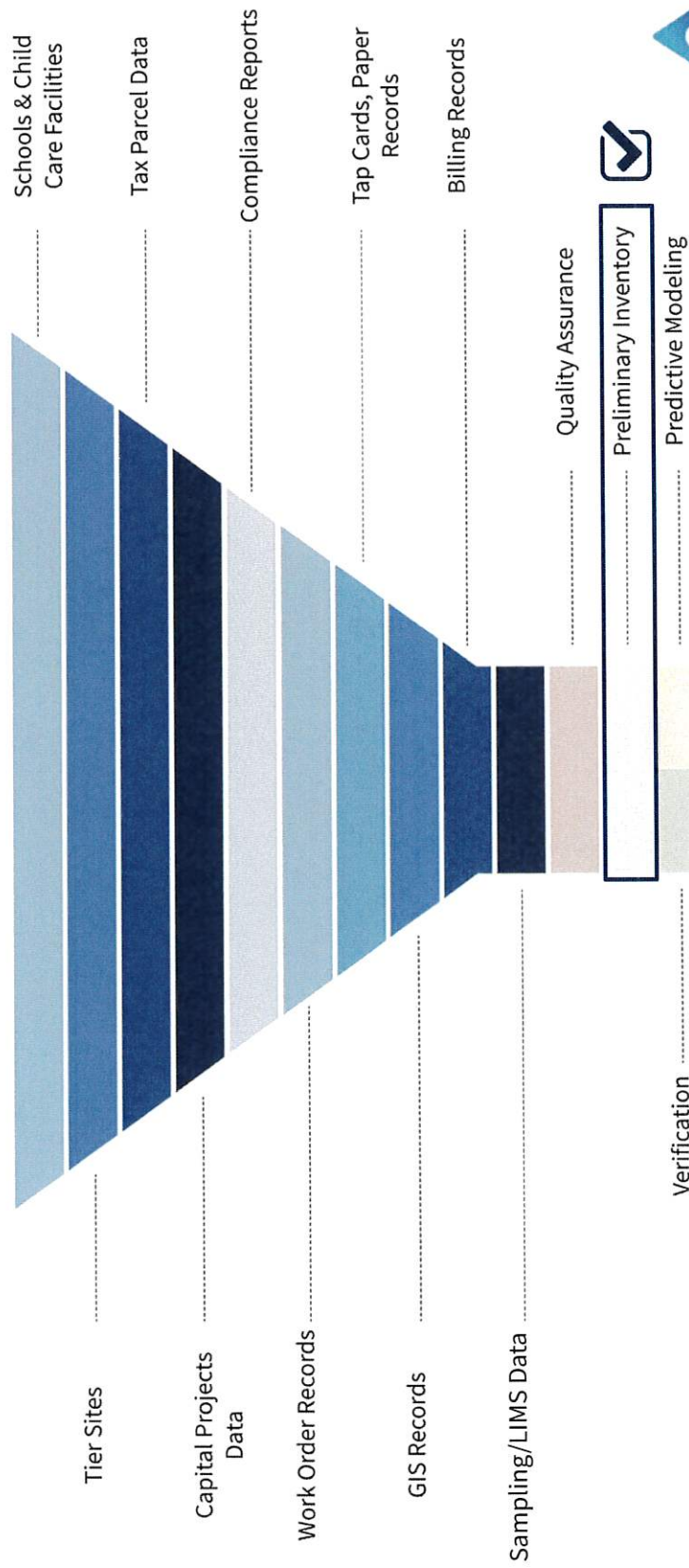
“Public Water Systems must develop a preliminary inventory of both **public and private** side service lines within 3 years of final rule publication, and use this preliminary inventory to **create a replacement plan** for known or possible lead service lines.”



Preliminary Inventory Development

Develop

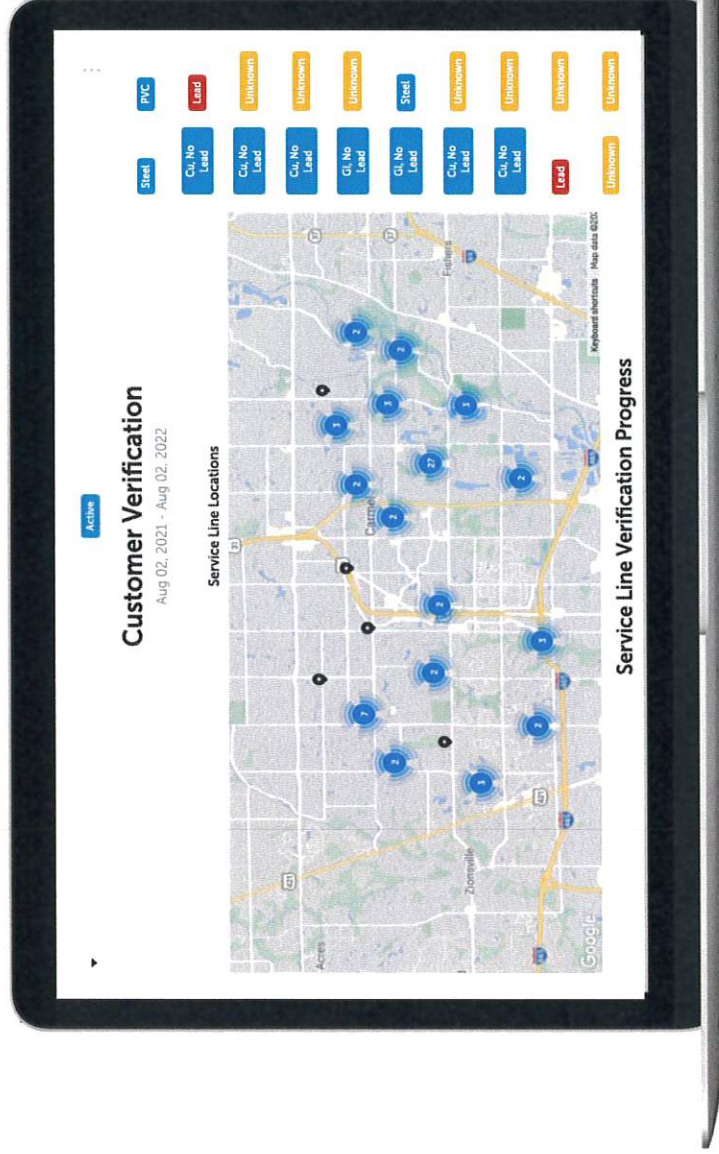
Create your inventory, regardless of starting place



Verification Workflow Management

Verify

Track every step of the verification process



Service Line: In Service Verified Date: 07/07/2021 Verified Status: Verified Lead Delete		Edit Details	
Public Line		Private Line	
Material	Cu No Lead	Material	Lead
Installed Date	03/04/1993	Installed Date	--
Verified By	Roger M.	Verified By	Tony R.
Removal Date	05/12/2021	Removal Date	07/07/2021
Depth (in)	--	Depth (in)	--
Diameter (in)	--	Diameter (in)	--
Fittings		Visual - Swab	
Lead Fittings	Unknown	Lead Fittings	Visual - Swab
Verified By	--	Verified By	--
Removal Date	--	Removal Date	--
Depth (in)	--	Depth (in)	--
Diameter (in)	--	Diameter (in)	--

Private-side Verification

Verify your customer owned inventory efficiently

Lead check swabs | Customer survey postcards

- Easy to use with clear instructions
- Customers digitally submit results in minutes
- Data is automatically imported into the software



Verify

Using Lead Check Swabs

Your local water utility is working hard to identify possible lead sources and we need your help!

These swabs are a quick and easy way to identify lead in your home's plumbing. As a participant in this assessment you were provided 2 swabs to apply to two locations in your home.

1. The Service Line

2. Interior plumbing with solder

REMEMBER: 1 Swab per location - DO NOT rub on more than one (1) location

Watch our video to learn how to find these! Visit <https://www.leadcheck.com> or scan the QR code.



FOLLOW THESE THREE SIMPLE STEPS TO LOOK FOR

STEP 1: If available, use sandpaper to scrub the metal surface you want to test. Wipe the surface

STEP 2: Crush the swab on the A and B marks. (See Figure 1). Turn the swab tip-side-down and

several times. (See Figure 2). Then gently squeeze until a yellow liquid comes to the

STEP 3: Gently squeeze the tube while lightly rubbing the surface you are testing. (See Figure

Rub for 30 seconds. Swabs must be used within two minutes.

No Lead: If the tip remains **YELLOW**, verify your negative results by squeezing a drop

onto the test confirmation card. (See Picture 1)

Lead Pipe: The tip will turn **PINK** or **RED** if lead is present. (See Picture 2)

Lead Solder: If you are testing leaded solder, the tip may turn **PINK** or **RED** first, and

turn **PURPLE**. This is caused by the presence of tin.



EXAMPLES: Image 1 depicts a lead-free certified bronze elbow. Image 2 depicts a lead solder

Lead Check swabs confirmed expected results for both plumbing components.

PLEASE KEEP IN MIND:

- Swabs cannot be used to test water but you can use them on toys or ceramics if you

- do not have solder to test.

- Use one swab per surface and do not rub an individual swab on more than one metal

The letter contained in this kit will provide you with instructions and a link to report

your findings.

Survey:

Street Address, Apt # (if applicable), City, State, and Zip Code where sample will be collected:

Customer Name:

Primary Phone:

Email Address:

LCE Participations:

☐ Yes, I would like to participate in the Lead and Copper Program.

☐ No, Please take me off the list at this time.

Structure Type (Check one)

☐ Single Family Home

☐ Multi Family Home (ex. Duplex,

Apartment building)

☐ Other Buildings. Explain below:

Year of Construction (Check one)

☐ If exact year is known, enter: _____

☐ After 1988

☐ July 1986 - December 1988

☐ January 1983 - June 1986

☐ Before 1983

☐ Unknown

In-home Water Treatment Device (Check

that apply)

☐ None

☐ Water Softener

☐ Reverse Osmosis

☐ Whole house filter

☐ Filter at sink faucet

☐ Other. Explain below:

Plumbing (Check all that apply)

☐ Lead pipe

☐ Copper pipe without Lead Solder

☐ Copper pipe with Lead Solder

☐ Galvanized pipe

☐ Plastic pipe

☐ Original Plumbing has not been replaced

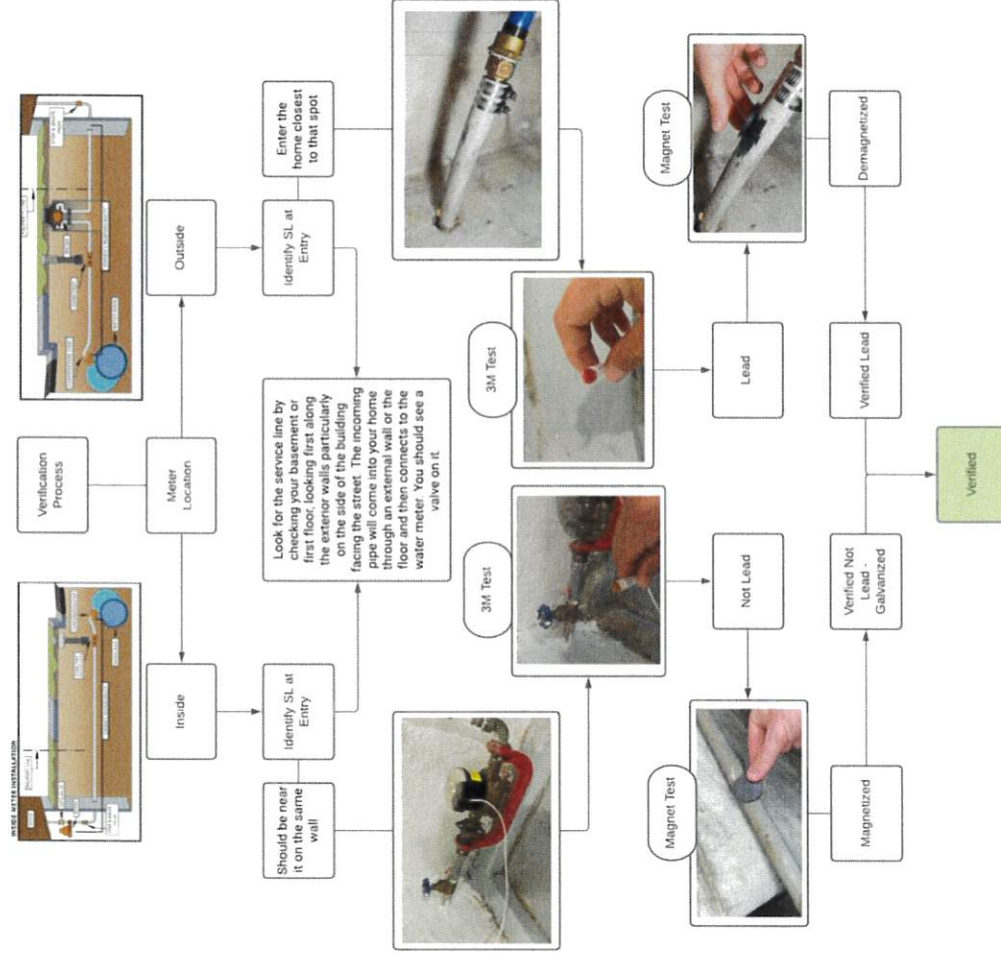
☐ Other. Explain below:

120Water™

120water.com

Verification Process

Verify



Private Line		Verification
Material	Lead	Visual - Swab
Installed Date	--	Verified By
Verification Date	07/07/2021	Tony R.
Diameter (in)	--	Removal Date
Depth (in)	--	--

Public-side Verification

Verify

Verify your *utility* owned inventory efficiently

- Simple software to use in the field
- Upload photos and notes
- Maintain real-time records and monitor activities for every location

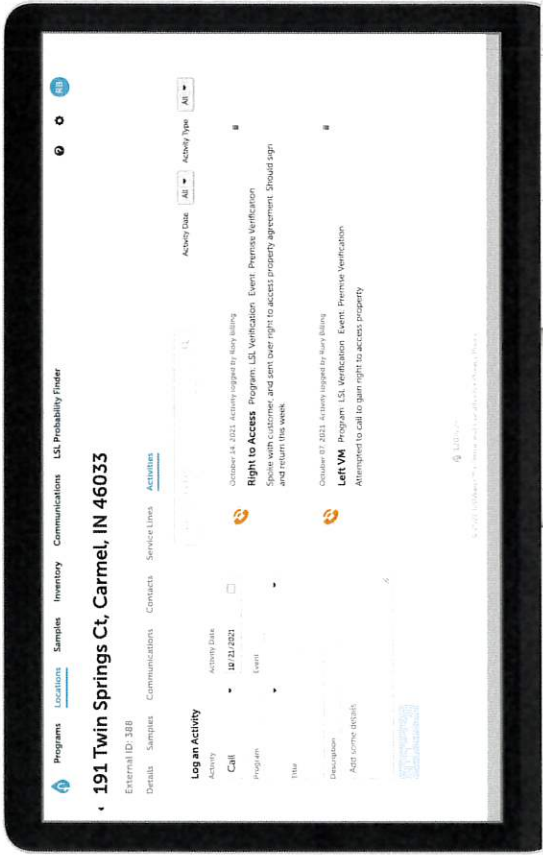
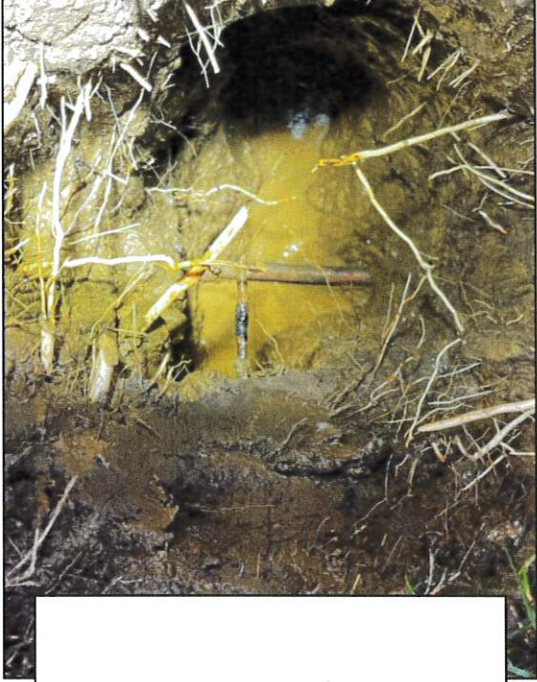
Public Line

Material
Cu, No Lead Verification
Visual - Excavation

Installed Date
06/23/1988 Verified By
Paul B.

Verification Date
-- Removal Date

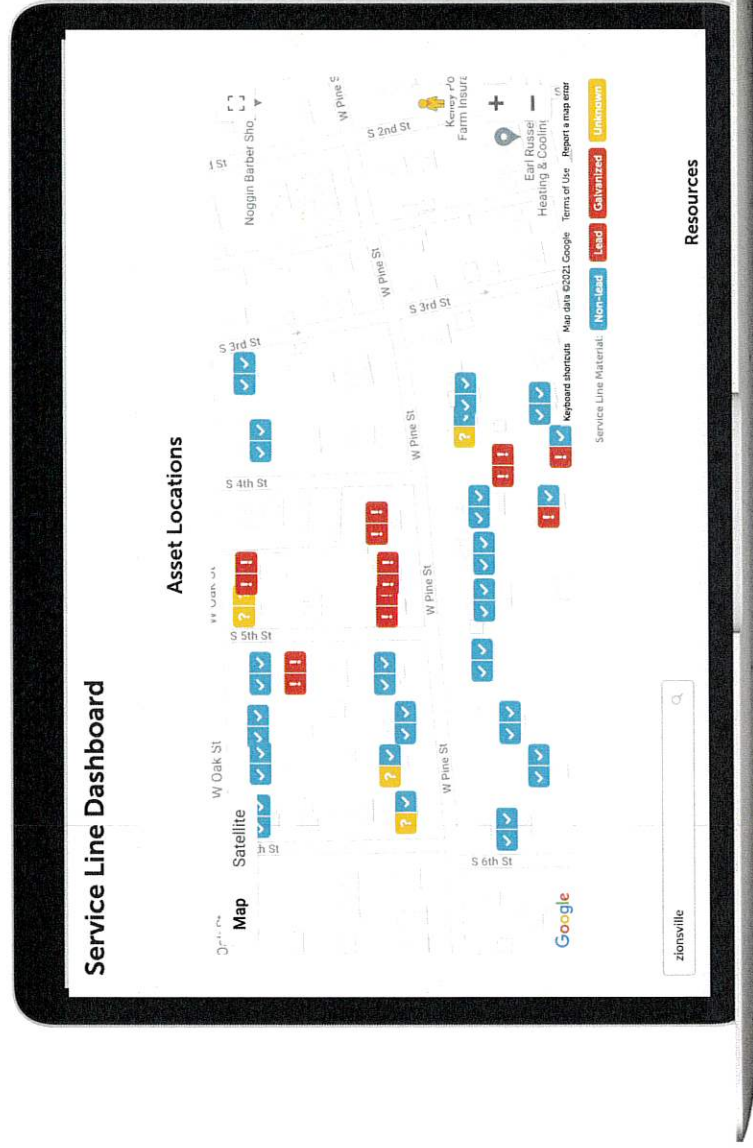
Diameter (in)
-- Depth (in)



Public Transparency Dashboard

Verify

Build trust and stay compliant with ease



Showing 10 of 31 Assets

Address	Public / Private	Updated Date
151 Augusta Street, Pawnee, IN 62558	Non-lead Non-lead	05/05/2021
25 Primrose St., Pawnee, IN 62558	Non-lead Non-lead	05/05/2021
Sampling Performed	Lead Lead	05/05/2021
308 High Ridge Court, Pawnee, IN 62558	Non-lead Unknown	05/05/2021
38 Edgefield Rd, Pawnee, IN 62558	Non-lead Non-lead	05/05/2021
58 Lower River Dr, Pawnee, IN 62558	Non-lead Lead	05/05/2021
60 Ridge St, Pawnee, IN 62558	Unknown Unknown	05/05/2021
64 N. Mechanic Road, Pawnee, IN 62558	Non-lead Non-lead	05/05/2021
64 Trenton St, Pawnee, IN 62558	Lead Lead	05/05/2021
657 S. Blackburn Ave, Pawnee, IN 62558	Lead Lead	05/05/2021

Program & Sample Management

Easily plan your LCR events and sample where necessary without increasing your resources.

| Sampling Kits

Replace, Sample, Report

Compliance and replacement sampling in one place

End-to-end logistics management

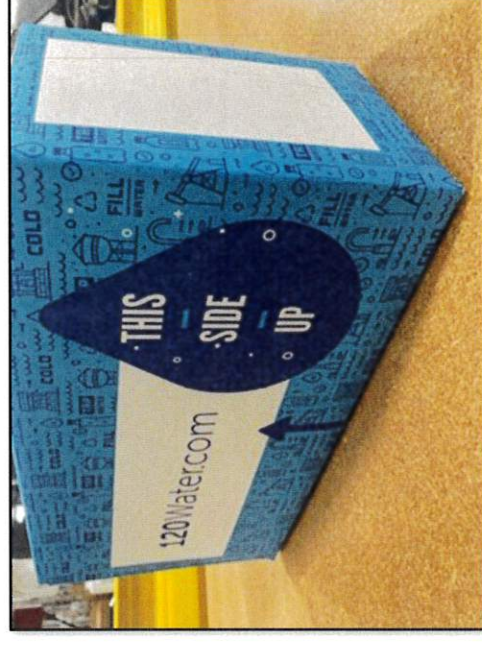
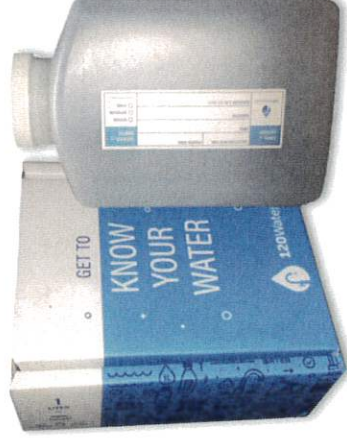
- Automated, triggered, and tracked for every program
- 120Water handles every step of the kit logistics process from start to finish

The right kit for the job

- Kits that are EPA-approved and purpose built for program success across our suite of solutions.
 - 1 Liter kits
 - 1st and 5th Liter kits

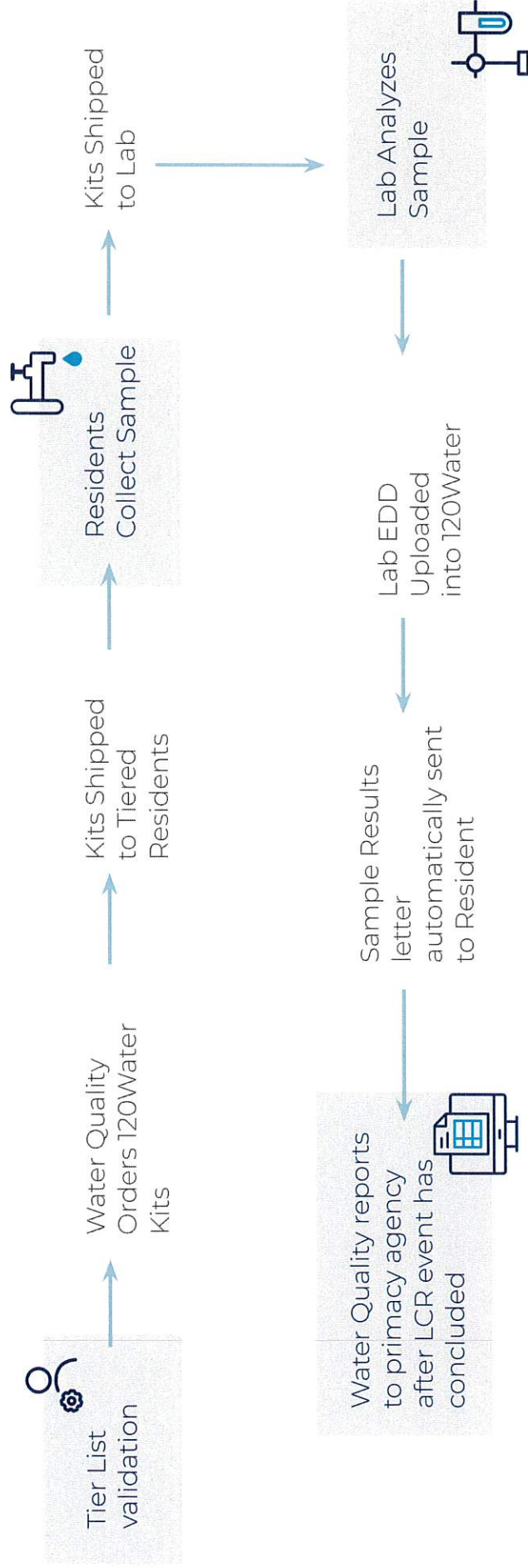
Custom-branded packaging

- Provide a seamless and positive brand experience





How It Works: End-to-End LCR Solution

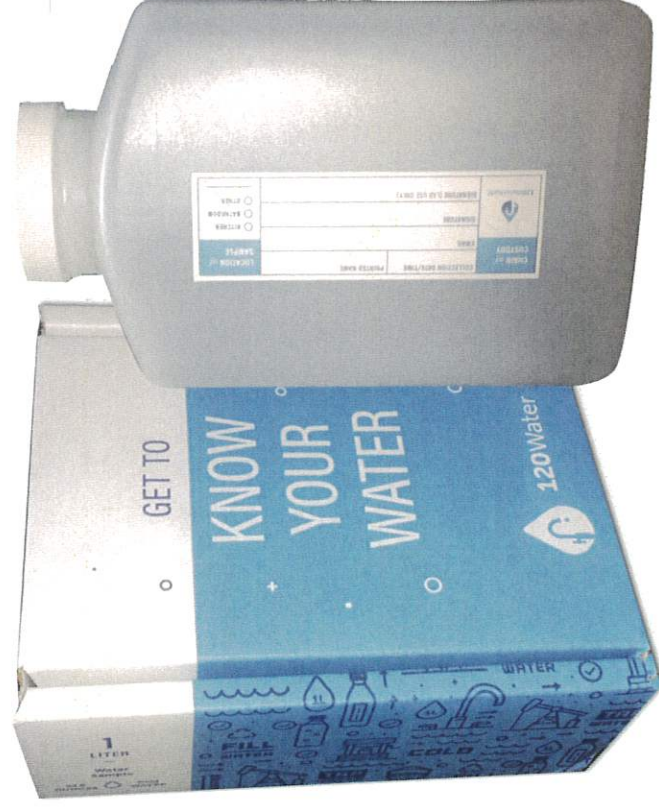


Digital Sample Kits

Automate sample fulfillment & tracking

Collect kits faster and at a lower cost

Tap into our vast lab network

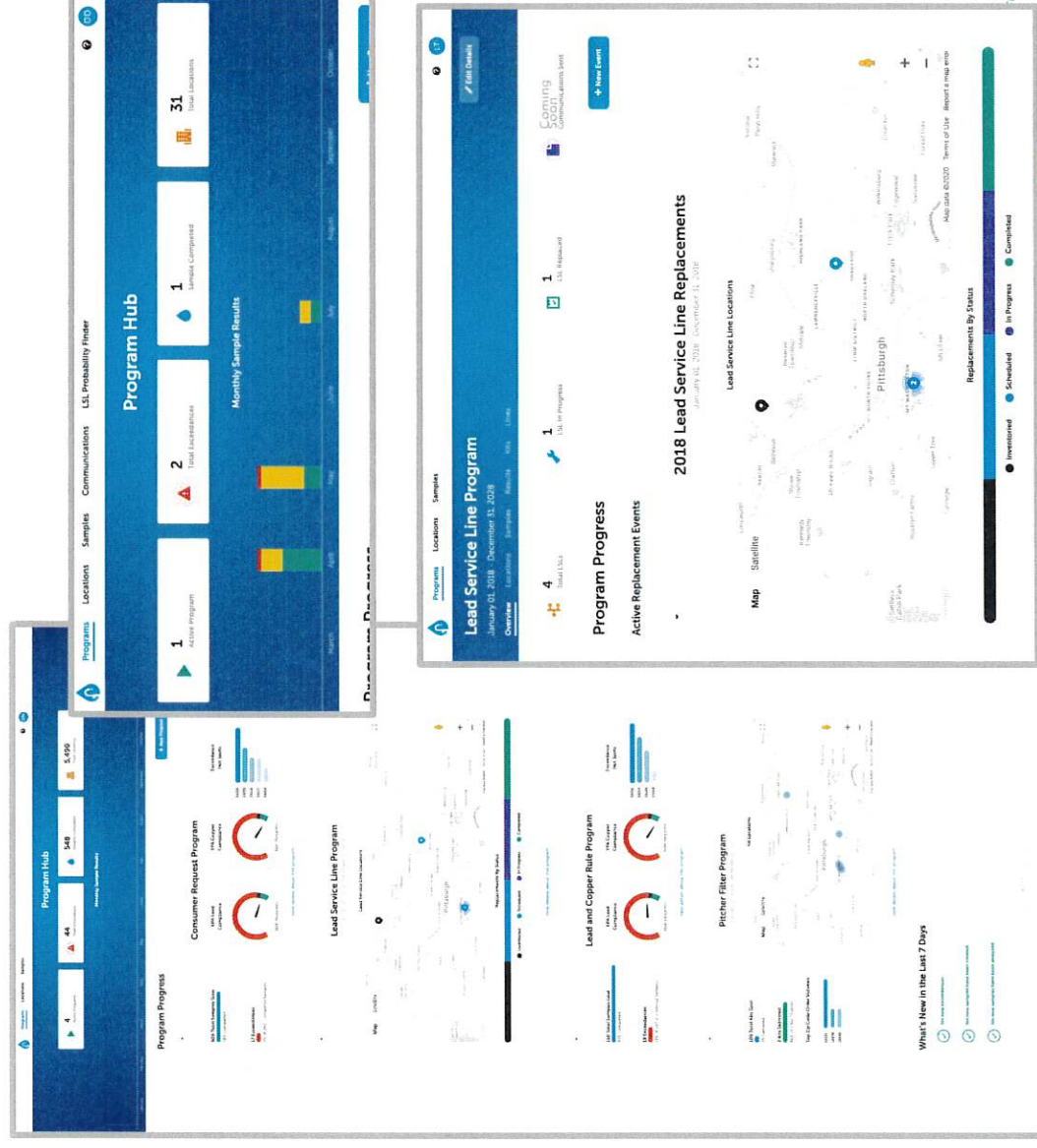


Plan & Execute LCR Programs

Centralize & view all programs in one platform

Monitor progress and outcomes

Track progress over time



Turnkey Sample Management

Create samples and order kits to be direct shipped

Track sample and kit status/progress in real-time

View lab results (auto-uploaded to 120Water platform)

Access sampling history for a location

The screenshot displays the Turnkey Sample Management software interface. The top navigation bar includes links for Programs, Locations, Samples, and Results. The main header shows the program name 'Lead Service Line Program' and the date range 'January 01, 2018 - December 31, 2028'. Below the header, there are tabs for Overview, Locations, Samples, and Results. The 'Locations' tab is active, showing a list of locations with columns for External ID, Address, and Program(s). A modal window titled 'Create Samples for 1 Location' is open, showing a dropdown for '2018 Lead Service Line Replacements' and a text input for 'Number of Samples for each Location' set to 0. The 'Status Tracking' section shows a timeline for a sample, starting from 'New' (June 17, 2020) and moving through 'Analyzed' (June 24, 2020), 'Completed' (July 01, 2020), 'Delivered' (June 29, 2020), 'En Route To Lab' (July 01, 2020), and 'At Lab' (July 13, 2020). The 'Lead Result' section shows a 'Non-Detect' result with a value of 0.65 ppb. The 'Sample Details' section provides information about the sample, including the event name '2020 LCR Semester 1', the sample ID '81998', the location '96 Glen Ridge Ave., Pawnee, IN 46258', and the contact person 'Andy Dwyer'.

Create Samples for 1 Location

Select Event: 2018 Lead Service Line Replacements

Number of Samples for each Location: 0

Status Tracking

Sample Status: New (June 17, 2020), Analyzed (June 24, 2020), Completed (July 01, 2020)

Kit Status: Ordered (June 17, 2020), Shipped (June 20, 2020), Delivered (June 29, 2020), En Route To Lab (July 01, 2020), At Lab (July 13, 2020)

Lead Result

Non-Detect

Lead Parameter: 0.65 ppb Result

Sample Details

Program: LCR Compliance

Event Name: 2020 LCR Semester 1

Sample ID: 81998

Location: 96 Glen Ridge Ave., Pawnee, IN 46258

Contact: Andy Dwyer, andy@pawneemail.com, (317) 355-0130



120Water

City of McDonough - GA

William Vondenbosch

wvondenbosch@mcdonoughga.org

404-520-9465

Reference: 20230125-134257028

Quote created: January 25, 2023

Quote expires: February 24, 2023

Quote created by: Joe Riitano

joe@120water.com

Comments from Joe Riitano

Contract start date is at time of signature.

Products & Services

Item Name & Description	Unit Price	Quantity	Term (months)
Pro - Public Water System Annual subscription PWS Pro package to manage programs and data. Unlimited users	\$7,640.00 / year	1	24
Professional Services (Assist) Discrete tappable specifics under each scope area (block of 20 hours)	\$2,500.00 / year	3	24
Implementation Setup, Configuration and Guided Web Training of the 120Water Account	\$1,500.00	1	

Subtotals

Annual subtotal	\$12,869.00
	after \$2,271.00 discount
One-time subtotal	\$1,500.00
Total	\$14,369.00

Purchase terms

Net 30 billing.

Invoice Terms:

Billing Street Address:

Billing City:

Billing State:

Billing Zip Code:

Billing Country:

Billing Notes (if applicable):

This Order Form, together with the Master Services Agreement available at <https://120water.com/master-services-agreement/> (the "MSA"), shall become a legally binding contract upon the earlier of (a) the date both parties execute the Order Form or (b) the date Customer initially began using the Services. Any capitalized word not otherwise defined in this Order Form shall have the same meaning as set forth in the MSA.

120Water may reject this Order Form if: (1) the signatory below does not have the authority to bind Customer to this Order Form, (2) changes have been made to this Order Form (other than completion of the purchase order information and signature block), or (3) the requested purchase order information or signature is incomplete or does not match our records or the rest of this Order Form. Subscriptions are non-cancelable before their end of the Term.

Signature

Signature

Date

Printed name

Countersignature

Countersignature

Date

Printed name

Questions? Contact me



Joe Riitano
joe@120water.com

120Water
250 S Elm St
Zionsville, IN 46077
US

AGENDA ITEM SUMMARY
February 20, 2023 City Council Meeting
Item Number: 14



Presented by: Deborah Upshaw / Michael Clark-Consultant

Department: Finance

ITEM SUMMARY:

Request approval and adoption of Budget Amendment Resolution to amend the FY 2022-2023 Budget for approved transactions in the various funds.

SPECIAL CONSIDERATIONS OR CONCERNS:

This Budget Amendment is the 1st Amendment for FY 2022-2023

STAFF RECOMMENDATION:

Amend the budget accordingly

FINANCIAL IMPACT:

Increases budgeted revenues and expenditures pertaining to fund requested in Exhibit A

FUNDING SOURCE:

See Exhibit A

ATTACHMENTS:

See Attached

OTHER DEPARMENTAL REVIEW NEEDED:

☐ Yes

☒ No

**STATE OF GEORGIA
CITY OF MCDONOUGH**

RESOLUTION NO. _____

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF MCDONOUGH,
GEORGIA AMENDING THE FISCAL YEAR 2022-2023 BUDGET; ADJUSTING,
RECLASSIFYING, AND CORRECTING CERTAIN REVENUES AND EXPENDITURES, BY
FUND, AS REFLECTED IN THE SCHEDULE OF BUDGET AMENDMENTS:**

WHEREAS, The Mayor and Council of the City of McDonough approved transactions and budget adjustments that effect the Annual Budget Document of the City for fiscal year 2022-2023;

WHEREAS, The Annual Budget Document should be amended to reflect the adjustments, reclassifications, and corrections approved by the Mayor and Council of the City of McDonough;

WHEREAS, The Code of Ordinances of the City of McDonough requires amendments to the Annual Budget Document by made by Resolution;

WHEREAS, State law authorizes the City to amend its budget in order to adapt to changing governmental needs, under O.C.G.A. § 36-81-3(d).

NOW, THEREFORE BE IT RESOLVED, as follows:

Section 1. The City of McDonough Budget for the Fiscal Year ending June 30, 2023, is hereby amended to reflect the fund-level adjustments, reclassifications, and corrections as specifically set out in the attached Exhibit "A."

Section 2. All resolutions, ordinances or portions thereof in conflict with the provisions of this Resolution are hereby repealed.

Section 3. This Resolution shall become effective immediately upon adoption.

SO RESOLVED this 20th Day of February 2023.

CITY OF MCDONOUGH, GEORGIA

Sandra Vincent, Mayor

Attest: _____
Christy Taylor, City Clerk

CITY OF MCDONOUGH
FY 2022-2023
MID YEAR ADJUSTMENT
GENERAL FUND

		2022-2023
REVENUES		BUDGET
100.4.39.1500	TRANSFER IN -HOTEL MOTEL FUND	843,750
100.4.36.1000	INTEREST REVENUES	7,000
100.4.39.1100	UNAPPROPRIATED FUND BALANCE	-
100.4.38.9200	OPIOID SETTLEMENT	-
		24,215,458

		2022-2023
EXPENDITURES		BUDGET
100.5.1300.52.3996	CITY ADMIN-OPIOID SETTLEMENT EXPENDITURES	-
100.5.1512.52.3855	FINANCE-CONTRACT & FEES	32,500
100.5.1512.57.3011	FINANCE-PARKING METER BANK CHARGES	6,500
100.5.1535.52.1301	IT-TECHNICAL-SOFTWARE MAINTENANCE	409,683
100.5.1535.5.2599	IT-TECHNICAL-CAPITAL OUTLAY	215,029
100.5.1535.52.1303	IT-PURCHASE OF SOFTWARE	29,640
100.5.2650.52.3855	COURTS- CONTRACTS & FEES	9,184
100.5.321.52.3600	PD- DUES & FEES	5,145
100.5.3210.52.2210	PD- AUTO REPAIR & MAINTENANCE	-
100.5.3210.52.3855	PD-CONTRACT & FEES	19,510
100.5.3210.53.1600	PD-SMALL EQUIPMENT	-
100.5.3520.52.2210	FIRE-AUTO/TRUCKS-REPAIRS & MAINT.	56,200
100.5.3520.52.3600	FIRE-DUES & FEES	1,600
100.5.3520.53.1270	FIRE-ENERGY/-GASOLINE/DIESEL	32,700
100.5.4210.53.1280	HWY/STR-UTILITIES	20,000
100.5.4210.53.1797	HWY/STR-LANDSCAPING	10,000
100.5.7400.52.1200	PLANNING & ZONING-PROFESSIONAL SERVICES	-
100.5.9000.39.2201	TRANSFER TO MCDONOUGH URA	280,663
100.5.7540.53.1280	MAINSTREET UTILITIES	-
TOTAL MID YEAR ADJUSTMENT		24,215,458

HOTEL/MOTEL FUND		
		2022-2023
REVENUES		BUDGET
275.4.31.4100	HOTEL/ MOTEL TAXES	-
TOTAL		-

EXPENDITURE		BUDGET
275.57540.52.3850	CONTRACTED SERVICES	-
275.57540.57.2165	TOURISM & HOSPITALITY	-
275.57540.61.1500	TRANSFER TO GENERAL FUND	-
TOTAL		-

AGENDA ITEM SUMMARY
February 20, 2023 City Council Meeting
Item Number: 15



Presented by: Deborah Upshaw/ Michael Clark-Consultant Department: Finance

ITEM SUMMARY:

Request approval for reimbursement in the amount of \$1,495,642 from American Rescue Act Plan (ARPA) Funds as follows:

Sanitation Fund - 560 Macon St	\$ 269,245
Water Sewer Fund – Turner Church Road Force Main	\$1,226,397

SPECIAL CONSIDERATIONS OR CONCERNS:

The reimbursements meet the requirements of the Final Rule for ARPA Projects. The Project-Expenditures will be reported in the Annual ARPA Report to the Department of the Treasury for the period ended March 31, 2023.

All ARPA Funds are to be obligated by December 32, 2024, and disbursed by December 31, 2026.

STAFF RECOMMENDATION:

Approve the Reimbursement from ARPA Funds.

FINANCIAL IMPACT:

The reimbursements will be accounted for as Revenues - Transfers-In from ARPA in both the Sanitation and Water & Sewer Funds. The ARPA Fund will show Expenditures- Transfers-Out.

FUNDING SOURCE:

560 Macon Street: 540-5.4520.52.3863 –Commercial Sanitation – ARPA \$260,928
560 Macon Street: 540-5.4520.54.2550 –Capital Outlay –ARPA - \$8,317
Turner Church Force Main: 505-5.4331.54.1405 –Sewer Sys Improvements ARPA-\$1,226,397

ATTACHMENTS:

See Attached Exhibits

OTHER DEPARMENTAL REVIEW NEEDED:

☒ Yes

☐ No

OTHER DEPARMENTAL REVIEW

☒ Finance

☐ Fire

☐ Stormwater

☐ Highway and Streets

☐ Main Street

☐ Water Distribution

☐ Human Resources

☐ Police

☒ Water/Sewer Operations

☐ Community Development

☐ Technology Services

☒ Other -Sanitation &
ARPA

Department Name:

Comments:

GOOD GOVERNANCE

Guiding Principle: Fiscal Responsibility, Accountability, Transparency

City of McDonough
Reimbursement Request
American Rescue Plan Act (ARPA)
February 20, 2023

Project Costs:

Sanitation Fund:

560 Macon Street-Citizen Trash Dump
Cost for Republic Services & Building

\$ 269,245 Exhibit B

Water Sewer Fund:

Cost for Turner Church PS Force Main Addition

1,226,397 Exhibit C

Total ARPA Fund Reimbursements

\$ 1,495,642

Exhibit A

City of McDonough
560 Macon Street Costs Incurred
For the Period Beginning March 21, 2021
to January 31, 2023

Republic Services for 560 Macon St

Period Ended:

	2021	2022	2023	Total
1/31	\$ -	\$ 13,070	\$ 10,754	
2/28	-	10,962		
(3/21/2021 thru 3/31/2021) 3/31	627	9,464		
4/30	22,091	11,221		
5/30	16,617	9,563		
6/30	8,729	1,023		
7/31	16,530	11,370		
8/31	12,531	10,374		
9/30	13,793	12,050		
10/31	12,876	11,402		
11/30	13,065	11,725		
12/31	10,611	10,480		
Totals by Year	\$ 127,470	\$ 122,704	\$ 10,754	260,928

10/12/2022 Panel Built Inc
Guard Booth for 560 Macon St

8,317

TOTAL COST -560 MACON STREET

\$ 269,245

Exhibit B

APPLICATION AND CERTIFICATE FOR PAYMENT

TO (OWNER):

City of McDonough
136 Keys Ferry Street
McDonough, GA. 30253

APPLICATION NUMBER: 1
DATE OF APPLICATION: 12/1/2022
PERIOD TO: 12/1/2022

FROM (CONTRACTOR):

RDJE, Inc.
679 Hwy 29 South, Suite A
Newman, GA. 30253

RDJE'S
INVOICE NO: 1
Contract Name: Turner Church PS Force Main Additions
Turnpseed Project No. 202369
Contract Date: 10/13/2022

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY

Change Orders approved in previous months by Owner.	ADDITIONS	DEDUCTIONS
Approved this Month		
Number Date Approved	0.00	
	0.00	
	0.00	
TOTALS	\$0.00	
Net change by Change Orders	\$0.00	

The undersigned contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

RDJE, Inc.

By: *[Signature]* Date: 12/1/22

ENGINEER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Engineer certifies to the Owner that to the best of the Engineer's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

OWNER'S APPROVAL FOR PAYMENT

By: _____ Date: _____

Application is made for Payment, as shown below, in connection with the Contract, Continuation Sheets attached.

1. ORIGINAL CONTRACT SUM \$1,226,397.00
2. NET CHANGE BY CHANGE ORDERS \$0.00
3. CONTRACT SUM TO DATE \$1,226,397.00
- 4a. TOTAL COMPLETED TO DATE \$29,000.00
- 4b. STORED MATERIALS \$427,938.55
4. Total Completed & Stored to Date \$456,938.55
5. Retainage 10% \$45,693.86
6. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$0.00
7. CURRENT PAYMENT DUE \$411,244.70

By: _____ Date: _____

By: _____ Date: _____

EXHIBIT C