

MEMORANDUM OF AGREEMENT

AC-22-0000-MA

Between

CITY OF OKLAHOMA CITY,
OKLAHOMA CITY WATER UTILITIES TRUST

And

CITY OF MIDWEST CITY



This Memorandum of Agreement (“MOU”) is made and entered into by and between the Oklahoma City Water Utilities Trust (“OCWUT”), a public trust created pursuant to the laws of the State of Oklahoma for the benefit of the City of Oklahoma City; the City of Oklahoma City (“Oklahoma City”), a municipal corporation, organized pursuant to the laws of the State of Oklahoma and the City of Midwest City (“Midwest City”), a municipal corporation, organized pursuant to the laws of the State of Oklahoma.

WITNESSETH:

WHEREAS, Oklahoma City owns and operates and OCWUT leases and finances the Oklahoma City water system, and Oklahoma City wastewater system, including all water and wastewater mains, water booster stations and wastewater lift stations; and

WHEREAS, on March 27, 1997, the Planning Commission for Oklahoma City approved a Planned Unit Development #589 (PUD-589) for a location identified as 9400 SE 29th Street, Oklahoma City, OK (“Site”), identification of the Site is attached hereto as **Attachment “A”**; and

WHEREAS, on April 15, 1997, the Oklahoma City Council approved a PUD-589; and

WHEREAS, PUD-589 was approved based on an application from HCA Health Services to rezone the location from R-MH-2, C-3, and I-1 to PUD-589; and

WHEREAS, PUD-589 was established for the construction and operation of a campus that would house professional and medical offices, a hospital facility and associated commercial and retail businesses; and

WHEREAS, the Staff Report for PUD-589 showed that there are other C-3 uses for the Site, including: “Community Recreation: Restricted”; and “Community Recreation: General”; and

WHEREAS, on September 19, 2006, a document entitled Partial Release of Right of Way, Grant of Replacement Right of Way, Design, Construction and Surface Use Agreement (“2006 Agreement”) was filed with the Oklahoma County Clerk’s Office in book 10247, page 1566; and

WHEREAS, the 2006 Agreement was between the then owner of the Site (Hope Real Estate, Inc.) and an oil and gas company named Cimmarron Gathering, L.P.; and

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WHEREAS, a portion of the 2006 Agreement included identification of the location of a high-pressured oil and gas line that crosses the Site (including the Southeast Corner of the Site), establishing a fifty-foot (50') easement for the high pressured oil and/or gas line, a twenty-five foot (25') buffer between the easement and any construction and other construction requirements for any water and sewer main constructions for the Site; and

WHEREAS, the campus was never constructed and on September 13, 2007, a Special Warranty Deed was filed with the Oklahoma County Clerk's Office transferring the Site from Hope Real Estate, LLC to the Midwest City Memorial Hospital Authority; and

WHEREAS, on August 27, 2019, the Site was transferred from the Midwest City Memorial Hospital Authority to Midwest City; and

WHEREAS, in 2019, Midwest City contacted Oklahoma City concerning changing what is constructed at the Site under PUD-589 from the campus to a multi-purpose sports complex under the "Community Recreation: General" C-3 use; and

WHEREAS, Oklahoma City had no objection to the change in construction, only required extension of the water main across the Site from West to East in the easement at the North boundary of the Site, with a wastewater service main being connected into an existing lift station to the City of Oklahoma City wastewater system, located adjacent to the Site; and

WHEREAS, Midwest City submitted plans and specifications to Oklahoma City's Utilities Department for the water main extension; and

WHEREAS, the Utilities Department required an extension of the wastewater system, for an eighteen-inch (18") wastewater main that would extend the wastewater system approximately 1,450 feet from the Southernmost manhole for the Oklahoma City wastewater system on the West side of the site, to the East boundary of the Site, but Oklahoma City gave Midwest City extra time to design and construct the main; and

WHEREAS, Oklahoma City ordinances only require the construction of an eight inch (8") wastewater main, but also allow for the main to be increased in size, with the size increased to be

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paid by OCWUT, Oklahoma City required the wastewater main extension to be eighteen inches (18”) in diameter, and OCWUT agreed to pay for the size increase at a cost of three dollars (\$3.00) per inch increase in circumference, per foot of the wastewater main; and

WHEREAS, Midwest City submitted plans and specifications June 2021 to the Utilities Department for the wastewater main extension; and

WHEREAS, on July 15, 2021, Midwest City was notified that the Utilities Director required the alignment of the wastewater main extension be altered to terminate at the Southeast corner of the Site and for this MOU to be executed; and

NOW, THEREFORE, in consideration of the mutual benefit to the parties the following terms and conditions are hereby agreed upon:

1. AGREEMENTS OF MIDWEST CITY

- a. Midwest City hereby agrees to construct a water main extension that meets all Oklahoma City, Oklahoma Department of Environmental Quality, and 2006 Agreement construction requirements along the South side of Southeast 29th Street at the South Douglas Boulevard intersection, where the Oklahoma City water main ends to the East side of the property line, which is also the east boundary of the easement, so not to trespass, damage or disturb the adjacent property owner to the East together with the necessary easements as set out in 1(d) and with construction completed prior to the official opening of the Midwest City Sports Complex. See **Attachment “B”**.
- b. Midwest City hereby agrees to construct a wastewater service main that meets all of Oklahoma City, Oklahoma Department of Environmental Quality, and 2006 Agreement construction requirements from the location of the bathrooms, concession stand, and other buildings to the Oklahoma City lift station that is located along the West boundary of the Site. See **Attachment “B”**.

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- c. Midwest City hereby agrees to construct an eighteen-inch (18”) wastewater main extension that meets all of Oklahoma City, Oklahoma Department of Environmental Quality, and 2006 Agreement construction requirements from the furthest Southern manhole for the Oklahoma City wastewater system that is located along the West boundary of the Site, running East and Southeast to the property line to the East, which is also the east boundary of the easement, so not to trespass, damage or disturb the adjacent property owner to the East together with the necessary easements as set out in 1(d) and with construction of the wastewater main extension completed no later than August 31, 2022. See **Attachment “B”**.
- d. Midwest City hereby agrees to grant to the City of Oklahoma City the water and wastewater mains and all necessary easements for said water and wastewater mains being 20-foot in width and identified in paragraphs (a) and (c) above and any further easement that may be necessary for the 25’ construction buffer as identified in the 2006 Agreement prior to the official opening of the Midwest City Sports Complex.

2. AGREEMENTS OF OKLAHOMA CITY AND OCWUT

- a. Oklahoma City hereby agrees to review and approve the plans and specifications for the water and wastewater mains that meet the requirements of paragraphs (1) (a) and (c) above within 30 days of receipt.
- b. Oklahoma City agrees to issue a certificate of occupancy upon completion of all construction at the Site.
- c. OCWUT agrees to pay to the Midwest City for the construction and installation of the eighteen-inch (18”) in circumference wastewater main at a cost of three dollars (\$3.00) per inch increase in circumference, per foot of wastewater main for that portion of the wastewater main that is larger than eight inches (8”) in circumference.

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3. TERM

This MOU shall be effective upon the date of the last signature contained herein. The term for this MOU shall continue until all construction has been completed and the certificate of occupancy is issued.

4. ABIDE BY LAW

OCWUT, Oklahoma City and Midwest City agree to faithfully abide by the ordinances, laws, rules and regulations of The City of Oklahoma City, the State of Oklahoma, the United States of America, and all other applicable governmental agencies, and all amendments thereto, as terms of this Agreement regardless of jurisdictional limits. Failure of any of the parties to so abide after notice and opportunity to correct any violation shall constitute a default. Nothing in this Agreement shall be interpreted as precluding any governmental agency or department from enforcing its laws, ordinances, rules, or regulations in addition to remedies herein provided.

Any criminal activity committed by any of the parties or its employees or other person under the Cleveland County's control shall be grounds for immediate termination of this Agreement.

5. NO SUBLEASE OR ASSIGNMENTS

No party may sublease or assign its duties and/or obligations stated within this MOU to any third party without written consent of all the other parties.

6. INDEMNIFICATION

The Parties hereby acknowledge that they are all government subdivisions of the State of Oklahoma. All Parties are covered under the Oklahoma Governmental Tort Claims Act at Title 51 of the Oklahoma Statutes, Section 151 *et seq.*, in the event any damage claims arise due to any action or inaction undertaken by any party to this MOU. Any claim for damages due to any action

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or inaction pursuant to this MOU by any Party or any third party shall comply with procedures and requirements set forth in the Oklahoma Governmental Tort Claims Act.

7. TERMINATION

This MOU shall terminate upon completion of the terms of the MOU.

This MOU may be terminated by any party with 90 days' notice to all other parties, that the party does not have sufficient funds, or will not be appropriated sufficient funds to maintain the agreements set forth in this MOU.

8. EFFECTIVE

The effective date of this Agreement shall be upon the latter of execution hereof by the last party hereto.

9. TIME OF ESSENCE

It is expressly agreed by all parties hereto that time shall be deemed to be of the essence of this Agreement.

10. AMENDMENT

This Agreement may not be amended except by express written agreement of all parties hereto.

11. VOID

Should it be determined that any provision or the application of any provision of this Agreement to any party is prohibited by law such prohibition shall not affect the validity of the remaining provisions of this Agreement or its effectiveness against the remaining parties.

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12. NOTICE

(a) Notices or other communications to OCWUT and Oklahoma City pursuant to the provisions hereof shall be sufficient if sent by registered or certified mail, postage prepaid, addressed to:

The Oklahoma City Water Utilities Trust:

General Manager
Oklahoma City Water Utilities Trust
420 W. Main, Suite 500
Oklahoma City, Oklahoma 73102

The City of Oklahoma City:

The City of Oklahoma City
Utilities Department
ATTN: Utilities Director
420 W. Main, Suite 500
Oklahoma City, Oklahoma 73102

and

The City of Oklahoma City
City Clerk
200 N. Walker Avenue, Second Floor
Oklahoma City, Oklahoma 73102

Midwest City:

City Manager
City of Midwest City
100 N. Midwest Boulevard
Midwest City, OK 73110

And

City Clerk
City of Midwest City
100 N. Midwest Boulevard
Midwest City, Ok 73110

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13. DELEGATION

Oklahoma City hereby delegates to the Utilities Director, OCWUT hereby delegates to the General Manager of OCWUT, and the City of Midwest City delegates to the City Manager its authority to negotiate and approve any amendment to this MOU.

14. WHOLE AGREEMENT

It is mutually understood and agreed by the parties hereto that this Agreement contains all the covenants, stipulations and provisions agreed upon by said parties and no agent or any party to this Agreement has authority to alter or change the terms hereof, except as provided herein, and no party is or shall be bound by any statement or representation not in conformity herewith.

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APPROVED by the City Council and signed by the Mayor of The City of Midwest City
this 14 day of December, 2021.

The City of Midwest City

ATTEST:

Handwritten signature of Sara Hancock in blue ink.

SARA HANCOCK
CITY CLERK

Handwritten signature of Matt Dukes in blue ink.

MATT DUKES
MAYOR

Reviewed for form and legality.

Handwritten signature of Donald D. Maisch in blue ink.
DONALD D. MAISCH
CITY ATTORNEY

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APPROVED by the Trustees and signed by the Chairman of the Oklahoma City Water Utilities Trust this ____ day of _____, 2021.

ATTEST: Oklahoma City Water Utilities Trust

SECRETARY

CHAIRMAN

APPROVED by the City Council and signed by the Mayor of The City of Oklahoma City of Oklahoma City this ____ day of _____, 2021.

ATTEST:

The City of Oklahoma City

CITY CLERK

MAYOR

Reviewed for form and legality.

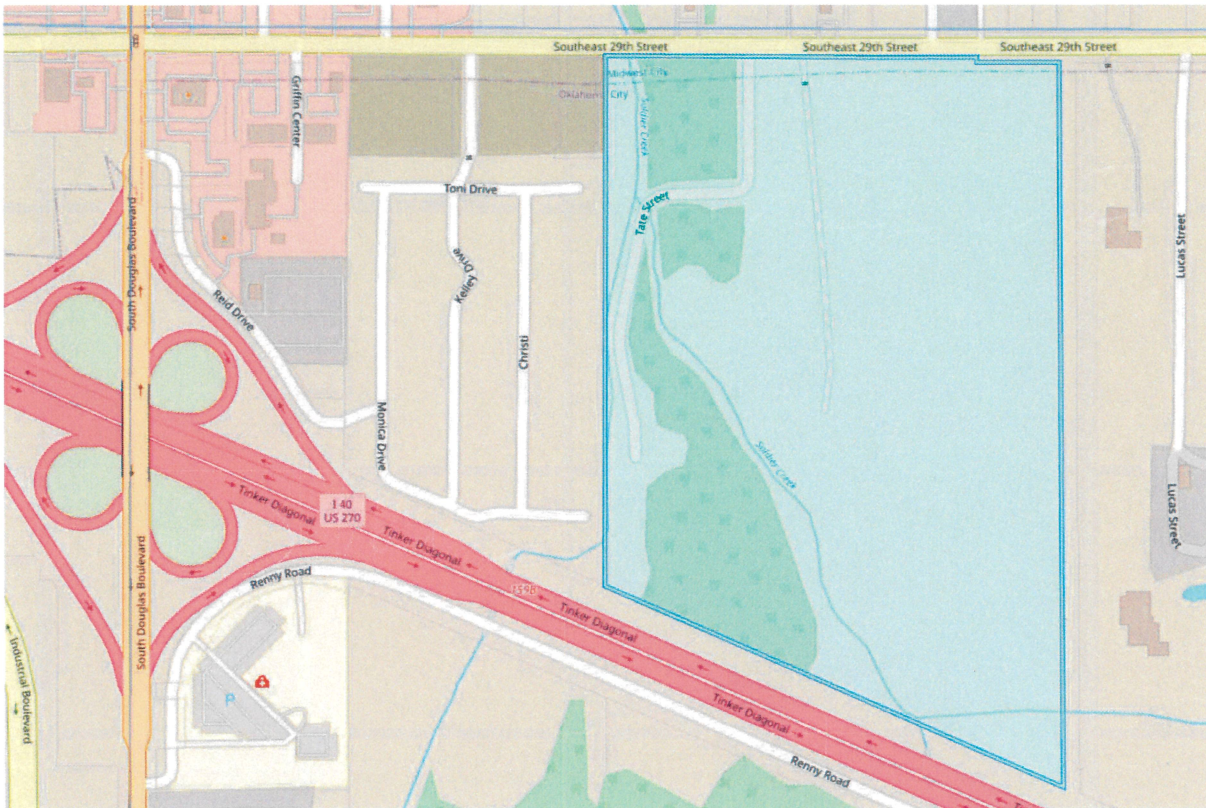
ASSISTANT MUNICIPAL COUNSELOR

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**ATTACHMENT "A"
SITE LOCATION
(Site is identified by the blue shaded area)**



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ATTACHMENT "B"
WATER MAIN and WASTEWATER MAIN
(As described on the following page, which is incorporated by reference)