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**RETAIL WATER SALES AGREEMENT**

This Retail Water Sales Agreement (hereinafter referred to as "Agreement") is made effective as of the latter signature date hereof (the "Effective Date") by and between The City of Midwest City, a municipal corporation (hereinafter referred to as "City") and Ronald D. and Jackie J. Davis Trusts (Ronald D. and Jackie J. Davis, co-trustees) (doing business as Davis Paint and Collision, Inc.) (hereinafter referred to as "Customer") (City and Customer being collectively referred to herein as the "Parties").

**RECITALS**

**WHEREAS**, the City owns and operates a water system that provides potable water to its customers (hereinafter referred to as "City System"); and

**WHEREAS**, the Customer owns property located at the East 1/2 of the West 1/2 of the Northeast 1/4 of the Northeast 1/4 of Section 18, Township 11 North, Range 1 West of the IB&M, Oklahoma County, Oklahoma, (containing 10 acres MOL) a/k/a 10830 Southeast 29<sup>th</sup> Street, Oklahoma City, OK 73130-7724; and

**WHEREAS**, the Customer operates an auto body paint and collision shop consisting of the auto body work shop, offices, outdoor automobile parking, grassy areas near Southeast 29<sup>th</sup> Street and wooded areas behind the offices and parking lot; and

**WHEREAS**, the above-described property is located within the corporate city limits of the City of Oklahoma City; and

**WHEREAS**, the City of Oklahoma City's water system does not extend to the above-described property; and

**WHEREAS**, the City System is located immediately across the street (to the North) from the above-described property; and

**WHEREAS**, the above-described property is currently being serviced by water wells; and

**WHEREAS**, near the above-described property in the Eagle Industries Superfund Site, clean-up of which is being overseen by the Oklahoma Department of Environmental Quality; and

**WHEREAS**, the Eagle Industries Superfund Site includes contamination of both the soil and groundwater with Trichloroethylene (TCE) and 1,2-Dichloroethane (1,2-DCA); and

**WHEREAS**, the buildings and water wells on the above-described property existed before the clean-up of the Eagle Industries Superfund Site commenced; and

**WHEREAS**, the water wells on the above-described site are contaminated with the same contaminants or daughter products of the contaminants located at the Eagle Industries Superfund Site; and

**WHEREAS**, the City of Oklahoma City and the Customer have reached an agreement allowing the Customer to purchase potable water from the City; and

**WHEREAS**, City and Customer desire to enter into a Retail Water Sales Agreement as expressly provided herein.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Agreement Term.** This agreement shall commence on the Effective Date and remain in effect for five (5) years from the Effective Date. This agreement may be renewed by the Parties for two (2) additional five (5) year period.
2. **Permission.** The City hereby grants the following permissions to the Customer:
  - a. To connect and/or to maintain the connection to the City System.
  - b. Said connection shall be at the point identified in **Attachment "A"**.
  - c. Said connection shall be installed by a licensed plumber approved by the City or designee. Prior to any connection to the City System, Customer shall submit plans and specifications, prepared by the licensed plumber. An engineer for the City shall review and approve the plans and specifications.
  - d. Said connection shall only supply potable water to the Customer's auto body shop and offices. Potable water from the City System shall not be used for any other purpose without written consent from the City or designee.
3. **Rates and Payment.** Customer shall be billed at the rates established in Section 43-64 of the City's Municipal Code or future rates as established by the City in its Municipal Code. The amount billed to the Customer shall be based on water usage as determined by the flow of water through the meter. Customer shall be billed monthly by the City and Customer shall pay in accordance with Section 43-67 of the City's Municipal Code. Any delinquent payments or actions taken due to failure to pay shall be governed by Sections 43-67 and 43-68 of the City's Municipal Code.
4. **Customer's Duties and Responsibilities.** Except as modified herein, the Customer shall, at its own expense:
  - a. Hire a licensed plumber, approved by the City, to make the connection to the City System;
  - b. Incur all costs of construction for the connection, meter fees, tap fees and system development changes applicable to any new connection;
  - c. Incur all costs to test and make repairs to the meter upon request of the City; and
  - d. Incur all costs to disconnect from the City System.
5. **Customer's Meter and Connection.** Customer's meter and connection shall be installed per the City's requirements and remain within the utility easement for the associated main. Once installed, the service, meter, meter components, meter box become the property of the City. Eighteen inches (18") beyond the meter shall be the determining point for the start of "private infrastructure." The water meter will be provided by the City after all fees and accounts are established. Inspection of the service connection and meter is required at the time of the completion of installation. The Customer shall not be deemed to be an employee or agent of the City. The City shall not have any control nor takes any responsibility for the Customer's meter or connection.

6. **Construction.** All construction to connect the Customer to the City System shall be in accordance with the City's building codes, adopted at the time of construction. Additionally, a double check valve shall be installed on the service line within ten feet (10') of the point of entry.
7. **Access and Testing.** Customer hereby grants the City access to the water meter for Customer's connection. The City has the right to read and/or test the meter at any time. If the City has reason to believe the meter is not operating within specifications, the City may request the customer test the meter. If the test finds that the meter is not operating within specifications, the City may require the Customer to repair the meter. The City shall have the right to adjust charges to the Customer based on the findings that the meter was not operating within specifications. Any test that demonstrates that the meter was operating more than 3% higher or lower than the actual volume test shall be deemed that the meter was not operating within specifications.
8. **City's Duties and Responsibilities.** Except as modified herein, the City shall:
  - a. Notify the Customer in the event the City finds its necessary to temporarily stop the flow of water to the Customer to make repairs to the City System;
  - b. Make repairs to the Customer's meter in the event any damages occur due to the temporarily stoppage of the flow of water due to the need of the City to make repairs; and
  - c. Allow only one connection to the Customer.
  - d. Notify the Customer in the event the City finds it necessary to temporarily stop or reduce the flow of water to the Customer due to an emergency, Act of God, water rationing, or suspension of water service to all customers on the City's System due to a reason other than to make repairs. Customer shall not hold the City responsible for any loss, cost or expense resulting from the reduction or suspension of the supply of water.
9. **City Delegation.** The City hereby delegates the authority to amend this agreement or to make any approvals under this agreement to the City Manager. The City Manager may delegate this authority to any City Employee or City Contractor as necessary.
10. **Notices.** All notices required by this Agreement shall be in writing, delivered either in person or by first class mail to the following

City of Midwest City  
c/o of the City Manager  
100 N. Midwest Boulevard  
Midwest City, OK 73110

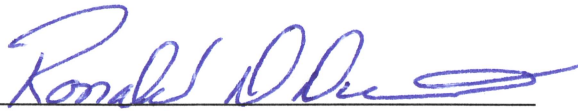
Ronald D. and Jackie J. Davis Trusts  
c/o Ronald and Jackie Davis, co-trustees  
10830 Southeast 29<sup>th</sup> Street  
Oklahoma City, OK 73130-7724

11. **General Provisions.**

- a. **Amendment.** Any Amendment to this Agreement shall be in writing and executed by the Customer and the City or City's designee.
- b. **Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of Oklahoma and the City Ordinances of the City of Midwest City. Any matter filed concerning this Agreement shall be filed in the District Court for Oklahoma County after all administrative processes have been exhausted.
- c. **City Liability.** Any claims filed against the City shall be filed in accordance with the Oklahoma Governmental Tort Claims Act, Title 51 of the Oklahoma Statutes, Section 151 *et seq.*
- d. **No Creation of Rights.** The Customer hereby acknowledges that by entering into this agreement does not create any rights of the Customer to any property owned or under the control of the City, nor creates any rights to the City System. The City hereby acknowledges that this agreement does not create any rights of the City to any property owned by the Customer, unless specifically expressed herein.
- e. **Termination.** Either Party has the right to terminate this agreement by giving sixty (60) days written notice to the other party. Additionally, this agreement shall automatically terminate in the event the City of Oklahoma City extends water service to the Customer in accordance with the agreement entered into between the Customer and the City of Oklahoma City.
- f. **Complete Agreement.** The Parties agree that this is the complete Agreement and no statements, representations or discussions not set forth herein or not contained in any written Amendment shall be binding on the Parties and no Party is or shall be bound by any statement or representation that does not conform to this document. No agent or any Party to this Agreement has the authority to alter, modify or change this Agreement except as expressly provided herein. This Agreement shall be read as a whole and shall not be interpreted either for or against either party.
- g. **Open Records Act.** Customer understands that all records of the City, including this Agreement are open to the public for inspection, review and mechanical reproduction in accordance with the Oklahoma Open Records Act, Title 51 of the Oklahoma Statutes, Section 24A.1 *et seq.*
- h. **Non-Transferable.** This Agreement cannot be transferred to any third party without written permission of the other party. Any attempt to transfer this Agreement to a third party without the written consent of the other party nullifies and makes void the Agreement.
- i. **Change in Ownership.** Should the Customer sell or transfer the property to a third-party, the new owner shall be required to obtain a new agreement from the City. Any new agreement will not be unreasonably denied.

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**RONALD D. AND JACKIE J. DAVIS TRUSTS**



Ronald D. Davis  
Co-Trustee



Jackie J. Davis  
Co-Trustee

Date: 10-18-21

Date: 10-18-21

APPROVED by the City Council and signed by the Mayor for the City of Midwest City,

this 14 day of December, 2021.

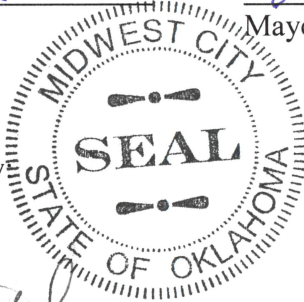
Sara Hancock

City Clerk

Mark D. Smith

Mayor

Approved as to form and legality



Donald Marshall

City Attorney