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**MIDDLETON CITY COUNCIL**  
**JUNE 1, 2022**

The Middleton City Council meeting on June 1, 2022, was called-to-order at 5:31 p.m. by Mayor Steven Rule.

**Roll Call:** Council President Kiser, Council Members Huggins, Murray and O'Meara were present. City Attorney Douglas Waterman, and Deputy Clerk Dawn Goodwin were present.

Pledge of Allegiance, Invocation: Jean Fishburn

**Action Items**

**A. Approve Amended Agenda**

**Motion:** Motion by Council President Kiser to approve the amended agenda as posted May 31, 2022, at 11:50 a.m. Motion seconded by Council Member O'Meara and approved unanimously.

**Action Items:**

1. Consent Agenda (items of routine administrative business) (**Action Items**) (**Exhibit A**)
  - a. Consider approving minutes for City Council May 18, 2022, regular meeting.
  - b. Consider ratifying payroll for May 20, 2022, in the amount of \$122,619.29.
  - c. Consider approving accounts payable thru May 27, 2022, in the amount of \$87,014.81.
  - d. Consider approving a quote from HACH for testing equipment for the Pilot Project in the amount of \$5,391.96.
  - e. Consider approving a proposal from Ackerman Estvold for Piccadilly Park Drainage Improvements in the amount of \$11,800.00.

Mayor Rule called the items. Council President Kiser stated he had gone through the accounts payable, and nothing had changed since the check registers had been uploaded to the council drobox.

**Motion:** Motion by Council President Kiser to approve Consent Agenda Items 1 a-e. Motion seconded by Council Member O'Meara and approved unanimously.

2. Consider finding that delays in the approval of Mid-Star impact fee program present an imminent peril to the public welfare and consider adopting an emergency moratorium on development applications and building permits in the City of Middleton pursuant to Idaho Code 67-6523.

Mayor Rule called the agenda item, City Attorney Douglas Waterman requested the item be moved to later in the meeting as he was still crafting the document pertaining to the agenda item.

3. Consider Request for Reconsideration of the Mill at Middleton Subdivision Preliminary Plat Approval from April 6, 2022. – Roberta Stewart/Douglas Waterman (**Exhibit B**)

Mayor Rule called the agenda item and City Attorney Douglas Waterman explained that State Code 67-6535 entitled any interested person the ability to request that the application be reconsidered based on new facts or facts that they felt were not given the proper amount of consideration during the first hearing and decision of the application. Mr. Waterman went on to explain the hearing process to the Council and those in attendance. Council Member O'Meara recused himself.

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Jeremey Rudolph and Kylie Billingsley presented a power point outlining, what they let were eleven (11) deficiencies in the decision on the Mill at Middleton Subdivision Preliminary Plat. The deficiencies included lack of consideration for letters presented by Middleton School District #134 and Greater Middleton Parks and Recreation District, the lack of Middleton Road being opened for traffic flow, a letter from Aldape Sprinklers stating that it was highly recommend that the neighbors speak with the developer discouraging the buildup of the land to help prevent the flooding of lawns and drains.

Council Discussion followed. Council Member Huggins stated that both letters from the Middleton School District and Greater Middleton Parks and Recreation District had been given consideration and that although she is in big favor of taxing districts working together, the city has no control over how the county considers the collection of funds. Council Member Huggins went on to express that regarding the COMPASS report, discussion was had, and the discussion was taken into consideration into the final discission for the application. Regarding the city sewer system, the city is always monitoring the capacity and takes the capacity into consideration before approving any application. Council Member Murray stated that he had originally voted no on the application and that he had agreed with a lot of the points presented to Council tonight. Council President Kiser addressed the concerns of flooding stating that the application was a preliminary plat and that these kinds of issues would be addressed and resolved but the applicants and city engineers before being brought before council for an approval or denial of the final plat.

**Motion:** Motion by Council President Kiser to deny a Request for Reconsideration of the Mill at Middleton Subdivision Preliminary Plat Approval from April 6, 2022 Motion seconded by Council Member Huggins and approved unanimously by roll call vote of 2 to 1.

4. Consider approval of Consent to Annexation & Utility Corridor Agreement (Pre-Annexation Agreement) for the C-4 Subdivision. – Roberta Stewart

Mayor Rule called the item and Planning, and Zoning Official Roberta Stewart gave a brief explanation of the item while presenting **Exhibit C**.

**Motion:** Motion by Council President Kiser to approve the Consent to Annexation & Utility Corridor Agreement (Pre-Annexation Agreement) for the C-4 Subdivision. Motion was seconded by Council Member Huggins and approved unanimously by roll call vote.

5. Consider approving a Memorandum of Understanding – Leading Idaho Local Bridge Program between the Local Highway Technical Assistance Council and the City of Middleton. – Jason VanGilder (**Exhibit D**)

Mayor Rule called the item and gave a brief explanation of the agenda item as Public Works Director was out of the office.

**Motion:** Motion by Council President Kiser to approve a Memorandum of Understanding – Leading Idaho Local Bridge Program between the Local Highway Technical Assistance Council and the City of Middleton. Motion was seconded by Council Member O'Meara and carried unanimously.

6. Consider adding WSP USA, Inc. to the City's on-call services roster. – Jason VanGilder

Mayor Rule called the item and gave a brief explanation of the agenda item as Public Works Director was out of the office.



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**Motion:** Motion by Council President Kiser to add WSP USA, Inc. to the City's on-call services roster. Motion seconded by Council Member Huggins and approved unanimously.

7. Consider adding CMWM Plumbing to the City's on-call services roster. – Jason VanGilder

Mayor Rule called the item and gave a brief explanation of the agenda item as Public Works Director was out of the office.

**Motion:** Motion by Council President Kiser to add CMWM Plumbing to the City's on-call services roster. Motion seconded by Council Member Huggins and approved unanimously.

8. Consider approving an additional services authorization from T-O Engineers for the Middleton Headworks Maintenance in an amount not to exceed \$14,245.00. – Jason VanGilder **(Exhibit E)**

Mayor Rule called the item and gave a brief explanation of the agenda item as Public Works Director was out of the office.

**Motion:** Motion by Council President Kiser to approve an additional services authorization from T-O Engineers for the Middleton Headworks Maintenance in an amount not to exceed \$14,245.00. Motion seconded by Council Member Huggins and approved unanimously.

9. Consider approving a quote from HUBER Technology for the rehabilitation of the Middleton Headworks screens in an amount not to exceed \$10,110.00. – Jason VanGilder **(Exhibit F)**

Mayor Rule called the item and gave a brief explanation of the agenda item as Public Works Director was out of the office.

**Motion:** Motion by Council President Kiser to approve an approving a quote from HUBER Technology for the rehabilitation of the Middleton Headworks screens in an amount not to exceed \$10,110.00. Motion seconded by Council Member O'Meara and approved unanimously.

10. Consider approving non-aerial Fireworks vendor permit from Outlet Fireworks, LLC for dates 6/24/2022-7/05/2022. – Becky Crofts **(Exhibit G)**

Mayor Rule called the item and Deputy Clerk Dawn Goodwin gave a brief explanation of the item.

**Motion:** Motion by Council President Kiser to approve non-aerial Fireworks vendor permit from Outlet Fireworks, LLC for dates 6/24/2022-7/05/2022. Motion seconded by Council Member O'Meara and approved unanimously.

Mayor Rule called for a break at 6:23 p.m. and resumed the meeting at 6:29 p.m.

2. Consider finding that delays in the approval of Mid-Star impact fee program present an imminent peril to the public welfare and consider adopting an emergency moratorium on development applications and building permits in the City of Middleton pursuant to Idaho Code 67-6523. (Exhibit H)

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Mayor Rule called the item and gave a brief background on the subject and how the item before council came to be. City Attorney Douglas Waterman explained that State Code 67-6523 enabled the city to enact an emergency moratorium based on the safety of its citizens. Council discussion ensued.

**Motion:** Motion by Council President Kiser to approve adopting an emergency moratorium on development applications and building permits in the City of Middleton pursuant to Idaho Code 67-6523. Motion seconded by Council Member O'Meara.

**Amended Motion:** Motion by Council President Kiser to approve adopting an emergency moratorium on development applications and building permits in the City of Middleton pursuant to Idaho Code 67-6523 with the omission of the fifth (5<sup>th</sup>) recital. Motion seconded by Council Member O'Meara and carried unanimously by roll call vote.

Public Comment:

- Residents: Phillip, Jim Taylor, Lori Smith, Sterling Smith, Jackie Hutchison, Theresa Denham, Mike Baldwin, Mike Hoffman, Gennie Fishburn, Armando Fernandes, Maria Fernandes, and Lisa Mayerhofer all passed on the opportunity to address council as signed up on the public comment sheet.
- Marty Denham – Middleton, ID – Mr. Denham expressed his disappointment with the council regarding a previous presentation to the council from T-O Engineers, as not one of them asked any questions regarding the presentation and what was being explained.
- Jason Lenius – 475 Triumph Dr, Middleton, ID – Mr. Lenius thanked the council for their work for the city. He went on to express that he was taken aback that the request for reconsideration was dismissed so quickly.
- Rena McKean – 543 Mountain St., Middleton, ID – Ms. McKean expressed that she felt that the council cannot hear what the public is saying to them and that they need to take into consideration what residents are saying at these meetings.
- Mike Graffe – 1889 Ridge Way, Middleton, ID – Mr. Graffe voiced that the complaining by the residents today was too late, that all the issues they bring up have already been approved based on city code and if the code doesn't change then the complaints are too a little too late. He went on to state that getting upset and showing anger is not the way to get things done. Mr. Graffe also voiced his support for the moratorium.
- Brian Sheets – 24184 Willis Creek St, Middleton, ID – Mr. Sheets wanted to understand the role of the city planning staff. He stated that to him it seemed that the planning staff was acting more as an advocate to the developers than as an advocate of the residents.
- Matt Wilke – PO Box 7, Middleton, ID – Mr. Wilke expressed that he heard the cry for the need of the moratorium but that he was worried that this is going to cost the city legal issues in the future. He went on to state that based on traffic information alone he does not believe that it can be proven that the safety of the residents is in peril.
- Kylie Billingsley – 507 Triumph Dr, Middleton, ID – Expressed that the council felt more like a courtroom than a place where the residents are heard, and their opinions and voices listened.
- Jeremy Rudolph – 507 Triumph Dr, Middleton, ID – MR. Rudolph expressed that it was a hard pill to swallow being told that the case that was presented to the council tonight was denied but then almost in the same breath being told that a moratorium needed



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to be put into place for the same reasons that were presented to the council earlier. Mr. Rudolph went to express that the advocacy for the developer needs to take a backseat to that of the residents needs and safety.

- Commissioner Vanbeek – Voiced that she as a commissioner hears the cities concerns and has been trying to push the matter forward with county commissioners.
- Teresa (In audible and illegible last name) – 13105 Green well Ln, Caldwell, ID – Teresa wanted to know if the city had reviewed the information on the rehearing prior to the meeting and if they had, she wanted them to disclose this information to the public.


Mayor Rule called for a break at 6:46 p.m. and resumed the meeting at 6:52 p.m.

**Mayor and Council Comments**

- Mayor Rule stated that himself, Council Member Murray and City Administrator Becky Crofts had met earlier in the day with ITD I n regards to traffic planning for Middleton and learned how to navigate the ITD process.

**Adjourn:** Mayor adjourned the city council meeting at 7:44 PM.

ATTEST:

  
Dawn Goodwin, Deputy Clerk  
Minutes Approved: June 15, 2022

  
Steven J. Rule, Mayor



# **EXHIBIT “A”**



# Quotation

**Quote Number: 100740834v3**

Use quote number at time of order to ensure  
that you receive prices quoted

Hach  
PO Box 608  
Loveland, CO 80539-0608  
Phone: (800) 227-4224  
Email: [quotes@hach.com](mailto:quotes@hach.com)  
Website: [www.hach.com](http://www.hach.com)

Quote Date: 24-May-2022

Quote Expiration: 23-Jun-2022

CITY OF MIDDLETON  
PO BOX 487  
MIDDLETON, ID 83644-0487

Name: Rodger Hawker  
Phone: 208-789-3953  
Email: [rhawker@middletontcity.com](mailto:rhawker@middletontcity.com)

Customer Account Number : 098283

Sales Contact: Jenny Farney Email: [jenny.farney@hach.com](mailto:jenny.farney@hach.com) Phone: 801-230-0925

## PRICING QUOTATION

Line	Part Number	Description	Qty	Net Unit Price	Extended Price
1	LEV015.53.22006	HQ2200 Portable Multi-Meter with Rugged Field Gel pH and Dissolved Oxygen Electrodes, 5 m Cables	1	3,433.92	3,433.92
2	CDC40105	IntelliCAL CDC401 Field 4-Poles Graphite Conductivity Cell, 5 m Cable	1	1,008.00	1,008.00
3	MTC10105	aa IntelliCAL MTC101 Field Low Maintenance Gel Filled ORP/RedOx Electrode, 5 m Cable	1	860.16	860.16
4	25M2A1001-115	ORP buffer solution, 200 mV, 500 mL	1	89.88	89.88
				Grand Total	\$ 5,391.96

## TERMS OF SALE

**Freight:** Ground Prepay and Add

**FCA:** Hach's facility

**12% Supply Chain Surcharge has been added to this quote for all shipments, if applicable, and is included in the "Net Unit Price" and Grand Total**

All purchases of Hach Company products and/or services are expressly and without limitation subject to Hach Company's Terms & Conditions of Sale ("Hach TCS"), incorporated herein by reference and published on Hach Company's website at [www.hach.com/terms](http://www.hach.com/terms). Hach TCS are contained directly and/or by reference in Hach's offer, order acknowledgment,

and invoice documents. The first of the following acts constitutes an acceptance of Hach's offer and not a counteroffer and creates a contract of sale "Contract" in accordance with the Hach TCS: (i) Buyer's issuance of a purchase order document against Hach's offer; (ii) acknowledgement of Buyer's order by Hach; or (iii) commencement of any performance by Hach pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of the Hach TCS are not part of the Contract.

Due to International regulations, a U.S. Department of Commerce Export License may be required. Hach reserves the right to approve specific shipping agents. Wooden boxes suitable for ocean shipment are extra. Specify final destination to ensure proper documentation and packing suitable for International transport. In addition, Hach may require : 1). A statement of intended end-use; 2).Certification that the intended end-use does not relate to proliferation of weapons of mass destruction (prohibited nuclear end use, chemical / biological weapons, missile technology); and 3). Certification that the goods will not be diverted contrary to U.S. and/or applicable laws in force in Buyer's jurisdiction.

ORDER TERMS:

Terms are Subject to Credit Review

In order for Hach to process the order as quickly as possible, please provide the following information.

- Complete Billing address.
- Complete Shipping address.
- Part numbers and quantities of items being ordered.
- Please reference the quotation number on your purchase order

If the order is over \$25,000 Hach will also require the following additional information.

- Pricing
- Purchase Order Number
- Freight terms and INCO term FOB Origin or FCA Shipping Point
- Required delivery date
- Vendor name should specify "Hach Company" with the Loveland address:
  - o Hach, PO Box 389, Loveland, CO 80539
- Credit terms of payment. Default payment terms are Net 30.
- Indicate if order needs to ship complete or if it can ship partial.
- Tax status
- Special invoicing instructions

Sales tax is not included on quote. Applicable sales tax will be added to the invoice based on the U.S. destination, if applicable provide a resale/exemption certificate.

Shipments will be prepaid and added to invoices unless otherwise specified.

Equipment quoted operates with standard U.S. supply voltage.

Hach standard terms and conditions apply to all sales.

Additional terms and conditions apply to orders for service partnerships.

Prices do not include delivery of product. Reference attached Freight Charge Schedule and Collect Handling Fees.

Standard lead time is 30 days.

This Quote is good for a one time purchase

Sales Contact:

Name: Jenny Farney  
Title: Regional Sales Manager  
Phone: 801-230-0925  
Email: jenny.farney@hach.com





## HACH COMPANY

### Headquarters

P.O. Box 389  
5600 Lindbergh Drive  
Loveland, CO 80539-0389

### Purchase Orders

PO Box 608  
Loveland, CO 80539-0608

WebSite: [www.hach.com](http://www.hach.com)

### U.S.A.

Phone: 800-227-4224  
Fax: 970-669-2932  
E-Mail: [orders@hach.com](mailto:orders@hach.com)  
[quotes@hach.com](mailto:quotes@hach.com)  
[techhelp@hach.com](mailto:techhelp@hach.com)

### Export

Phone: 970-669-3050  
Fax: 970-461-3939  
Email: [intl@hach.com](mailto:intl@hach.com)

### Remittance

2207 Collections Center Drive  
Chicago, IL 60693

### Wire Transfers

Bank of America  
231 S. LaSalle St.  
Chicago, IL 60604  
Account: 8765602385  
Routing (ABA): 071000039

Quotation Addendum

## ADVANTAGES OF WORKING WITH HACH

<b>Hach Service</b>	<b>Pick&amp;Ship™</b>	<b>Technical Support</b>
<p><i>Protect your investment &amp; peace of mind</i></p> <ul style="list-style-type: none"> <li>✓ A global partner who understands your needs</li> <li>✓ Delivers timely, high-quality service you can trust</li> <li>✓ Provides team of unique experts to help you maximize instrument uptime</li> <li>✓ Ensure data integrity</li> <li>✓ Maintain operational stability</li> <li>✓ Reduce compliance risk</li> </ul> <p><a href="http://www.hach.com/service-contracts">www.hach.com/service-contracts</a></p>	<p><i>Pick&amp;Ship™ Program offers a better way to keep your supplies in stock</i></p> <ul style="list-style-type: none"> <li>✓ <b>Convenience</b> of one purchase order for the entire year</li> <li>✓ <b>Flexibility</b> to change, cancel or create new orders</li> <li>✓ <b>Savings</b> from locking in prices &amp; thus avoiding price surges and rush charges</li> <li>✓ <b>Peace of mind</b> with automatic, reliable shipments just as you need them</li> </ul> <p><a href="http://www.Hach.com/pickandship">www.Hach.com/pickandship</a></p>	<p><i>Provides post-sale instrumentation and application support</i></p> <ul style="list-style-type: none"> <li>✓ Hach's highly skilled Technical Support staff is dedicated to helping you resolve technical issues before, during and after the sale.</li> <li>✓ Available via phone, e-mail, or live online chat at Hach.com!</li> <li>✓ Fast access to answers at <a href="https://support.hach.com">https://support.hach.com</a></li> <li>✓ Toll-free phone: 800-227-4224</li> <li>✓ E-mail: <a href="mailto:techhelp@hach.com">techhelp@hach.com</a></li> </ul> <p><a href="http://www.Hach.com">www.Hach.com</a></p>

## ADVANTAGES OF SIMPLIFIED SHIPPING AND HANDLING

<b>Safe &amp; Fast Delivery</b>	<b>Save Time – Less Hassle</b>	<b>Save Money</b>
<ul style="list-style-type: none"> <li>✓ Receive tracking numbers on your order acknowledgement</li> <li>✓ Hach will assist with claims if an order is lost or damaged in shipment</li> </ul>	<ul style="list-style-type: none"> <li>✓ No need to set up deliveries for orders or to schedule pickup</li> <li>✓ Hach ships order as product is available, at no additional charge, when simplified shipping and handling is used.</li> </ul>	<ul style="list-style-type: none"> <li>✓ No additional invoice to process – save on time and administrative costs</li> <li>✓ Only pay shipping once, even if multiple shipments are required</li> </ul>

STANDARD SIMPLIFIED SHIPPING AND HANDLING CHARGES <sup>1, 2, 3, 4</sup> Pricing Effective 4/11/2020						Collect <sup>4</sup>
Total Price of Merchandise Ordered	Standard Surface (Mainland USA)	Second Day Delivery (Mainland USA)	Next Day Delivery (Mainland USA)	Second Day Delivery (Alaska & Hawaii)	Next Day Delivery (Alaska & Hawaii)	Handling Fee Effective 4/11/2020
\$0.00 - \$49.99	\$17.99	\$44.99	\$83.90	\$72.21	\$137.27	\$13.47
\$50.00 - \$149.99	\$28.59	\$84.27	\$159.00	\$120.84	\$229.73	\$13.85
\$150.00 - \$349.99	\$50.22	\$133.98	\$272.91	\$169.07	\$329.04	\$14.72
\$350.00 - \$649.99	\$69.95	\$182.91	\$363.75	\$228.65	\$442.76	\$15.48
\$650.00 - \$949.99	\$88.16	\$191.13	\$399.98	\$236.66	\$446.10	\$16.04
\$950.00 - \$1,999.99	\$110.91	\$235.85	\$498.69	\$280.67	\$543.06	\$17.52
\$2,000.00 - \$3,999.99	\$128.04	\$250.64	\$513.44	\$291.54	\$554.54	\$20.22
\$4,000.00 - \$5,999.99	\$148.44	\$260.33	\$538.23	\$292.89	\$570.53	\$24.90
\$6,000.00 - \$7,999.99	\$175.40	\$296.40	\$612.84	\$323.07	\$622.86	\$29.04
\$8,000.00 - \$9,999.99	\$200.15	\$336.83	\$658.19	\$360.41	\$683.52	\$33.51
Over \$10,000	2.5% of Net Order Value	4.5% of Net Order Value	7% of Net Order Value	4.5% of Net Order Value	7% of Net Order Value	\$51.84

- Shipping & Handling charges shown are only applicable to orders billing and shipping to U.S. destinations. Shipping & Handling charges will be prepaid and added to invoice. Shipping & Handling for the Pick&Ship Program is charged on each shipment release and is based on the total price of each shipment release. Shipping & Handling charges are subject to change without notice.
- Additional Shipping & Handling charges will be applied to orders containing bulky and/or especially heavy orders. Refrigerated and all weather Samplers do not qualify for simplified Shipping & Handling charges, and are considered heavy products. Dissolved Oxygen Sensors can be damaged if exposed to temps below freezing, causing sensor failure. Must be shipped over night or 2nd day air during the cold weather months.
- Orders shipping to Alaska or Hawaii: Additional Shipping & Handling charges may be applied at time of order processing. Second Day and Next Day delivery is not available to all destinations.
- Hach Company will assess a collect handling fee on orders with collect shipping terms. This handling fee covers the additional costs that Hach Company incurs from processing and managing collect shipments.

Due to variations in component characteristics, regulatory transportation requirements and/or associated shipping and handling costs, individual kit components may or may not be packaged together in a single carton at time of final packaging and shipping.

## SALES TAX

Sales Tax is not included in the attached quotation. Applicable sales and usage taxes will be added to your invoice, at the time of order, based on U.S. destination of goods, unless a valid resale/exemption certificate for destination state is provided to the above address or fax number, attention of the Tax Dept.

## TERMS & CONDITIONS OF SALE FOR HACH COMPANY PRODUCTS AND SERVICES

This document sets forth the Terms & Conditions of Sale for goods manufactured and/or supplied, and services provided, by Hach Company of Loveland, Colorado ("Hach") and sold to the original purchaser thereof ("Buyer"). Unless otherwise specifically stated herein, the term "Hach" includes only Hach Company and none of its affiliates. Unless otherwise specifically stated in a previously-executed written purchase agreement signed by authorized representatives of Hach and Buyer, these Terms & Conditions of Sale establish the rights, obligations and remedies of Hach and Buyer which apply to this offer and any resulting order or contract for the sale of Hach's goods and/or services ("Products").

1. **APPLICABLE TERMS & CONDITIONS:** These Terms & Conditions of Sale are contained directly and/or by reference in Hach's offer, order acknowledgment, and invoice documents. The first of the following acts constitutes an acceptance of Hach's offer and not a counteroffer and creates a contract of sale ("Contract") in accordance with these Terms & Conditions: (i) Buyer's issuance of a purchase order document against Hach's offer; (ii) acknowledgement of Buyer's order by Hach; or (iii) commencement of any performance by Hach pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of these Terms & Conditions of Sale are not a part of the Contract.

2. **CANCELLATION:** Buyer may cancel goods orders subject to fair charges for Hach's expenses including handling, inspection, restocking, freight and invoicing charges as applicable, provided that Buyer returns such goods to Hach at Buyer's expense within 30 days of delivery and in the same condition as received. Buyer may cancel service orders on ninety (90) day's prior written notice and refunds will be prorated based on the duration of the service plan. Inspections and re-instatement fees may apply upon cancellation or expiration of service programs. Seller may cancel all or part of any order prior to delivery without liability if the order includes any Products that Seller determines may not comply with export, safety, local certification, or other applicable compliance requirements.

3. **DELIVERY:** Delivery will be accomplished FCA Hach's facility located in Ames, Iowa or Loveland, Colorado, United States (Incoterms 2010). Legal title and risk of loss or damage pass to Buyer upon transfer to the first carrier. Hach will use commercially reasonable efforts to deliver the Products ordered herein within the time specified on the face of this Contract or, if no time is specified, within Hach's normal lead-time necessary for Hach to deliver the Products sold hereunder. Upon prior agreement with Buyer and for an additional charge, Hach will deliver the Products on an expedited basis. Standard service delivery hours are 8 am – 5 pm Monday through Friday, excluding holidays.

4. **INSPECTION:** Buyer will promptly inspect and accept any Products delivered pursuant to this Contract after receipt of such Products. In the event the Products do not conform to any applicable specifications, Buyer will promptly notify Hach of such nonconformance in writing. Hach will have a reasonable opportunity to repair or replace the nonconforming product at its option. Buyer will be deemed to have accepted any Products delivered hereunder and to have waived any such nonconformance in the event such a written notification is not received by Hach within thirty (30) days of delivery.

5. **PRICES & ORDER SIZES:** All prices are in U.S. dollars and are based on delivery as stated above. Prices do not include any charges for services such as insurance; brokerage fees; sales, use, inventory or excise taxes; import or export duties; special financing fees; VAT, income or royalty taxes imposed outside the U.S.; consular fees; special permits or licenses; or other charges imposed upon the production, sale, distribution, or delivery of Products. Buyer will either pay any and all such charges or provide Hach with acceptable exemption certificates, which obligation survives performance under this Contract. Hach reserves the right to establish minimum order sizes and will advise Buyer accordingly.

6. **PAYMENTS:** All payments must be made in U.S. dollars. For Internet orders, the purchase price is due at the time and manner set forth at [www.hach.com](http://www.hach.com). Invoices for all other orders are due and payable NET 30 DAYS from date of the invoice without regard to delays for inspection or transportation, with payments to be made by check to Hach at the above address or by wire transfer to the account stated on the front of Hach's invoice, or for customers with no established credit, Hach may require cash or credit

card payment in advance of delivery. In the event payments are not made or not made in a timely manner, Hach may, in addition to all other remedies provided at law, either: (a) declare Buyer's performance in breach and terminate this Contract for default; (b) withhold future shipments until delinquent payments are made; (c) deliver future shipments on a cash-with-order or cash-in-advance basis even after the delinquency is cured; (d) charge interest on the delinquency at a rate of 1-1/2% per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges and/or inventory carrying charges; (e) repossess the Products for which payment has not been made; (f) recover all costs of collection including reasonable attorney's fees; or (g) combine any of the above rights and remedies as is practicable and permitted by law. Buyer is prohibited from setting off any and all monies owed under this from any other sums, whether liquidated or not, that are or may be due Buyer, which arise out of a different transaction with Hach or any of its affiliates. Should Buyer's financial responsibility become unsatisfactory to Hach in its reasonable discretion, Hach may require cash payment or other security. If Buyer fails to meet these requirements, Hach may treat such failure as reasonable grounds for repudiation of this Contract, in which case reasonable cancellation charges shall be due Hach. Buyer grants Hach a security interest in the Products to secure payment in full, which payment releases the security interest but only if such payments could not be considered an avoidable transfer under the U.S. Bankruptcy Code or other applicable laws. Buyer's insolvency, bankruptcy, assignment for the benefit of creditors, or dissolution or termination of the existence of Buyer, constitutes a default under this Contract and affords Hach all the remedies of a secured party under the U.C.C., as well as the remedies stated above for late payment or non-payment. See [120](#) for further wire transfer requirements.

7. **LIMITED WARRANTY:** Hach warrants that Products sold hereunder will be free from defects in material and workmanship and will, when used in accordance with the manufacturer's operating and maintenance instructions, conform to any express written warranty pertaining to the specific goods purchased, which for most Hach instruments is for a period of twelve (12) months from delivery. Hach warrants that services furnished hereunder will be free from defects in workmanship for a period of ninety (90) days from the completion of the services. Parts provided by Hach in the performance of services may be new or refurbished parts functioning equivalent to new parts. Any non-functioning parts that are repaired by Hach shall become the property of Hach. No warranties are extended to consumable items such as, without limitation, reagents, batteries, mercury cells, and light bulbs. **All other guarantees, warranties, conditions and representations, either express or implied, whether arising under any statute, law, commercial usage or otherwise, including implied warranties of merchantability and fitness for a particular purpose, are hereby excluded.** The sole remedy for Products not meeting this Limited Warranty is replacement, credit or refund of the purchase price. This remedy will not be deemed to have failed of its essential purpose so long as Hach is willing to provide such replacement, credit or refund.

8. **INDEMNIFICATION:** Indemnification applies to a party and to such party's successors-in-interest, assignees, affiliates, directors, officers, and employees ("Indemnified Parties"). Hach is responsible for and will defend, indemnify and hold harmless the Buyer Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to Hach's breach of the Limited Warranty. Buyer is responsible for and will defend, indemnify and hold harmless the Hach Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to negligence, misuse or misapplication of any goods or services, violations of law, or the breach of any provision of this Contract by the Buyer, its affiliates, or those employed by, controlled by or in privity with them. Buyer's workers' compensation immunity, if any, does not preclude or limit its indemnification obligations.

9. **PATENT PROTECTION:** Subject to all limitations of liability provided herein, Hach will, with respect to any Products of Hach's design or manufacture, indemnify Buyer from any and all damages and costs as finally determined by a court of competent jurisdiction in any suit for infringement of any U.S. patent (or European patent for Products that Hach sells to Buyer for end use in a member state of the E.U.) that has issued as of the delivery date, solely by reason of the sale or normal use of any Products sold to Buyer hereunder and from reasonable expenses incurred by Buyer in defense of such suit if Hach does not undertake the defense thereof, provided that Buyer promptly notifies



## TERMS AND CONDITIONS OF SALE FOR HACH® PRODUCTS

Hach of such suit and offers Hach either (i) full and exclusive control of the defense of such suit when Products of Hach only are involved, or (ii) the right to participate in the defense of such suit when products other than those of Hach are also involved. Hach's warranty as to use patents only applies to infringement arising solely out of the inherent operation of the Products according to their applications as envisioned by Hach's specifications. In case the Products are in such suit held to constitute infringement and the use of the Products is enjoined, Hach will, at its own expense and at its option, either procure for Buyer the right to continue using such Products or replace them with non-infringing products, or modify them so they become non-infringing, or remove the Products and refund the purchase price (prorated for depreciation) and the transportation costs thereof. The foregoing states the entire liability of Hach for patent infringement by the Products. Further, to the same extent as set forth in Hach's above obligation to Buyer, Buyer agrees to defend, indemnify and hold harmless Hach for patent infringement related to (x) any goods manufactured to the Buyer's design, (y) services provided in accordance with the Buyer's instructions, or (z) Hach's Products when used in combination with any other devices, parts or software not provided by Hach hereunder.

10. **TRADEMARKS AND OTHER LABELS:** Buyer agrees not to remove or alter any indicia of manufacturing origin or patent numbers contained on or within the Products, including without limitation the serial numbers or trademarks on nameplates or cast, molded or machined components.

11. **SOFTWARE AND DATA.** All licenses to Hach's separately-provided software products are subject to the separate software license agreement(s) accompanying the software media and/or included as an Appendix to these Terms & Conditions of Sale. Except to the extent such express licenses conflict with the remainder of this paragraph, the following also applies relative to Hach's software: Hach grants Buyer only a personal, non-exclusive license to access and use the software provided by Hach with Products purchased hereunder solely as necessary for Buyer to enjoy the benefit of the Products. A portion of the software may contain or consist of open source software, which Buyer may use under the terms and conditions of the specific license under which the open source software is distributed. Buyer agrees that it will be bound by all such license agreements. Title to software remains with the applicable licensor(s). In connection with Buyer's use of Products, Hach may obtain, receive, or collect data or information, including data produced by the Products. In such cases, Buyer grants Hach a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of such data, or to aggregate such data for use in an anonymous manner, solely to facilitate marketing, sales and R&D activities of Hach and its affiliates.

12. **PROPRIETARY INFORMATION; PRIVACY:** "Proprietary Information" means any information, technical data or know-how in whatever form, whether documented, contained in machine readable or physical components, mask works or artwork, or otherwise, which Hach considers proprietary, including but not limited to service and maintenance manuals. Buyer and its customers, employees and agents will keep confidential all such Proprietary Information obtained directly or indirectly from Hach and will not transfer or disclose it without Hach's prior written consent, or use it for the manufacture, procurement, servicing or calibration of Products or any similar products, or cause such products to be manufactured, serviced or calibrated by or procured from any other source, or reproduce or otherwise appropriate it. All such Proprietary Information remains Hach's property. No right or license is granted to Buyer or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent right or other proprietary right of Hach, except for the limited use licenses implied by law. Hach will manage Customer's information and personal data in accordance with its Privacy Policy, located at <http://www.hach.com/privacypolicy>.

13. **CHANGES AND ADDITIONAL CHARGES:** Hach reserves the right to make design changes or improvements to any products of the same general class as Products being delivered hereunder without liability or obligation to incorporate such changes or improvements to Products ordered by Buyer unless agreed upon in writing before the Products' delivery date. Services which must be performed as a result of any of the following conditions are subject to additional charges for labor, travel and parts: (a) equipment alterations not authorized in writing by Hach; (b) damage resulting from improper use or handling, accident, neglect, power surge, or operation in an environment or manner in which the instrument is not designed to operate or is not in accordance with Hach's operating manuals; (c) the use of parts or accessories not provided by Hach; (d) damage resulting from acts of war, terrorism or nature; (e) services outside standard business hours; (f) site

prework not complete per proposal; or (g) any repairs required to ensure equipment meets manufacturer's specifications upon activation of a service agreement.

14. **SITE ACCESS / PREPARATION / WORKER SAFETY / ENVIRONMENTAL COMPLIANCE:** In connection with services provided by Hach, Buyer agrees to permit prompt access to equipment. Buyer assumes full responsibility to back-up or otherwise protect its data against loss, damage or destruction before services are performed. Buyer is the operator and in full control of its premises, including those areas where Hach employees or contractors are performing service, repair and maintenance activities. Buyer will ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services. Buyer is the generator of any resulting wastes, including without limitation hazardous wastes. Buyer is solely responsible to arrange for the disposal of any wastes at its own expense. Buyer will, at its own expense, provide Hach employees and contractors working on Buyer's premises with all information and training required under applicable safety compliance regulations and Buyer's policies. If the instrument to be serviced is in a Confined Space, as that term is defined under OSHA regulations, Buyer is solely responsible to make it available to be serviced in an unconfined space. Hach service technicians will not work in Confined Spaces. In the event that a Buyer requires Hach employees or contractors to attend safety or compliance training programs provided by Buyer, Buyer will pay Hach the standard hourly rate and expense reimbursement for such training attended. The attendance at or completion of such training does not create or expand any warranty or obligation of Hach and does not serve to alter, amend, limit or supersede any part of this Contract.

15. **LIMITATIONS ON USE:** Buyer will not use any Products for any purpose other than those identified in Hach's catalogs and literature as intended uses. Unless Hach has advised the Buyer in writing, in no event will Buyer use any Products in drugs, food additives, food or cosmetics, or medical applications for humans or animals. In no event will Buyer use in any application any Product that requires FDA 510(k) clearance unless and only to the extent the Product has such clearance. Buyer will not sell, transfer, export or re-export any Hach Products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Hach Products or technology in any facility which engages in activities relating to such weapons. Unless the "ship-to" address is in California, U.S.A., the Products are not intended for sale in California and may lack markings required by California Proposition 65; accordingly, unless Buyer has ordered Products specifying a California ship-to address, Buyer will not sell or deliver any Hach Products for use in California. Any warranty granted by Hach is void if any goods covered by such warranty are used for any purpose not permitted hereunder.

16. **EXPORT AND IMPORT LICENSES AND COMPLIANCE WITH LAWS:** Unless otherwise specified in this Contract, Buyer is responsible for obtaining any required export or import licenses. Buyer will comply with all laws and regulations applicable to the installation or use of all Products, including applicable import and export control laws and regulations of the U.S., E.U. and any other country having proper jurisdiction, and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder. Buyer will comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Buyer's business activities in connection with this Contract, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). Buyer agrees that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Buyer or for Hach, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Buyer's activities related to this Contract. Hach asks Buyer to "*Speak Up!*" if aware of any violation of law, regulation or our Standards of Conduct ("SOC") in relation to this Contract. See <http://danaher.com/integrity-and-compliance> and [www.danaherintegrity.com](http://www.danaherintegrity.com) for a copy of the SOC and for access to our Helpline portal.

17. **RELATIONSHIP OF PARTIES:** Buyer is not an agent or representative of Hach and will not present itself as such under any circumstances unless and to

## TERMS AND CONDITIONS OF SALE FOR HACH® PRODUCTS

the extent it has been formally screened by Hach's compliance department and received a separate duly-authorized letter from Hach setting forth the scope and limitations of such authorization.

18. **FORCE MAJEURE:** Hach is excused from performance of its obligations under this Contract to the extent caused by acts or omissions that are beyond its control of, including but not limited to Government embargoes, blockages, seizures or freeze of assets, delays or refusals to grant an export or import license or the suspension or revocation thereof, or any other acts of any Government; fires, floods, severe weather conditions, or any other acts of God; quarantines; labor strikes or lockouts; riots; strife; insurrections; civil disobedience or acts of criminals or terrorists; war; material shortages or delays in deliveries to Hach by third parties. In the event of the existence of any force majeure circumstances, the period of time for delivery, payment terms and payments under any letters of credit will be extended for a period of time equal to the period of delay. If the force majeure circumstances extend for six months, Hach may, at its option, terminate this Contract without penalty and without being deemed in default or in breach thereof.

19. **NON ASSIGNMENT AND WAIVER:** Buyer will not transfer or assign this Contract or any rights or interests hereunder without Hach's prior written consent. Failure of either party to insist upon strict performance of any provision of this Contract, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Contract will not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same will continue and remain in force and effect as if no waiver had occurred.

20. **FUNDS TRANSFERS (PAYMENTS):** Buyer and Hach both recognize that there is a risk of banking fraud when individuals impersonating a business demand payment under new banking or mailing instructions. To avoid this risk, Buyer must verbally confirm any new or changed bank transfer or mailing instructions by calling Hach at +1-970-663-1377 and speaking with Hach's Credit Manager before mailing or transferring any monies using the new instructions. Both parties agree that they will not institute mailing or bank transfer instruction changes and require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any payment instruction changes before any new or outstanding payments are due using the new instructions.

21. **LIMITATION OF LIABILITY:** None of the Hach Indemnified Parties will be liable to Buyer under any circumstances for any special, treble, incidental or consequential damages, including without limitation, damage to or loss of property other than for the Products purchased hereunder; damages incurred in installation, repair or replacement; lost profits, revenue or opportunity; loss of use; losses resulting from or related to downtime of the products or inaccurate measurements or reporting; the cost of substitute products; or claims of Buyer's customers for such damages, howsoever caused, and whether based on warranty, contract, and/or tort (including negligence, strict liability or otherwise). The total liability of the Hach Indemnified Parties arising out of the performance or nonperformance hereunder or Hach's obligations in connection with the design, manufacture, sale, delivery, and/or use of Products will in no circumstance exceed in the aggregate a sum equal to twice the amount actually paid to Hach for Products delivered hereunder.

22. **APPLICABLE LAW AND DISPUTE RESOLUTION:** The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of Colorado, without regard to its principles or laws regarding conflicts of laws. If any provision of this Contract violates any Federal, State or local statutes or regulations of any countries having jurisdiction of this transaction, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions. Unless otherwise specifically agreed upon in writing between Hach and Buyer, any dispute relating to this Contract which is not resolved by the parties shall be adjudicated in order of preference by a court of competent jurisdiction (i) in the State of Colorado, U.S.A. if Buyer has minimum contacts with Colorado and the U.S., (ii) elsewhere in the U.S. if Buyer has minimum contacts with the U.S. but not Colorado, or (iii) in a neutral location if Buyer does not have minimum contacts with the United States.

23. **ENTIRE AGREEMENT & MODIFICATION:** These Terms & Conditions of Sale constitute the entire agreement between the parties and supersede any prior agreements or representations, whether oral or written. No change to or modification of these Terms & Conditions shall be binding upon Hach unless in a written instrument specifically referencing that it is amending these Terms & Conditions of Sale and signed by an authorized representative of Hach. Hach

rejects any additional or inconsistent Terms & Conditions of Sale offered by Buyer at any time, whether or not such terms or conditions materially alter the Terms & Conditions herein and irrespective of Hach's acceptance of Buyer's order for the described goods and services.

24. **APPENDICES:** If checked, the following Appendices are attached hereto and incorporated by reference into these Terms & Conditions of Sale:

☐ CLAROS SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

\* \* \*



May 17, 2022

City of Middleton  
Jason VanGilder, PW Director  
1103 W Main Street  
Middleton, ID 86644

RE: Engineering Professional Services Agreement (PSA)  
Civil Engineering Design  
Proposed Piccadilly Park Drainage Improvements ID

Dear Mr. Rule,

Ackerman-Estvold (A-E) is pleased to present this proposal for engineering services for the design of drainage improvements as they relate to the proposed Piccadilly Park project located on West Main Street, Middleton, ID.

We understand the project scope includes the removal and replacement of the existing bioswale along Main Street with a seepage bed and grass to expand the usable space within the park. Within the overall project objective, A-E's scope of services would include limited topography survey, coordination with the city as it relates to storm drainage design and report, geotechnical investigation if deemed necessary, and preparation of construction drawings for the aforementioned improvements. In addition, limited construction administration and inspection of the project will be performed during the construction phase and will be provided on an hourly basis as needed.

Pursuant to our conversation and the client's objectives, the scope of services we propose to provide shall consist of the following:

Scope	Initial Submittal Schedule	Budget
Civil Improvement Construction Drawings and Reports	To Be Determined	\$6,100
Geotechnical Investigation – if deemed necessary	To Be Determined	\$2,700
Construction Engineering & Admin	To Be Determined	\$3,000

**Total Proposed Scope-of-Services**

**\$11,800**

The outlined scope and proposed fee schedule include all expected Civil Engineering Services as required by local, state, and federal agencies governing the project within their jurisdiction. A-E does not warrant nor guarantee approval by any reviewer or agency for items out of its control. This proposal also includes construction phase support as requested and can include submittal reviews,

on-site construction progress meetings, preparation of as built drawings, part-time observation of construction activities, and or administration of civil construction project components. This proposal only includes the specific items listed within the scope of service and does not include site lighting, environmental clearance and or any agency or permit application fees. Any additional services can be accommodated at standard hourly rates if requested. An additional proposal for services would be provided at the time of the request.

Billing will occur monthly based on the percentage of work completed to date.

If there are any questions, concerns, or if the scope of services as outlined needs any revision or clarification, please feel to contact our office.

Best Regards,

ACKERMAN-ESTVOLD

A handwritten signature in blue ink, appearing to read "Steve Eberle".

Steve Eberle  
Vice President, COO

# **EXHIBIT “B”**



May 5, 2022

To The City of Middleton:

RE: Middleton Mill Infill Subdivision, Request for Reconsideration by residents of Middleton

Dear City Council and Planning and Zoning Commission –

We as a community of 104 individuals are writing a Request for Reconsideration In response to Executed FCO with Exhibit-CC-The-Mill.pdf executed April 21, 2022. In the Matter of the Application of Wade Thomas of IAG Capital LLC and Bob Unger of Unger Enterprises for preliminary plat with respect to The Mill at Middleton Subdivision located at 0 N. Dewey Avenue (Tax Parcels Nos. 33892, 33888, and 33876).

**Specific Deficiencies Highlighted in this Reconsideration:**

- 1. Due consideration not given to the letter submitted by the School District that our schools are over-capacity and not appropriately included in the FCO for this development.**
- 2. Due consideration not given to the e-mail written by the Greater Middleton Parks and Recreation Department.**
- 3. That this project provides “safe vehicle and pedestrian facilities” (FCO p.11) which is in opposition to the COMPASS report (FCO p. 12, K) and the decision made by the Planning and Zoning Committee on February 14, 2022.**
- 4. The FCO claims that the development will “increase the quality of life and general welfare of the city” (FCO p.9, Goal 4). This is a deficiency given information presented by the Superintendent that schools are over-capacity, GMPRD that the City has outgrown its resources, COMPASS information that it will create stress on pedestrians, long standing resident concerns of increased traffic and concerns about the sewage system.**
- 5. That “the proposed development will not impose expense upon the public” (FCO p.1, B 6). This will impose expense given increased flooding on neighbors yards and potential flooding for new homes built below unstable ditch.**



- 6. The City Engineer has required the Applicant to terminate W. Millstone Street into a Cul-de-Sac (FCO p. 6, Section F). There was no additional traffic study conducted on Middleton Road by the City Engineer and Peregrine enters opposite of where residents are wanting connection.**
- 7. Code MCC 1-15-2 is a deficiency given that it allows modification to any and all City codes. Codes are written to be followed and making waivers on variances (MCC 1-15-2), is not in the best interest for the health and welfare of the residents of Middleton, especially when the waiver hasn't considered safety ramifications.**
- 8. It is a deficiency for the City to "take care of" a legal issue in regards to illegal lots splits, without consent of the property owners.**

Under Conclusions of Law in the FCO it states that "due consideration has been given to the comments received from the governmental subdivisions providing services in the City of Middleton planning jurisdiction, comments received from individuals of the public, and comments from City Planning Staff and City Engineer" (FCO, pg.1, B 2).

A letter written by Superintendent Gee prior to April 6, 2022 indicated that schools in Middleton were having a hard time keeping up with the growing population from new developments (letter included as exhibit I in this reconsideration). He asked for City Council to be "judicious" in approving new construction as our elementary schools were at capacity. This letter was not given "due consideration" in regard to this development as when it was presented to City Council, the Planning and Zoning Official dismissed it as not being written specifically for this development, despite the letter being submitted for the council meeting on April 6th in which this development was the only development up for consideration that night and the letter specifically states "The Mill at Middleton Subdivision."

This letter was not included in the FCO as it should have been. It is submitted as Exhibit I in this reconsideration. Within approved minutes from the April 6th meeting showing where the letter was read and labeled as "Exhibit I," this letter was attached from the Middleton School District regarding "All New Development" within Middleton as well as "The Mill at Middleton Subdivision" (pg. 2, #3, Approved minutes from 4/6/22). This is a large deficiency that a letter written by the Middleton School District specifying this subdivision by name was not included in the FCO and given the necessary due consideration by City Council Appointees when discussing this subdivision.

On March 23rd Julie Collette of Greater Middleton Parks and Recreation District said she is "opposed to any further residential development until the Parks District and School District are better funded" (pg. 47 & 48 of the FCO). Ms. Colette noted that there are more people involved in sporting clubs and events, and the District is in great need of more playing fields and gyms. Also, the cost of vandalism has greatly increased from 12.9% of the vandalism

budget in 2019 to 419% last year. The District has simply outgrown its resources. This letter was not given due consideration as it was not read aloud during the meeting and was not provided ample discussion among City Council members.

Goals 3 and 23 (p.11, I, B in the FCO) state that the project provides “safe vehicle and pedestrian facilities,” yet a comment letter from COMPASS (FCO p. 12, K) stated that the Subdivision will add “stress” to bicycle and pedestrian access on Middleton Road. It further noted that a bus transit station should be built on Hwy 44/Main Street. During the City Council Meeting this comment from COMPASS was read briefly, but more emphasis was given to the pathways and sidewalks, rather than to the stress indicated by COMPASS and highlighted by numerous residents during the community comment section of the meeting. The Planning & Zoning Commission’s recommendation for denial stemmed from the COMPASS comment that the Subdivision would put “stress” on pedestrian and bicycle activity in the area and because Dewey Avenue was missing sidewalks at multiple locations (p. 13, P FCO).

While the FCO claims that the development will “increase the quality of life and general welfare of the city” (p.9, Goal 4 FCO) the 104 individuals filing this appeal do not believe this is true given that the only way into and out of this new subdivision is through two existing subdivisions, rather than through a main street like the majority of other subdivisions built. This will increase traffic substantially through two subdivisions with many small children. Studies from 2017 have shown that each home takes roughly 5 trips a day one way (energy.gov). Roughly 250 more cars will be driving through these two subdivisions daily. Those on this reconsideration, not directly in the neighborhood, are concerned with increased traffic in general within the town.

The Planning and Zoning Commission recommended denial of the preliminary plat application on February 14, 2022 “until Developer and City administration can devise a plan to make Dewey Avenue safer for pedestrians and vehicle traffic.” The FCO states that when Council zoned the development R-3, it should have considered the impact of traffic on the surrounding area at that time. The other reason for the lack of requiring Dewey to be improved is that the City generally does not require a Developer to improve frontage on other property that the developer does not own.

We as concerned residents of Middleton want to make sure that roads are safe for our children walking to school. Safety should come before continued development and more children walking on unsafe roads. Other communities will halt a development, even part-way through, if safety concerns are brought up about certain roads. It is concerning that the remedy for this issue raised by Planning and Zoning, which ultimately led to the denial on February 14th, is that this should have been considered when zoning the property. In other words, though there is nothing, we as a community can do about it now. We want to live in a community where the safety of our children and residents comes before continuing to add more homes and people. By not addressing unsafe roads for this development and future

developments, it simply creates safety concerns for a larger group of Middleton residents. We are requesting that Council come up with a plan to remedy some of our unsafe roads prior to continuing to approve more subdivisions.

According to the Conclusions of Law within the FCO, Council has the authority to approve or deny the application, with or without conditions. We as members of the Middleton community are requesting that Council deny (or approve an application with conditions) when there are clear safety concerns being voiced by the community, as is the case with this application.

On page 1 of the FCO under section B, number 6, it states that "the proposed development will not impose expense upon the public." Letters written (FCO p.24 Exhibit D) into the P&Z meeting and statements made at both the P&Z and City Council meeting indicated that the development would cause further water drainage problems for residents at 507 Triumph Drive and 519 Triumph Drive. Please see letter by Adalpe Landscape (Request for Reconsideration Exhibit CC) confirming increased cost by these residents if the developer does not agree to work with them.

Another deficiency to this Conclusion of the Law (FCO pg.1, B6) is concerns brought up before P&Z and City Council about was historical information about the Middleton Mill Ditch giving way, which would undoubtedly impose expense upon the homes built directly below the Canal. We are recommending that an Geotechnical Survey be performed to look into the integrity of this canal before building homes below it and shared with the public.

### **Cul-de-Sac Vs. Dead End Road**

From the FCO on page 6, Section F, the City Engineer has required the Applicant to terminate W. Millstone Street into a Cul-de-Sac rather than allowing access directly on Middleton Road. It was stated Middleton Road is a minor arterial, which requires access to be limited to keep traffic flowing and also stated the Millstone access was only a few feet south of the Triumph Drive access, creating a dangerous traffic conflict.

From page 63 of the FCO, in the initial planner comments document, point number 10, The City will not allow access from Peregrin on to Middleton Road. It is an arterial, and no new approaches are allowed. Additionally, it is too close to Triumph Drive approach, so it is unsafe. Point number 11 asks developer to rename Peregrin now that it will not be a through road.

Restating from the FCO on page 12, section J, point a and b, there were numerous comments received from surrounding landowners and occupants, in which primary comments were:

- a. Subdivision will cause additional traffic
- b. Do not want traffic to travel through Kennedy Meadows and Mountain View Subdivisions

We are in disagreement with the City Engineer's assessment above for a couple of reasons:

1. Reasoning for City not allowing access from Peregrine onto Middleton Road is no approaches are allowed because Middleton Road is an Arterial, however, Peregrine is already open on the other side of Middleton Road. Only having two access points in the Middleton Mill subdivision creates greater safety concerns for the residents who live along the non-arterial roads. Additionally, there was no additional traffic study conducted on Middleton Road by the City Engineer or Developer.
2. The road labeled as W Millstone Street is defined as a Dead End Road per MCC 5-4-10-2.F. Based on this definition, the city is granting a variance in their own code and has not stated this variance in the FCO and it has not been reviewed through due process within the Governing Bodies.
  - a. Codes are written to be followed and making waivers on variances MCC 1-15-2, is not in the best interest for the health and welfare of the residents of Middleton, especially when the waiver hasn't considered safety ramifications.

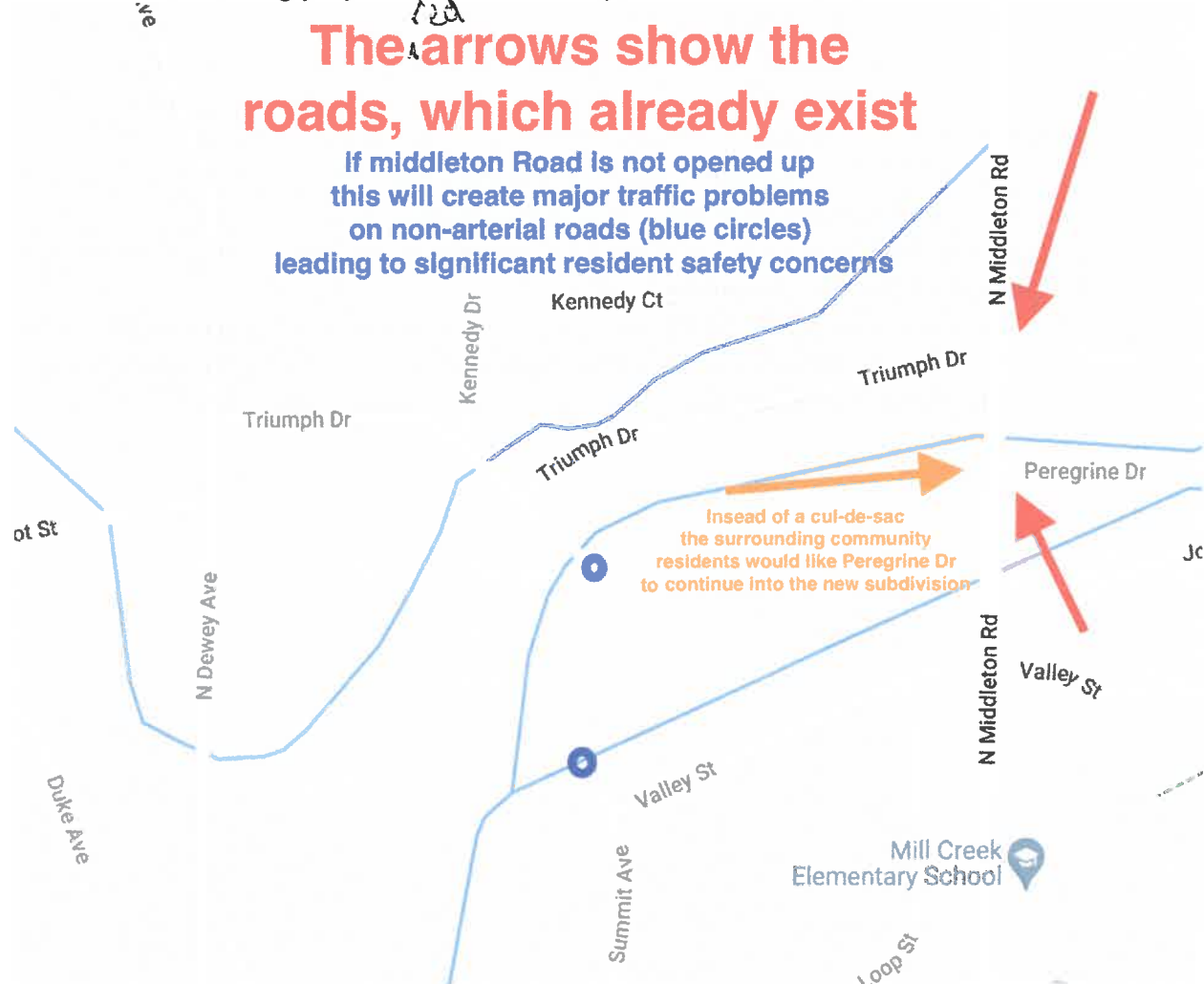
Current FCO image from page 6:



(See Exhibit AA in Request for Reconsideration on additional page for larger image)



The orange arrow suggests Peregrine Road continues into Middleton Mill Subdivision, which is what is being proposed within this request for reconsideration:



(See Exhibit BB in Request for Reconsideration on Additional page for larger image)

MCC 5-4-10-2. E and Per MCC 5-4-10-2. F pasted below for reference:

MCC 5-4-10-2. E. Cul-De-Sac Roads: Cul-de-sac roads shall terminate in a circular turnaround with a right-of-way radius of at least fifty feet (50'). The City may approve an equally convenient form of turning space where extreme conditions justify. The maximum length shall be six hundred feet (600') from the entrance to the center of a turnaround.

MCC 5-4-10-2. F. Dead End Roads: Dead end roads will not be approved except in locations designated by the City as necessary to future extensions in development of adjacent lands. In any case, a dead end road serving more than four (4) lots shall provide by easement a temporary turning circle with a fifty foot (50') radius or other acceptable design to accomplish adequate access. Turnaround to be improved with an all weather surface meeting the requirements of the International Fire Code.

Additionally, we have serious concerns for the City of Middleton favoring developers over the citizens of Middleton. We have concerns based on the discrepancies between the initial planner comments and the 2<sup>nd</sup> round planner comments from the FCO. We do not believe the best interests of the citizens of Middleton are being served. Please review the correspondence below. The citizens of Middleton would like reasonable explanations as to how the city can simply "take care of" a legal issue in regards to illegal lots splits, without consent of the property owners. These specific parcels belong to parties at 507 and 519 Triumph Drive.

From page 63 of the FCO in the initial planner comments point number two dated 12/16/2021, it is stated specifically to the applicant –

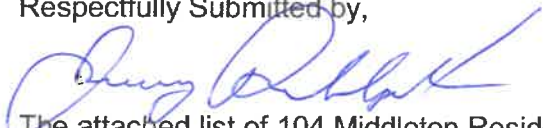
You will have to include the two illegal lot split parcels (R3388801 and 33888010A0) in your preliminary plat. There appears to be two separate illegal lot splits from 2016, and the City will not recognize the parcels regardless of the fact that they have parcel numbers. The two small parcels are still considered part of Parcel No. R33888. You will need to provide access and utilities to the two parcels on your pre-plat. If you cannot get the owners to join the plat, the City "may" be satisfied with an affidavit from the owners of the respective lots stating that they understood when they bought their lots they were buying illegal parcels. Without either of these solutions, the preliminary plat cannot proceed.

From page 66 of the FCO in the 2nd Round Planner comments point number 1 dated 12/29/2021, it is stated specifically to the applicant –

1. City will take care of 2 non-conforming lots to the north, and it is no longer a problem for this development.

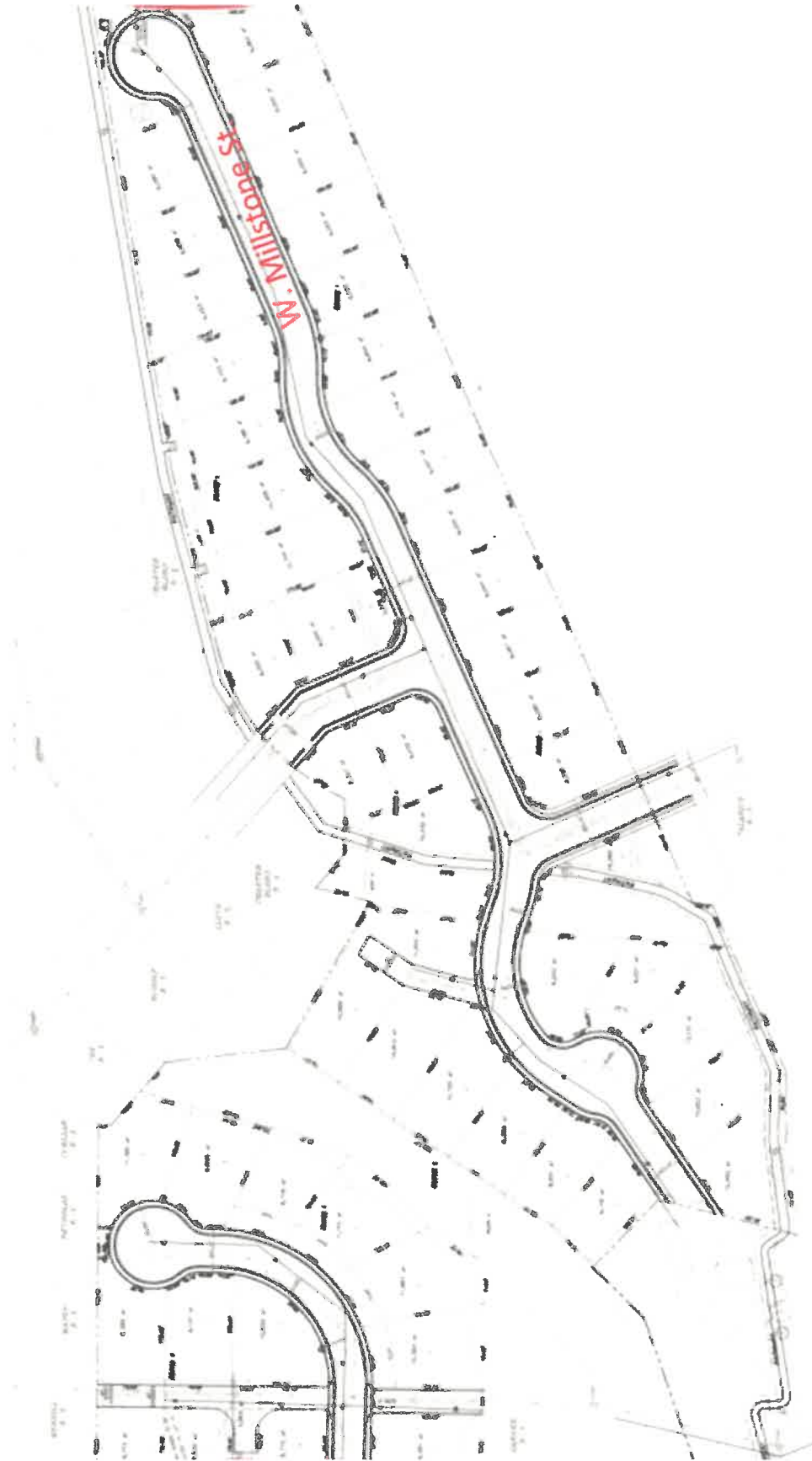
We appreciate your request for reconsideration and sincerely hope the City will take action to work in the best interest of its citizens.

Respectfully Submitted by,

 ON BEHALF OF  
The attached list of 104 Middleton Residents concerned with this subdivision  
and greater community without proper infrastructure in place

# EXHIBIT AA

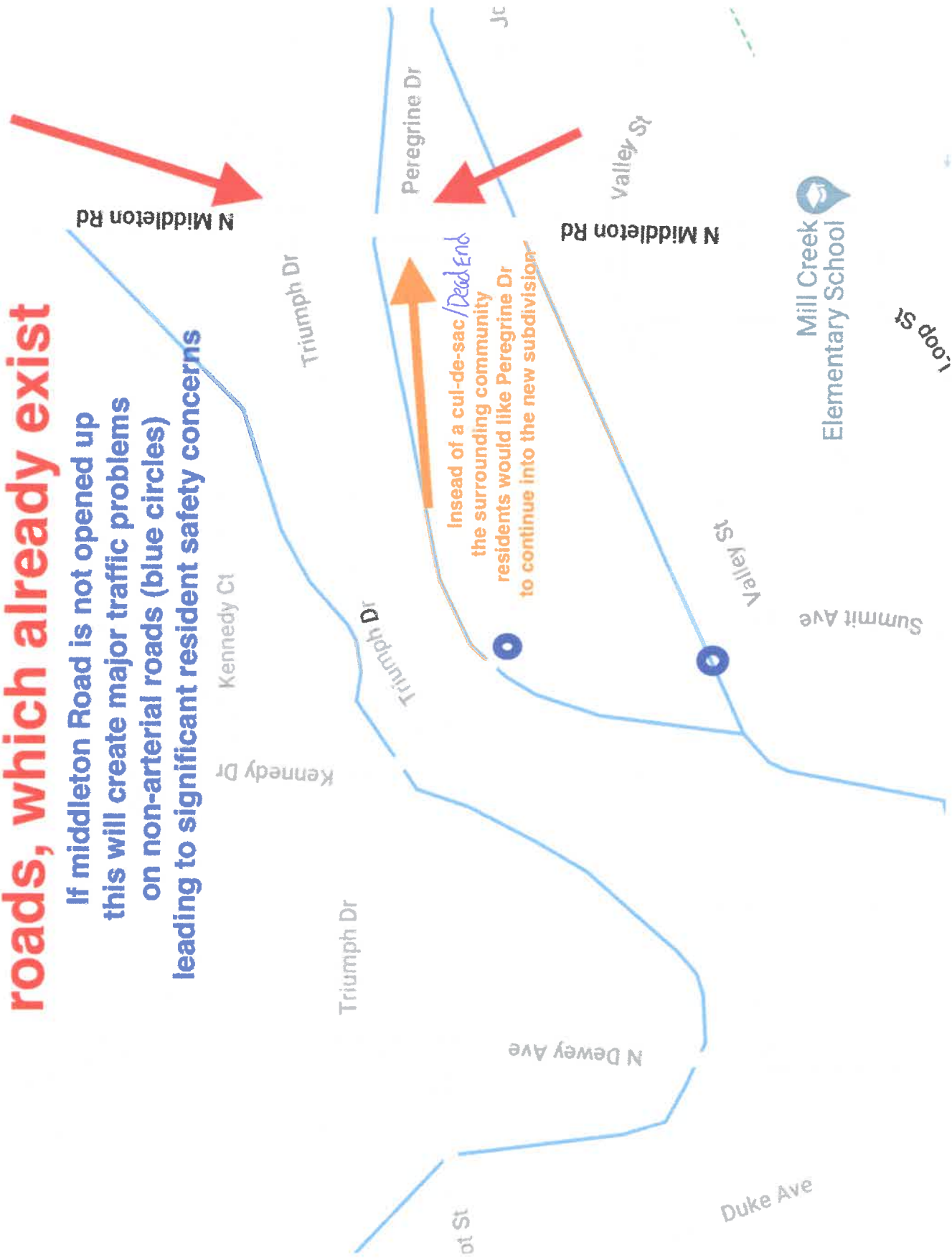
Current proposal  
from Developer



RED

## The arrows show the roads, which already exist

If Middleton Road is not opened up  
this will create major traffic problems  
on non-arterial roads (blue circles)  
leading to significant resident safety concerns







# Middleton School District #134

**Marc Gee**  
Superintendent

**Lisa Pennington**  
Assistant Superintendent

## Middleton School District #134

### City of Middleton--Public Hearing Notice Response

#### General Response for All New Development

Middleton School District is currently experiencing significant growth in its student population. As it is now, we have 2 of our 3 elementary schools over capacity (2 portables at Mill Creek, 3 portables at Heights Elementary) with more coming. We are nearing capacity, but have not superseded at this point, at our high school and middle school. As it stands now there is a need for additional facilities in our school district, primarily at the elementary grades. However, we have significant concerns of the continued growth and our ability to meet the future facility needs of our district at the secondary level (Middleton Middle School and Middleton High School).

We are in process of having a demographic study performed for our school district boundaries and preliminary data suggests that for every new home we could expect between 0.5 and 0.7 (with an average of .559)\*\* students to come to our school. That is the factor/rate we use to make our projection of student impact for each development.

We encourage the city to be judicious in their approval process recognizing that each new development brings new students to our school and will increase the burden placed on taxpayers within the school district. New facilities, primarily an elementary school, are needed now, but additional students could continue to increase that need.

*\*\*Please note a change in this rate from previous correspondence*

#### The Mill at Middleton Subdivision

Students living in the subdivision as planned would be in the attendance zones for both Middleton Heights and Mill Creek Elementary school. With 50 lots, we would anticipate, upon completion, an increase of 25-35 students between Middleton Heights Elementary, Mill Creek Elementary, Middleton Middle School, and Middleton High School.

In addition to the increase in student population, no bussing would be provided for elementary school students. As such, it would be important that the developer include plans for sidewalks connecting to the existing sidewalk system so that students have a safe passage to school. (Bussing would be provided for Middle and High School students)

5 South Viking Avenue  
Middleton, ID 83644

(208) 585-3027  
msd134.org

# ~~EXHIBIT "D"~~

EXHIBIT CC

May 4, 2022

To The City of Middleton:

RE: Middleton Mill Infill Subdivision, supporting document for appeal on Behalf of Dr. Kylie Billingsley  
Jeremy Rudolph and additional residents of Middleton

Dear City Council and Planning and Zoning Commission –

For the record, we live at 507 Triumph Drive, Middleton Idaho, 83644 and own three additional parcels at 424 Boise Street, Middleton, Idaho, 83644.

We wanted to inform you, we recently moved due to many reasons including but not limited to our son being accepted into a new school with enrollment capacity, the growth of Middleton and an unmanageable water issue on the back parcel of our property in the summer months.

We wanted to specifically inform you of the water issue in our backyard, which we had evaluated by Aldape Landscaping in early November 2021. This water issue occurred specifically once the canal was turned on and slowly became more of an issue as the summer continued. During the time this issue was in place, mainly in the summer months when the canal was on, we were unable to enjoy approximately 35-40% of our main level back yard area due to the water level being approximately 4 inches high in areas.

We were informed by the Aldape team, that the issue stemmed from two places, which is believed to come from the Canal through seepage of the bank as well as the adjacent Mill parcel directly behind our property. The water issue was specifically noticeable from the parcel behind our property. Aldape shared with us as building occurs on the infill property the water problem would be worse and the issue could never be rectified unless we were to spend approximately \$8,000 to build a drainage system, plus additional re-routing of sprinkler and irrigation costs at an hourly rate.

At the time, we worked with our former neighbors Richard and Jennifer Lloyd at 519 Triumph Drive, who also had received the same information from Aldape Landscaping at or around the same time. They received a quote as well for the same type of drainage system, which would connect into ours and flow into the creek, which we understand the developer is planning to pipe where it was to be connected. We discussed with the neighbors and Aldape and mutually decided to wait until the Spring / Summer of 2022 prior to embarking on this project.

In addition to our former neighbors at 519 Triumph Drive, many other neighbors have moved out of Kennedy Meadows subdivision between December 2021 to date. We respectfully request your consideration for imposition of an amicable solution for the developer to take responsibility for the current water issues caused by the Middleton Mill parcel adjacent to their home as well as our neighboring 519 home to prevent further water issues.

Thank you for your consideration,

Dr. Kylie Billingsley and Jeremy Rudolph



May 2, 2022

To The City of Middleton:

RE: Middleton Mill Infill Subdivision, supporting document for appeal on Behalf of Doctor Kylie Billingsley Jeremy Rudolph and additional residents of Middleton

Dear City Council and Planning and Zoning Commission –

We are Aldape Sprinklers, Landscape and Home Services LLC and a Licensed, Bonded and Insured, Idaho Contractor. Our Idaho Contractor Lic# RCE26760 and Idaho Public Works Lic #025215.

This letter is regarding an evaluation I had conducted for a water issue on the back of two separate properties in early November 2021 –

- Richard and Jennifer Lloyd – 519 Triumph Drive, Middleton, Idaho, 83644
- Jeremy Rudolph and Kylie Billingsley – 507 Triumph Drive, Middleton, Idaho, 83644

Each one of the properties above has approximately .25 acres on the exterior of their lots. I originally inspected and evaluated the 519 property with Michael McDonald and followed with inspection of 507 property.

For the 519 property – we determined we were going to install a drainage system to reduce surface water of approximately four inches in the backyard. This would include two dry wells, up to approximately 190ft of 4 inch perforated pipe, 80ft of solid drainage pipe, misc fittings to make necessary connections, 3ea 12in drain boxes, 2ea surface drains and 1.5yds  $\frac{3}{4}$  in drain rock. This system was meant to collect water along the south and southwest back fence, then transfer it to the drywell system. Water would then leach into dry wells into ground below hardpan soil. Additionally an overflow pipe would extend from the from the drywell system to the southeast side of the property (Shed side), to evacuate excess water.

For the 507 property – we determined we were going to install Drainage System to reduce surface water in the back yard. This included delivery of 2ea Dry Wells, up to approximately 230 ft of 4" Perforated Drainage Pipe, 120 ft of Solid Drainage Pipe, Misc Fittings to make necessary connections, 3ea 12" Drain Boxes, 2 ea surface drains and 2.5 yds  $\frac{3}{4}$ " Drain Rock. System will collect water from backyard around raised beds, then transfer it to the Dry-Well System. Water will then leach from dry wells into ground below hardpan soil. Additionally, Overflow Pipes would extend from the Dry-Well system into the 519 neighboring drainage system, to evacuate excess water.

In addition to the above, the owners request us to review the Middleton Mill property to the south to understand the source of the water issue. We looked at the field to the west as requested and could not see any specific water source that would affect either property, however it is not ruled out. We did see a broken tin pipe, which was not connected to anything. The only source that we can see is the canal at the top of the hill that is leaching down into the 519 backyard. For the ditch to the southwest on the Middleton mill property, we recommended the homeowner speak to the owner of that property and let them know that their overgrowth in that ditch is encroaching your property and it is their responsibility to keep it clean and free of debris that may affect its ability to flow. We highly recommended they specifically speak with the developer to ensure that they don't build up the land which would cause their future neighbor's lawns to drain into theirs. We believe that adding the two flow wells and the drain boxes on each property will help



alleviate all the water problems and if development does take place, the solution may have to be re-evaluated, which will incur costs on each of these homeowner locations.

Below is a map, which corresponds with the cardinal directions indicating specific information listed in the above letter:



Respectfully,

*[Handwritten signature]*

Kirk Duncan  
 Aldape Sprinklers, Landscape and Home Services

*See color map on next page*



Creek Developer  
Plans to Pipe



Triumph Dr

507 Triumph Drive●

519 Triumph Drive●

507

519

SW Adjacent  
Middleton Mll  
Property

# EXHIBIT DD

Middleton Mill Subdivision Appeal Submitted by the following residents of Middleton:			
Name	In favor of Appeal	Address	Signature
Kalle Gibson	Yes	607 Triumph Dr.	Kalle Gibson
Chris Gibson	Yes		Chris Gibson
Tianna Bartsch	Yes	673 Triumph Dr.	Tianna Bartsch
Rich Hargitt	Yes	696 Triumph Dr.	Rich Hargitt
Lisa Hargitt	Yes	696 Triumph Dr.	Lisa Hargitt
Donna Scarpelli	Yes	623 Mountain St.	Donna Scarpelli
Michael Scarpelli	Yes	623 Mountain St.	Michael Scarpelli
Cindy Haynes	Yes	682 Valley St.	Cindy Haynes
Susan Lowe	Yes		Susan Lowe
Dana Rogers	Yes	739 Triumph	Dana Rogers

Concerned w/ schools, traffic, sewage out of compliance  
 traffic, wild life  
 Policing & clearing of play



**Reconsideration submitted by the following individuals of Middleton**

<b>Name</b>	<b>Address</b>
Sharee Keeney	716 Triumph Drive
Jeff Keeney	716 Triumph Drive
Lacey Sargent	731 Triumph Drive
Lewis Sargent	731 Triumph Drive
Kim Shipherd	720 Triumph Drive
Dan Shipherd	720 Triumph Drive
Amanda Lewis	728 Triumph Drive
Dwayne Lewis	728 Triumph Drive
Don Hus	672 Triumph Drive
Teresa Wendell	672 Triumph Drive
Kaden Walker	593 Triumph Drive
Shauna Stevens	509 N. Dewey Ave
Allen L. Stevens	509 N. Dewey Ave
Linda J. Garner	419 N. Dewey Ave
Margarita Rios	321 N. Dewey Ave
Jaime Rios	321 W. Dewey Ave
Sonya Abegglen	567 Triumph Drive
Coby Abegglen	567 Triumph Drive
Amber Walker	593 Triumph Drive
James Hanger	415 Triumph Drive
Tammi Hanger	415 Triumph Drive
Randy Mason	381 Triumph Drive
Sis Mason	381 Triumph Drive
Jason Terry	406 Triumph Drive
Kym Terry	406 Triumph Drive
Amy Noyes	638 Triumph Drive
Ken Houser	625 Triumph Drive
Kathy Houser	625 Triumph Drive
Chris Albright	650 Triumph Drive
Leanne Albright	650 Triumph Drive
Rene Cobb	689 Triumph Drive
Dan Cobb	689 Triumph Drive
Brad Homan	705 Triumph Drive
Debra Bjork	708 Triumph Drive
Barbara Ehle	723 Triumph Drive
Gayla Javaux	719 Kennedy Drive
Shannon Daellerbach	518 Kennedy Ct
Todd Bristow	532 Kennedy Ct
HL Spencer	148 Kennedy Ct
Rovin Thibault	676 Kennedy Ct.
Taylor Watters	631 Kennedy Ct.

Kurt Watters	631 Kennedy Ct.
Ginger Miller	657 Triumph Dr.
Bobbi Davis	15437 Goodson Rd
Adam Madtheis	593 Triumph Drive
Juan Salinas	14160 Tara St.
Ryan Hall	388 Triumph Drive
Andrew Batch	362 Triumph Drive
Marn Merrill	614 N. Dewey Ave
Scott Kimy	511 N. Dewey Ave
Jody Lenius	475 Triumph Drive
Jason Lenius	475 Triumph Drive
Ashley Wadsworth	521 Kennedy Ct
Katheryn Daellenbach	518 Kennedy Ct
Ryan Allen	599 Kennedy Ct
Kora K Allen	599 Kennedy Ct.
Mike Hoffman	482 Valley St.
Gene F. Greer	501 Valley St
Bobbi Greer	501 Valley St.
Phillip Freeman	477 Valley St.
Jessica Schossaw	460 Valley St.
Dorothy Van Egmond	509 Summit
Mary Ellen Crossly	602 Valley St.
Erin Burbank	640 Kennedy Dr
Nate Burbank	640 Kennedy Dr
April Chainey	577 Kennedy Ct.
Kim Mountjoy	519 Triumph Dr.
Cindy Mountjoy	519 Triumph Dr.
Angie Cuellar	433 Triumph Dr.
Leslie Montgomery	19163 Convent Ln.
Kylie Billingsley	507 Triumph Drive
Jeremy Rudolph	507 Triumph Drive
Kallee Gibson	607 Triumph Drive
Chris Gibson	607 Triumph Drive
Tianna Bartschi	673 Triumph Dr.
Rich Hargitt	696 Triumph Drive
Lisa Hargitt	696 Triumph Drive
Donna Scarpelli	623 Mountain St
Michael Scarpelli	623 Mountain St.
Cindy Haynes	682 Valley St.
Mike McDougall	13037 Greenwell Ln
Wendy McDougall	13037 Greenwell Ln
Donna Rogers	739 Triumph Drive
Richard Gates	9868 Foothill Rd



Theresa Denham	25381 Kimpton Dr
Martin Denham	25381 Kimpton Dr
Zeanna Johnson	25379 Kimpton Dr
Sallyy Graf	12399 Shady Ln
Christopher Graf	12399 Shady Ln
Tara Thomas	12311 Shady Ln
Randy Zelinko	12283 Shady Ln
Lisa Enzmingo	12248 Shady Ln
Michael Brandon	24957 Mint Ln
David Salisbury	24901 Mint Ln
Kristine Salisbury	24901 Mint Ln
Teresa Taresh	13105 Greenwell Ln
Janet Gibson	945 Harvest Way
Brent Heck	13168 Greenwell Ln
Rachel Darnell	1435 W Tiller Ct
Micah Darnell	1435 W Tiller Ct
Helen O'Brian	95 Eaton Road
Susan Lowe	
Ian Vickers	518 Diamond Lake
Sarah Vickers	518 Diamond Lake

Middleton Mill Subdivision Appeal Submitted by the following residents of Middleton

Name	In favor of Appeal	Address	Concerned with ALL areas outlined in appeal	Specific Concerns/Comments
Ashtley Wadsworth	YES	521 Kennedy Ct.	YES	
Matthew Dallenbach	YES	518 Kennedy Ct.	YES	
Samuel Dallenbach	YES	518 Kennedy Ct.	YES	
RYAN HUE	YES	519 KENNEDY	YES	
Kara Livingston-Hill	YES	509 Kennedy Ct.	YES	
Niko Hoffman	YES	482 Valley	YES	
Gene F. Greer	YES	501 Valley St	YES	
Bobbi Greer	YES	501 Valley St	YES	
Phillip Freeman	YES	477 Valley St	YES	
Jessica Schwan	YES	400 Valley St	YES	
Dorothy VanEgmond	YES	509 Summit	YES	
Manuela Crossley	YES	602 Valley St	YES	
Carin Burkink	YES	640 Kennedy Dr	YES	
Nate Burbank	YES	640 Kennedy Dr	YES	
April Chainey	YES	577 Kennedy Ct.	YES	
Kim Mountjoy	YES	519 TRIUMPH	YES	
Cindy Mountjoy	YES	519 TRIUMPH	YES	
Angie Cuellar	YES	433 Triumph	YES	
Leslie Montgomery	YES	19163 Convent Ln.	YES	

Angie Cuellar

(moving to Middleton)

Middleton Mill Subdivision Appeal Submitted by the following residents of Middleton:

Name	In favor of Appeal	Address	Concerned with ALL areas outlined in appeal	Specific Concerns/Comments	Signature
Laura Javary	Yes	719 Kennedy Ave	Yes		Laura Javary
Shannon Daels	Yes	518 Kennedy St	Yes		Shannon Daels
Todd Barstow	Yes	552 Kennedy St	Yes		Todd Barstow
Wesley Spencer	Yes	678 Kennedy	Yes		Wesley Spencer
Ryan Javary	Yes	676 Kennedy	Yes		Ryan Javary
Taylor Waters	Yes	631 Kennedy	Yes		Taylor Waters
Kurt Waters	Yes	631 Kennedy	Yes		Kurt Waters
GINGER MILLER	Yes	657 Triumph Dr	Yes		GINGER MILLER
Bobbi Davis	Yes	15437 Goodson Rd	Yes		Bobbi Davis
Adam Mughlia	Yes	593 Triumph Dr	Yes		Adam Mughlia
Erin Sabines	Yes	1460 TMA St	Yes		Erin Sabines
Ryan Hall	Yes	388 Triumph Dr	Yes		Ryan Hall
Johnny Hall	Yes	388 Triumph Dr	Yes		Johnny Hall
Farmer Hall	Yes	388 Triumph Dr	Yes		Farmer Hall
Andrew Batch	Yes	362 Triumph Dr	Yes		Andrew Batch
Mark Macmillan	Yes	614 N Dewey	Yes		Mark Macmillan
Scott Krinsky	Yes	511 N Dewey	Yes		Scott Krinsky
JODY LENIUS	Yes	475 Triumph Dr	Yes		JODY LENIUS
JASON LENIUS	Yes	475 Triumph Dr	Yes		JASON LENIUS

3 Family Tract - (my line in Middleton 1000)

Caldwell



Middleton Mill Subdivision Appeal Submitted by the following residents of Middleton:				
Name	In favor of Appeal	Address	Concerned with ALL areas outlined in appeal	Specific Concerns/Comments
James Hanger	Yes	415 Triumph Dr	Yes	
Tammi Hanger	Yes	415 Triumph Dr	Yes	
Randy Mason	Yes	381 Triumph Dr	Yes	
Sis Mason	Yes	381 Triumph Dr	Yes	
Jason Terry	Yes	406 Triumph Dr	Yes	
Jason Terry	Yes	406 Triumph	Yes	
Alex Terry	Yes	406 Triumph	Yes	
<del>Amy Noves</del>	<del>Yes</del>			
Amy Noves	Yes	638 Triumph	Yes	
Ken Houser	Yes	625 Triumph	Yes	
Kathy blouster	Yes	625 Triumph	Yes	
Chris Hanger	Yes	650 Triumph	Yes	
Heather Hanger	Yes	650 Triumph	Yes	
Gracie Cole	Yes	689 Triumph	Yes	
Dan Cole	Yes	"	Yes	
Gracie Hanger	Yes	705 Triumph	Yes	
Debra Hanger	Yes	708 Triumph	Yes	
Barbara Ehle	Yes	723 Triumph	Yes	

Middleton Mill Subdivision Appeal Submitted by the following residents of Middleton:			
Name	In favor of Appeal	Address	Signature
Shane Keeney	yes	716 Triumph Dr	Shane Keeney
Dee Keeney	yes	716 Triumph Dr	Dee Keeney
Lacey Sargent	yes	731 Triumph Dr	Lacey Sargent
Lewis Sargent	yes	731 Triumph Dr	Lewis Sargent
Kim Shipard	yes	700 Triumph Dr	Kim Shipard
Don Shipard	yes	700 Triumph Dr	Don Shipard
Amanda Lewis	yes	728 Triumph Dr	Amanda Lewis
Dwaine Lewis	yes	728 Triumph Dr	Dwaine Lewis
Don Hus	yes	672 Triumph Dr	Don Hus
Teresa Wendell	yes	672 Triumph Dr	Teresa Wendell
Kaden Walker	yes	593 Triumph Dr	Kaden Walker
Shauna Stevens	yes	509 N. Dewey	Shauna Stevens
Allen L. Stevens	yes	509 N. Dewey	Allen L. Stevens
Linda J. Stevens	yes	419 N. Dewey	Linda J. Stevens
Margaret Rios	yes	321 N. Dewey Ave	Margaret Rios
Jaime Rios	yes	321 N. Dewey Ave	Jaime Rios
Sony Abegyan	yes	507 Triumph Dr	Sony Abegyan
Coby Abegyan	yes	507 Triumph Dr	Coby Abegyan
Amber Walker	yes	593 Triumph Dr	Amber Walker

Concerned with ALL areas Specific Concerns/Comments outlined in appeal

Quiet traffic  
(Traffic safety)  
Table  
All



Middleton Mill Subdivision Appeal Submitted by the following residents of Middleton:				
Name	In favor of Appeal	Address	Concerned with ALL areas outlined in appeal	Specific Concerns/Comments
Rose H. GATES	YES	9868 FORTMILL	YES	CAN NEEDS A GROWTH PLAN
Helen O'Brien	yes	95 Eaton Rd	yes	What is City General Plan? Slow Growth!

*[Handwritten signatures]*

Middleton Mill Subdivision Appeal Submitted by the following residents of Middleton:

Name	In favor of Appeal	Address	Concerned with ALL areas outlined in appeal	Specific Concerns/Comments	Signature
TERESA DENHAM	Y	25351 Kimpton Dr.	1, 2, 3, 4, 6, 7, 8	Failure to respond to safety issues	Shirley Paul
MARTIN DENHAM	Y	25351 Kimpton Dr.	1, 2, 3, 4, 6, 7, 8	#5 Notable lack of transparency	Marshall Paul
Leanna Johnson	Y	25372a Kimpton Dr.	All	School crowding	Leanna Johnson
Sally Grist	Y	12399 Shady Kimpton	All		Sally Grist
CHRISTOPHER GERT	Y	12399 Shady Kimpton	All		Christopher Gert
Tara Thomas	Y	12311 Shady Ln	All		Tara Thomas
Randy Zuparko	Y	12283 Shady Ln	All		Randy Zuparko
Lisa Enzinger	Y	12248 Shady Ln	All		Lisa Enzinger
Michaela Branton	Y	24957 miniature	All	lack of transparency & charging zoning after back	Michaela Branton
David S. S. S.	Y	24901 mini	All		David S. S. S.
Justin S. S. S.	Y	24901 mini	All		Justin S. S. S.
Kyle Billingsley	Y	507 Trumpet Dr.	All	Property directly impacted by	Kyle Billingsley
Jeremy Rudolph	Y	507 Trumpet Dr.	All	"	Jeremy Rudolph
Sarah Vickers	Y	508 Diamond Lake	All	Schools + traffic	Sarah Vickers
Leann Vickers	Y	508 Diamond Lake	All	Schools + traffic	Leann Vickers

Middleton Mill Subdivision Appeal Submitted by the following residents of Middleton:

Name	In favor of Appeal	Address	Concerned with ALL areas outlined in appeal	Specific Concerns/Comments	Signature
Kalle Gibson	YES	607 Triumph Dr.	YES		Kalle Gibson
Chas Gibson	YES		YES		Chas Gibson
Tianna Bartsch	YES	673 Triumph Dr.	YES		Tianna Bartsch
Rich Hargitt	YES	696 Triumph Dr.	YES		Rich Hargitt
Lise Hargitt	YES	696 Triumph Dr.	YES		Lise Hargitt
Dana Scarpelli	YES	623 Mountain St.	YES		Dana Scarpelli
Michael Scarpelli	YES	623 Mountain St.	YES		Michael Scarpelli
Cindy Haynes	YES	682 Valley St.	YES		Cindy Haynes
Susan Lowe	YES				Susan Lowe
Dana Rogers	YES	739 Triumph			Dana Rogers

Concerned w/ Sheds traffic + Sewage out of Compliance  
 Traffic, wild life  
 Policing + clearing of property

City of Middleton  
PO Box 487  
1103 W MAIN ST  
Middleton ID 83644

208-585-3133

Receipt No: 8.000022

May 6, 2022

RUDOLPH, JEREMY

Previous Balance:	.00
GENERAL FUND - REQUEST FOR RECONSIDERATION/THE MILL AT MIDDLETON/RUDOLPH, JEREMY 01-341-002 ANNEXING, PLANNING & ZONING	320.00

Total:	320.00
--------	--------

SunWest	Check No: 282	320.00
Total Applied:		320.00

Change Tendered:	.00
------------------	-----

Duplicate Copy

05/05/2022 4:52 PM

May 5, 2022

To The City of Middleton:

RE: Middleton Mill Infill Subdivision, Additional Deficiencies and Documents for Request for Reconsideration by residents of Middleton

Dear City Council and Planning and Zoning Commission –

We as a community of 104 individuals are writing a Request for Reconsideration In response to Executed FCO with Exhibit-CC-The-Mill.pdf executed April 21, 2022. In the Matter of the Application of Wade Thomas of IAG Capital LLC and Bob Unger of Unger Enterprises for preliminary plat with respect to The Mill at Middleton Subdivision located at 0 N. Dewey Avenue (Tax Parcels Nos. 33892, 33888, and 33876).

**Additional Specific Deficiencies Highlighted in this Reconsideration:**

1. This subdivision is in a FEMA floodplain, please see exhibit EE. The FCO fails to outline flood risk mitigation measures. Due consideration was not given to flood risk for the safety of the community. The developer needs adhere to the Code and the City needs to protect possible future injury to its citizens. We would like to see due consideration provided to MCC as provided in exhibit EE and developer to provide flood risk mitigation plan to address all specific points in MCC without any special waivers from code MCC 1-15-2. Specifically related to MCC 5-4-13-2: SUBDIVISION WITHIN FLOODPLAIN: A 1 b, g, h, i C 1 a, b, C 2, D, and D 3, 6, 7, 9.
2. The subdivision has multiple private lanes, please see exhibit FF. Although private lanes are allowed in the code they have to specifically be approved. In addition, the Code also states that all lots must have 30 feet access to public right-of-way frontage. Some of the lots on the suggested private lanes do not front public right-of-way. We would like to see due consideration provided to MCC as provided in Exhibit FF and a correction provided by the developer. Specifically related to MCC 4-1-1: GENERAL REQUIREMENTS: D.
3. Requesting explanation of maintenance of Private Lanes, please see exhibit FF. The FCO does not address who is responsible for maintaining the private lanes. We would like to see due consideration provided and a determination made by the City of Middleton in regard to who is responsible for maintaining the private lanes. The City of Middleton should not maintain private lanes and this should not put any



financial burden on Middleton taxpayers. Specifically related to MCC 4-1-1:  
GENERAL REQUIREMENTS: I.

Regarding MCC 5-4-10-4: LOT REQUIREMENTS: C. Lot Access: "All lots shall front on paved public roads, and no lots shall have direct access to collectors, boulevards, or arterials, unless otherwise approved by the City." From p.5 of original Request for Reconsideration document, if W Millstone Street is opened to Middleton Road, we would like to ensure that this MCC is taken into due consideration, specifically all sections of this code. See Exhibit GG.

## FEMA Designated Flood Plain

## 3

**C. Appropriateness Of Subdivision:**

1. In determining the appropriateness of subdivision for land located within a floodplain, the commission and City shall consider the objectives of this title, and at least the following:

a. The danger to life and property due to the increased flood heights or velocities caused by subdivision fill, roads and intended uses.

b. The danger that intended uses may be swept onto other lands or downstream to the injury of others.

2. No subdivision or part thereof shall be approved if levees, fills, structures or other features within the proposed subdivision will individually or collectively significantly increase flood flows, heights or damages. If only part of a proposed subdivision can be safely developed, development shall be limited to that part and the Council shall require development to proceed consistent with the determination.

D. Floodproofing Plans: Floodproofing plans must be individually approved by the City upon recommendation from the commission before such uses are constructed. Floodproofing may include, but not be limited to, the following:

2. Installation of watertight doors, bulkheads and shutters or similar methods of closure.

3. Reinforcement of walls to resist water pressure.

4. Use of paints, membranes or mortars to reduce seepage of water through walls.

5. Addition of mass or weight to structures to resist flotation.

6. Installation of pumps to lower water levels in structures.

7. Construction of water supply and waste treatment systems so as to prevent the entrance of floodwaters.

8. Installation of pumps or comparable facilities for subsurface drainage systems to relieve external foundation wall and basement flood pressures.

9. Building design and construction to resist rupture or collapse caused by water pressure or floating debris, including, but not limited to, the provision of engineered flood openings.

# Exhibit FF

## Relevant to MCC 4-1-1: GENERAL REQUIREMENTS

### 4-1-1: GENERAL REQUIREMENTS:

A. Building Permit Required; Exceptions: No structure or accessory structure over two hundred (200) square feet shall be constructed, remodeled, renovated, or added to within the City of Middleton without first obtaining a building permit and paying the established fees.

1. Exceptions:

- a. Replacing or upgrading exterior glass, without changing the frame.
- b. Removal of asphalt shingles and replacing with same roofing type without altering or repairing of existing sheeting.
- c. Adding a second layer of asphalt shingles over an original layer of asphalt shingles.
- d. Repairing and replacing individual shingles and/or roofing tiles.
- e. Residential fencing that complies with this Code.
- f. Replacing cabinets without changing plumbing or electrical.
- g. Repairing, but not replacing, existing plumbing fixtures.
- h. Contact City building official for other exemptions.

B. Certificate Of Occupancy: The building official shall not issue a certificate of occupancy for a building until all necessary subdivision infrastructure improvements have been constructed and accepted by the City, and debris has been removed from subdivision vacant lots. A certificate of occupancy will not be issued until any damage to public improvements by a homebuilder is repaired at the home builder's expense.

C. Stamped Plans: All plans for public, commercial, industrial and multi-family buildings exceeding four (4) dwelling units must be stamped by a licensed architect and/or a licensed engineer.

D. Subdivided Lot: No residence or commercial building shall be erected or moved onto any lot unless said lot has been legally subdivided and has thirty feet (30') of frontage on a public right-of-way and meets all the requirements of title 5 of this Code.

E. Traffic Impact Analysis: The City may require an applicant, at the applicant's expense, to conduct a traffic impact analysis for any commercial or industrial use requiring a building permit.

F. Address Numbering: All residential, commercial and industrial buildings within the City shall be numbered with an address assigned by the City. Numbers on residential buildings shall be a minimum of four inches (4") in height. Numbers on commercial and industrial buildings shall be a minimum of twelve inches (12") in height. Number colors should contrast with the building color so that they are plainly visible.

G. Sewer Connection: When a new connection is made to the sewer main, a cast iron hub shall be used unless an alternate connector is approved by the City.

H. Driveways: All lots shall front upon a public road unless otherwise approved by the City. Residences having a garage shall have a hard surface of concrete or asphalt driveway and approach with a width at least equal to the garage width that extends from the garage to the abutting public road. Driveways from garages not facing the street shall be a minimum twelve feet (12') wide between the garage and publicly maintained roads.

I. Private Lanes/Alleys: Private lanes/alleys may be constructed to access single family, single family attached, and/or apartment residences. Private lanes will be reviewed on a case-by-case basis and must be specifically approved by the city.

## Exhibit GG

### **5-4-10-4: LOT REQUIREMENTS:**

A. Lot Design: The lot size, width, depth, shape and orientation and minimum setback lines shall comply with the minimum requirements of the zoning regulations of the City as shown in section 5-4-1, Table 2 of this chapter. Lot lines shall be at right angles from the front, side and back property lines, unless otherwise approved as part of a preliminary plat.

B. Buffers: Lots along the roads identified in subsection 5-4-10-2D of this chapter shall conform to the traffic buffer requirements (see section 5-4-10-6 of this chapter).

C. Lot Access: All lots shall front on paved public roads, and no lots shall have direct access to collectors, boulevards, or arterials, unless otherwise approved by the City.

D. Flag Lots: Flag lots are prohibited unless allowed by the city as part of a preliminary plat. When a flag lot is allowed, the minimum lot frontage to a public road shall be twenty feet (20'), and the minimum lot width and setbacks are measured from where the lot widens for a building.

(Ord. 588, 3-1-2017; amd. Ord. 600, 12-20-2017; Ord. 609, 7-3-2018; Ord. 620, - -2019)

Amending from initial submission, resident Susan Lowe did not have an address listed, this amendment corrects her address from null to 1130 La Reata Way.

Respectfully Submitted by,

Jeremy Rudolph on behalf of:

The attached list of 104 Middleton Residents concerned with this subdivision and greater community without proper infrastructure in place from original submission



# Request for Reconsideration

## Middleton Mill Subdivision City Council Meeting 6-1-2022

1

**Letter from Greater Middleton Parks & Rec Department (GMPRD)**

From: Julie Corlette [jcorlette@gmail.com](mailto:jcorlette@gmail.com)  
 Sent: Wednesday, March 23, 2022 12:39 PM  
 To: Jessica Reynolds [jreynolds@middletoncity.com](mailto:jreynolds@middletoncity.com)  
 Cc: [jcorlette@gmail.com](mailto:jcorlette@gmail.com)  
 Subject: Re: Agency notice - CC The Mill at Middleton

Good morning Jessica,

We wanted to reach out to you and let the City of Middleton, the Mayor, and the Councilman Board know that GMPRD is taking a stance on the growth happening in Middleton and the surrounding areas. We are opposed to any further developments coming into Middleton at this time. Not only are the parks and recreation districts affected, but the school district as well, are struggling to keep up with the growth. The legislature has not added parks and recreation districts, nor school districts to the local verbiage, allowing the impact fee funding to help incur the costs from the additional growth happening around the city.

We are seeing high numbers of registrations at our sporting events coming from out of state. We have multiple sports clubs and recreation programs needing grass space to play on. We are using an outdated building to play sports in one gym and could use at least two more gyms. We are also seeing higher vandalism this year. We have already spent over \$3,000 dollars on new camera systems at our parks and buildings to try to keep up with the increase in crime in our little town. Last year we were at 419% over budget for vandalism - spending almost \$900 dollars on repairs. This year alone we are already at 110% of our increased vandalism budget, spending over \$550 dollars on repairs thus far. However, in 2019 we only used 12.9% of our vandalism repairs budget. Spending only \$25 dollars on repairs. These numbers alone speak VOLUMES as to what is happening in our area and the negative impact our growth will continue to have, especially on our youth. Having positive sports programs, open play space, and local community classes helps keep kids out of trouble. We are outgrowing our resources at a record pace!

In order for growth to continue and to gain our support, developers will have to show us in some way to address growth related issues and problems.

Thank you for listening to our concerns.

Kind Regards,  
 Julie

Julie Corlette  
 District Clerk 2019-  
 Greater Middleton Parks and Recreation District  
 112 S. Washington Ave., Middleton, WI 53544  
 208-585-3861  
[jcorlette@gmail.com](mailto:jcorlette@gmail.com)

4

# Facts

- February 14, 2022 - The Planning and Zoning Commission recommended denial of the preliminary plat application on February 14, 2022 "until Developer and City administration can devise a plan to make Dewey Avenue safer for pedestrians and vehicle traffic."  
**3 Deny, 1 approve**
- April 6, 2022 - The City Council approves Preliminary Plat -  
**2 Approve, 1 Deny, 1 Abstain**
- April 21, 2022 - Revised FCO is signed
- According to the Conclusions of Law within the FCO, Council has the authority to approve or deny the application, with or without conditions.
- We as members of the Middleton community are requesting that Council deny (or approve an application with conditions) when there are clear safety concerns being voiced by the community, as is the case with this application.

2



5

**Middleton School District #134**

**Letter from Middleton School District**

Middleton School District #134  
 City of Middleton--Public Hearing Notice Response

General Response for All New Development

Middleton School District is currently experiencing significant growth in its student population. As it is now, we have 2 of our 3 elementary schools over capacity (7 portables at Mill Creek, 1 portable at Maple Elementary) with more coming. We are seeing overcapacity, but have not implemented at this point, of our high school and middle school. As it stands now there is a need for additional facilities in our school district, primarily at the elementary level. However, we have significant concerns of the continued growth and our ability to meet the future facility needs of our district at the secondary level (Middleton Middle School and Middleton High School).

We are in process of having a demographic study performed for our school district. Boundaries and preliminary data suggest that for every new home we could expect between 0.5 and 1.7 (with an average of .506\*) students to come to our school. That is the factor that we use to make our projection of student impact for each development.

We encourage the city to be cautious in their approved process recognizing that each new development brings new students to our school and will increase the burden placed on taxpayers within the school district. New facilities, primarily an elementary school, are needed now, but additional students could continue to increase that need.

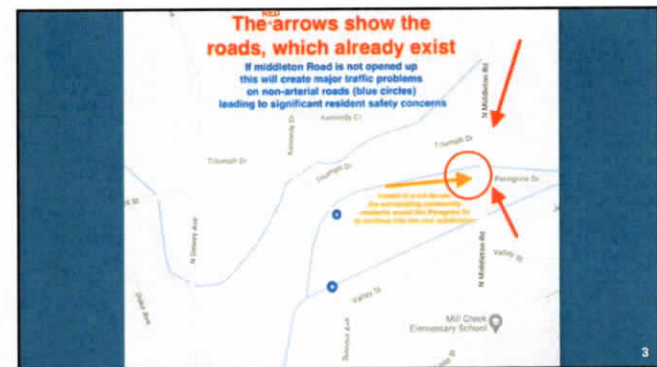
**The Mill at Middleton Subdivision**

Students living in the subdivision as planned would be in the attendance zones for both Middleton Heights and Mill Creek Elementary school. With 50 lots, we would anticipate, upon completion, an increase of 25-75 students between Middleton Heights Elementary, Mill Creek Elementary, Middleton Middle School, and Middleton High School.

In addition to the increase in student population, no housing would be provided for elementary school students. As such, it would be important that the developer include plans for sidewalks connecting to the existing sidewalk system so that students have a safe passage to school. (Housing would be provided for Middle and High School students).

\*Please note a change in this rate from previous correspondence

3



6

## City Goals & Community Impact

- Development will "increase the quality of life and general welfare of the city" (FCO p.9, Goal 4)
- Middleton Superintendent has stated schools are over capacity
- GMPRD stated the City has outgrown its resources
- COMPASS information creating stress on pedestrian (children)
- Community concerns with Traffic and Sewer

7

## Potential Expenses Imposed on Neighboring Properties

10

### Letter from Licensed and Bonded Landscape Contractor

10/10/2021

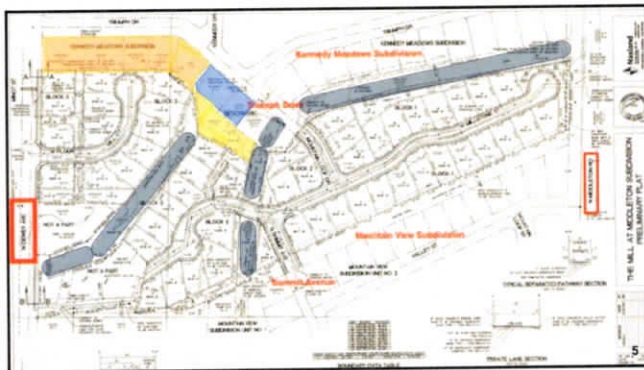
For the City of Middleton, we are writing to you regarding a drainage system to reduce surface water at approximately 100' below the surface. This would include new drains, up to approximately 200' of a 12" corrugated pipe, 80' of 6" corrugated pipe, and 100' of 4" corrugated pipe. The 12" drain would be installed in the center of the property, and the 6" and 4" drains would be installed in the center of the property. The 12" drain would be installed in the center of the property, and the 6" and 4" drains would be installed in the center of the property. The 12" drain would be installed in the center of the property, and the 6" and 4" drains would be installed in the center of the property.

**"We highly recommended they specifically speak with the developer to ensure that they don't build up the land which would cause their future neighbor's lawns to drain into theirs."**

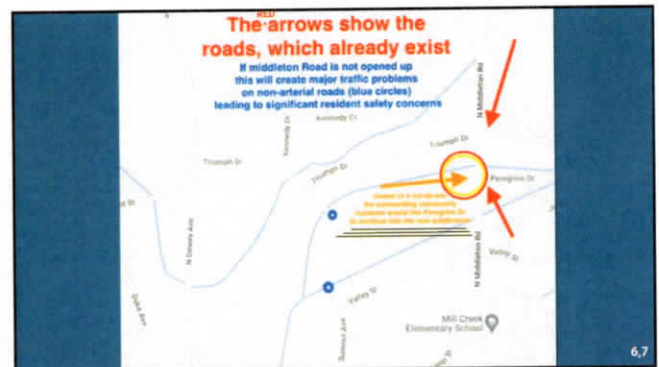
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12



### Illegal Lot Splits on Subject Property

These 2 lots were originally split illegally from original property with the city. They were recorded with the county but never recorded with the city. City provided preferential treatment to developers application to move forward with application without contacting neighboring landowners in relation to this issue.

507  
519  
SW Adjacent Middleton Mill Property  
Creek Developer Plans to Pipe

8

13

### Relevant to MCC 4-1-1: GENERAL REQUIREMENTS

**D. Subdivided Lot:** No residence or commercial building shall be erected or moved onto any lot unless said lot has been legally subdivided and has thirty feet (30') of frontage on a public right-of-way and meets all the requirements of title 5 of this Code.

**E. Traffic Impact Analysis:** The City may require an applicant, at the applicant's expense, to conduct a traffic impact analysis for any commercial or industrial use requiring a building permit.

**F. Address Numbering:** All residential, commercial and industrial buildings within the City shall be numbered with an address assigned by the City. Numbers on residential buildings shall be a minimum of four inches (4") in height. Numbers on commercial and industrial buildings shall be a minimum of twelve inches (12") in height. Number colors should contrast with the building color so that they are plainly visible.

**G. Sewer Connection:** When a new connection is made to the sewer main, a cast iron hub shall be used unless an alternate connector is approved by the City.

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**I. Private Lanes/Alleys:** Private lanes/alleys may be constructed to access single family, single family attached, and/or apartment residences. Private lanes will be reviewed on a case-by-case basis and must be specifically approved by the city.

A2, A3

16

### Flood Risk Mitigation for Current & New Owners

City of Middleton  
14417000000  
4/6, 4/7/2019  
esf

SPECIAL FLOOD HAZARD AREAS  
Regulatory Floodway (100-year AFD, 100-year AFD)

0 to 100 feet

A1

14

### THANK YOU!

17

### Relevant to MCC 5-4-13-2: SUBDIVISION WITHIN FLOODPLAIN

**5-4-13-2. SUBDIVISION WITHIN FLOODPLAIN:**

**A. Flood Area:**

1. For any proposed subdivision that is located within a floodplain, the subdivision shall provide the commission with a map of the flood area and a map of the floodplain.
2. The map of the flood area shall show the location of the flood area and the floodplain.
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### Idaho State Code & MCC

Laws in regards to Request for Reconsideration

Idaho Code 67-5535 provides the following:

(b) Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

Middleton City Code 1-14-2 provides the following:

Reconsideration Request and Appeal. Applicants, or an affected property owner as defined in Idaho Code 67-5521, shall have fourteen (14) days after a written final decision is executed to request reconsideration by the final decision maker. Such request must identify specific deficiencies in a final decision. Failure to request reconsideration may invalidate a subsequent judicial appeal. After considering the identified deficiencies, the final decision about the reconsidered request shall be issued and distributed to the applicant and to any affected property owners who have requested notice of the final decision.

18

# **EXHIBIT “C”**

**When Recorded, mail copy to**  
Middleton City Administrator  
1103 W. Main St.,  
Middleton, ID 83644

---

Space above this line for Recorder's use

## **CONSENT TO ANNEXATION AND UTILITY CORRIDOR**

THIS CONSENT TO ANNEXATION AND UTILITY CORRIDOR ("**Consent**"), is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Middleton, Idaho, an Idaho municipal corporation ("**City**") and Callister LLC, an Idaho Limited Liability Company ("**Developer**").

WHEREAS, Developer is the owner of the Subject Property located in Canyon County, Idaho and legally described and shown by Map/Exhibit in **Exhibit A** attached hereto and incorporated by this reference ("**Subject Property**"); and

WHEREAS, the Subject Property is located outside the City corporate limits but within the City's area of impact as established by Idaho Code Section 67-6526; and

WHEREAS, Developer is in the process of developing the Subject Property under the land use jurisdiction of Canyon County, Idaho, and a copy of the proposed preliminary plat is attached hereto as Exhibit "B" and incorporated in full by this reference.

WHEREAS, the parties acknowledge that the orderly development of the City will encompass the Subject Property within the foreseeable future; and

WHEREAS, both City and Developer have an interest in the thoughtful, well-planned, and coordinated growth of Canyon County and City; and

WHEREAS, Developer desires to agree and consent to the annexation of the Subject Property into the corporate limits of City (the "**Annexation**") as soon as the Subject Property becomes contiguous to City limits.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the foregoing recitals being incorporated herein as a part of this agreement, the parties agree as follows:

### **I. General**

A. In recognition of this binding commitment and consent to annexation, City shall be responsible for initiating the process to annex the Subject Property into the City, and City shall be responsible for all costs associated with the Annexation of the Subject Property except Developer, at its own cost, shall provide a legal description for the Subject Property. The City



shall have discretion over when said Annexation is initiated, and the denial of an application for Annexation by the City Council shall not void or negate this agreement or the consent to annex evidenced hereby. However, Annexation shall be initiated by the City within five (5) years of the availability of a path therefore.

B. Developer's subsequent and/or associated applications for the development of the Subject Property shall be granted no special privilege, license, priority, approval, or entitlement hereby, and shall progress in accordance with the then-current and applicable law.

C. This Consent shall be recorded in the Canyon County Recorder's Office following complete execution by the Developer and the City. This Consent shall run with the land. By the execution of this Consent, Developer is bound and likewise binds its heirs, assigns, and any and all successors in interests to the terms of this Consent.

D. Notice of the Consent shall appear on any plat recorded in the office of the Canyon County Recorder using the following language:

"The lots shown on this final plat are subject to a Consent to Annexation and Utility Corridor Agreement recorded in the Records of Canyon County, Instrument #\_\_\_\_\_."

E. Developer will provide, in good faith with City and City engineer, a utility corridor and easement for future sewer and water facilities to run "to and through" the Property as shown on Exhibit "C" attached hereto and incorporated herein by this reference. The easement corridor shall be the width of the road, but at locations outside of the roadway, the easement shall be twenty (20) feet wide. Said corridor and easement shall be shown on the preliminary plat and all recorded final plats for the subdivision project. Developer and future lot owners will not be required to hook up to City services upon annexation unless Developer and any future lot owner so chooses.

## **II. Annexation:**

A. The Subject Property is not currently contiguous to the Middleton City limits and cannot, therefore, be immediately annexed into City.

B. The Annexation shall be initiated and consummated pursuant to Idaho Code 50-222, and the same shall be a "Category A" annexation, as the term is used therein.

C. At such time as the Subject Property shall become contiguous to the City limits, the Developer, his heirs, successors, and assigns shall support the Annexation of the Subject Property in whole into the City limits to become part of the same with a R-1 zone designation. The Annexation application, and associated application for the designation of a zone to the Subject Property, may be initiated by the City. The failure of any application to result in the Annexation of the Subject Property shall not prevent or prohibit future Annexation applications under this Consent.

E. Developer, for itself and its heirs, assigns, and any and all successors in interest, forever, waive the right to object to Annexation of the Subject Property or revoke consent to the Annexation of the Subject Property.

This Consent shall become effective at the time that both parties execute the same. This Consent constitutes the legal, valid, and binding obligation of each party. The individuals executing this Consent warrants that he or she has full power and has been duly authorized to execute and deliver this Consent on behalf of the entity for which he or she signs.

Its:

**CONSENT TO ANNEXATION AND UTILITY CORRIDOR AGREEMENT, Page 3**

My Commission Expires: \_\_\_\_\_

\*SEAL

CITY OF MIDDLETON, IDAHO

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

By: STEVEN J. RULE

Its Mayor

ATTEST:

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

BECKY CROFTS, City Clerk

STATE OF IDAHO

)

) ss.

COUNTY OF CANYON

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me the undersigned, a Notary Public in and for said State personally appeared Steven J. Rule known or identified to me to be the Mayor of the City of Middleton, Idaho that executed the said instrument, and acknowledged to me that such City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO

Residence: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

\*SEAL

**Exhibit A**

**Legal Description & Boundary Map of the Subject Property**



## T-O ENGINEERS

Project No: 200194

Date: June 17, 2020

Page 1 of 1

### C4 PARCEL "A" BOUNDARY DESCRIPTION

A parcel of land, situated in a portion of NW1/4 of the SW1/4 of Section 34, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, being more particularly described as follows:

**COMMENCING** at a brass cap monument making the northeast corner of said NW1/4 of the SW1/4 (CW1/6 Corner), from which an aluminum cap monument marking the northwest corner of said NW1/4 of the SW1/4 bears N.89°40'14"W. a distance of 1317.43 feet, thence along the east line of said NW1/4 of the SW1/4 S.00°16'23"W. a distance of 225.00 feet to a 5/8 inch rebar marking the **POINT OF BEGINNING**;

- 1) Thence, continuing along said east line, S.00°16'23"W. a distance of 1037.42 feet to a 5/8 inch rebar on the north right-of-way line of Quail Haven Way;
- 2) Thence, leaving said east line and along said north right-of-way line N.89°41'52"W. a distance of 1320.54 feet to a 5/8 inch rebar on the west line of said NW1/4 of the SW1/4;
- 3) Thence, leaving said north right-of-way line and along said west line, N.00°24'52"E. a distance of 1038.05 feet to a 5/8 inch rebar;
- 4) Thence, leaving said west line and along a line parallel with said north line of NW1/4 of the SW1/4 and 225.00 south when measured perpendicular thereto, S.89°40'14"E. a distance of 1317.98 feet to the **POINT OF BEGINNING**.

Said parcel of land containing 31.42 acres more or less and is subject to all existing easements and/or rights-of-way of record or implied.

End of Description.







**C-4 SUBDIVISION**  
**BOUNDARY**  
**JANUARY, 2022**



**Exhibit B**

**Preliminary  
Plat or Site Plan**



PRELIMINARY PLAT FOR:  
**C-4 SUBDIVISION**  
COVER

**Exhibit C**  
**Utility Corridor**

EXHIBIT "C"

PROPOSED UTILITY CORRIDOR



PROPOSED UTILITY CORRIDOR



# **EXHIBIT “D”**

# **Memorandum of Understanding - Leading Idaho Local Bridge Program**

Between

## **LOCAL HIGHWAY TECHNICAL ASSISTANCE COUNCIL**

And

\_\_\_\_\_, hereinafter referred to as **LOCAL HIGHWAY JURISDICTION or LHJ**

### **Purpose:**

The purpose of this memorandum is for the Local Highway Technical Assistance Council (LHTAC) and local agencies with bridges in poor or posted condition to apply for award, manage and track projects in the Leading Idaho Local Bridge (LILB) Program. This program is intended to economically and efficiently fully fund local bridges and not serve for local match or supplemental funding on any federally funded projects.

### **Legal Authority:**

Senate Bill 1359 (2022), an appropriations bill, was signed by the Governor on March 16, 2022 funding the Strategic Initiatives Program (Idaho Code 40-719) with up to \$200 Million intended for local bridge maintenance. LHTAC has created a Leading Idaho Local Bridge Program from this legislation.

### **Procedures:**

LHTAC will conduct a two month call for applications from April 11 to June 8, 2022. Local agencies with eligible bridges may apply for a maximum of half of their eligible bridges (rounded up) or two (2) eligible bridges, whichever is most. Applications will be scored on technical information (75%) and local knowledge (25%). The technical information is extracted from bridge inspection reports and bridge locations and the right of way status is reported by the **LHJ**. The **LHJ** will also provide four additional points of information on the importance of the bridge. LHTAC staff and Council will score the applications after the application period closes with LHTAC staff presenting the scores and recommendations to Council in an open meeting.

LHTAC Council will award funding to projects in up to five (5) rounds of funding. LHTAC will implement a bundled award process to accelerate delivery and complete the largest number of highest scoring projects as possible. Project bundling will be utilized throughout all Rounds of funding. The rounds of funding are expected to use the following strategies:

Round 1 – High scoring projects that will have quick delivery and have limited to no barriers such as right-of-way acquisition or environmental complications. Also included in Round 1 will be bridges with low-cost repairs, bridges that have 50% or more design completed, and/or projects that are material purchase only.

Round 2 – High scoring applications that have longer projected delivery timelines.

Round 3 – Strategies to be determined.

Round 4 – Strategies to be determined.

Round 5 – Remaining funding to highest rated projects that funds the most possible projects.

As applications are awarded funding, the responsible **LHJ** will be expected to sign an individual project agreement within thirty (30) days of award by the LHTAC Council. This project agreement will have the details of funding, project roles/responsibilities and reporting milestones used for the project.

### **Responsibilities:**

Under this program LHTAC shall:

Administer the LILB program within the constraints of Idaho Code which includes soliciting for projects, reviewing the merits of applications (scoring), recommending projects and reporting progress at regular intervals.

Specific duties LHTAC will exercise for this program are:

- Overall Administration of projects from advancement of funding to completion of construction;
- Advance projects through a bundling process to increase the number of bridges awarded with the fixed funding level while considering need and use of each bridge;
- Develop a process and select engineering firms for the development of the projects awarded through the LILB program;
- Advertise and award projects through a low-bid process to construction contracting firms or;
- Authorize qualified Local Highway Jurisdictions able to demonstrate experience to self-perform construction. Eligible invoiced expenses will be limited to materials, rental equipment, traffic control, or others approved by LHTAC.

Specific duties **LOCAL HIGHWAY JURISDICTION** will exercise for this program are:

- Prioritize eligible bridges within jurisdiction and apply for funding;
- Present this memorandum and all attachments to the responsible elected officials at an open meeting in compliance with the Idaho Open Meetings requirements (Idaho Code 74-204);
- Provide a list of all applications under this program (Attachment A to this MOU);
- Provide a resolution from the responsible elected officials (Attachment B to this MOU);
- Enter into project agreements with LHTAC within thirty (30) days of award;
- Notify LHTAC in writing, via First Class Mail, Electronic Mail or hand delivered mail, the removal of any application from consideration for program funding or termination of this MOU.
- If eligible, request approval to self-perform construction.

Specific responsibilities will be formalized in each individual project agreement.

### **Financial Obligations**

**LOCAL HIGHWAY JURISDICTION** will have no financial obligation or commitment on any project until the project is advanced for funding. The details of financial obligations will be contained in the individual project agreement related to future maintenance, additional scope and project termination.

No advance funds, deposits or local match is required for this program. However, if a local sponsor would like to increase the scope of an individual project, this will be addressed during project agreement execution and the **LHJ** will be responsible for any scope beyond the proposed LHTAC scope. Any additional scope that could encroach on delivery schedules may negatively impact the advancement of the project. LHTAC reserves the authority to accept or deny any additional scope proposed by the local agencies. Funds for additional scope will be collected at the execution of the project agreement.

### **Limitations**

Nothing in the Memorandum of Understanding between LHTAC and **LHJ** shall be construed as limiting or expanding the statutory or regulatory responsibilities or authorities of any involved individual in performing functions granted to them by law; or as requiring either entity to expand any sum in excess of its appropriation. Each and every provision of this memorandum is subject to the laws and regulations of the State of Idaho and the United States.

Nothing in this Memorandum of Understanding shall be construed as expanding liability of either party. In the event of a liability claim, each party shall defend their own interests. Neither party shall be required to provide indemnification of the other party.

### **Effective Date**

This Memorandum shall become effective upon signature of the LHTAC Administrator or delegate and will remain in effect until the termination of this MOU.

### **Method of Termination**

This memorandum may be terminated by **LHJ** at any time prior to the awarding of any project. After awarding of at least one (1) project, this MOU will remain in effect until completion of funded projects.

After awards, **LHJ** may terminate funded projects as outlined in future project agreements and may terminate this MOU if there are no active funded projects listed in Attachment A.

LHTAC may terminate this MOU in the event that all funding has been awarded and no additional funding is authorized by the Idaho Legislature.

This MOU will terminate upon the completion of the LILB program.

### **Amendments**

Amendments to this memorandum shall effective upon mutual agreement and written approval by the LHTAC Administrator or Delegate and the signing authority of **LHJ**.

### **Signatures**

LOCAL HIGHWAY TECHNICAL ASSISTANCE COUNCIL

By \_\_\_\_\_ Date \_\_\_\_\_  
Administrator or Delegate

Local Agency

By \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_  
Mayor, Chairman or Delegate

## Attachment A – List of Applications for the Leading Idaho Local Bridge Program

*LOCAL HIGHWAY JURISDICTION to provide a list of intended applications including the bridge ID, highway name/number and if applicable bridge name*

[illegible]



Attachment B

Leading Idaho Local Bridge Program – Local Highway Jurisdiction Resolution

Res. No \_\_\_\_\_

WHEREAS, SB 1359 became law on March 16, 2022 appropriating funding for the repair and replacement of local bridges in poor and posted condition; and

WHEREAS, **LOCAL HIGHWAY JURISDICTION** has presented the Leading Idaho Local Bridge Program Memorandum of Understanding at an open meeting in accordance with the Idaho Open Meetings Law; and

WHEREAS, **LOCAL HIGHWAY JURISDICTION** has prepared and presented the listed applications in Attachment A at an open meeting in accordance with the Idaho Open Meetings Law; and

NOW, THEREFORE BE IT RESOLVED, that **LOCAL HIGHWAY JURISDICTION** is granted authority by (BOARD or COUNCIL NAME) to enter in the Leading Idaho Local Bridge Program Memorandum of Understanding with the Local Highway Technical Assistance Council.

I hereby certify that the above is a true copy of a resolution passed at a public meeting held in accordance with the Idaho Open Meetings Law, by LOCAL HIGHWAY JURISDICTION \_\_\_\_\_ day of \_\_\_\_\_, 2022

Signed \_\_\_\_\_ of **LOCAL HIGHWAY JURISDICTION** \_\_\_\_\_  
Seal (Mayor, Chairman, or Delegate) (Signature)

# **EXHIBIT “E”**



332 N. Broadmore Way  
Nampa, ID 83687  
Ph: (208) 442-6300 • Fax: (208) 466-0944

## T·O ENGINEERS

### ADDITIONAL SERVICES AUTHORIZATION

(Please expedite return of signed form.)

DATE: May 26, 2022

Contract/Project No: 220144 Project Name: Middleton Headworks Maintenance  
Name of Client: City of Middleton  
Address: 500 12<sup>th</sup> Avenue South  
City/State: Middleton, ID Zip Code: 83644 Telephone: (208) 585-3133  
Description of Services to be Provided by Consultant: See attached Scope of Work.

#### T-O Billing Reference Description:

Budget Estimate: \$14,245.00 ☐ T & M (Estimate Only) ☒ T & M (Not to Exceed)  
(Additional services are performed on a time and materials basis unless otherwise shown in writing)

Additional Service Requested By: City of Middleton  
Additional Service Request Rec'd By: Kasey Ketterling via ☒ Verbal ☒ Written  
Special Conditions: See attached Scope.

The Terms and Conditions of the original contract, City of Middleton Headworks Maintenance, dated March 16, 2021, above are incorporated and made a part of this Agreement.

Offered by T-O Engineers (Consultant):

Accepted by Client:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name/Title \_\_\_\_\_

Printed Name/Title \_\_\_\_\_

\_\_\_\_\_  
Name of Client

- ☒ Work will not proceed until authorization is signed by client  
☐ Work will proceed based on Client's verbal and or email authorization



## **T-O ENGINEERS**

CONSULTING ENGINEERS, SURVEYORS AND PLANNERS  
332 N BROADMORE WAY  
NAMPA, IDAHO 83687  
208-442-6300 • FAX 208-466-0944

***ASA #1 - Scope of Services  
City of Middleton  
May 26, 2022***

---

Project Number: 220144

Project Name: Middleton Headworks Maintenance

Consultant Company Address: T-O Engineers, 332 Broadmore Way, Nampa, Idaho 83687

Consultant Project Manager/Contact Information: Kasey Ketterling, PE, 208-442-6300

Contract Amount: \$14,245.00 (T/M NTE)

### **Project Understanding**

A concrete forensic evaluation was performed on the existing screening vault adjacent to the lift station and signs of deterioration were observed. The City of Middleton has requested the screening vault be coated. The original scope includes the creation of a bid specifications for influent bypassing, coating, servicing of the Huber screens, and replacement of conduit within the screen vault. Consultant will create and provide support of bid documents and bid process.

This Additional Services Authorization, ASA No. 1, scope includes adding a 4<sup>th</sup> pump to the existing influent Lift Station. The 4<sup>th</sup> pump will require pump install, associated piping and electrical, and relocation of the existing sampler unit. The City will provide the pump.

### ***General Assumptions:***

- a. This work will be added to the bid package being prepared under the original contract.
- b. Electrical connection and verification will be placed on the contractor and is not included in this scope.
- c. Existing spare pump and existing pipe sizing will be utilized, and no capacity or sizing verification is included in this scope.
- d. City staff will assist in bypass design for coordinating impact to the plant.

**Scope of Work Services:**

Items 1-2 are included in the original contract. Additional work is described below.

**1. Specification Document**

**1.1. Design Plans & Specifications**

CONSULTANT will prepare a technical specification and pipe support details for installation of the 4th pump and associated piping, including relocation of existing sampler to a prefabricated 2-foot high pedestal.

CONSULTANT will prepare electrical drawings and specification for the installation of the 4<sup>th</sup> pump, including associated electrical for the relocation of existing sampler.  
(Attachment B - Control Engineers Scope)

**2. BID ADMINISTRATION AND SUPPORT**

Bid Administration and Support is provided under a time and materials basis when requested by the City.

2.3. Bid Administration – CONSULTANT will review bid comments, prepare addendum, and advise CITY on bid inquiries. Assume one (1) addendum will be issued.

**ASA Revised Project Schedule**

<b>Item</b>	<b>Expected Completion</b>
Signed Contract:	April 7, 2022
Signed ASA Contract:	June 2, 2022
City Submittal:	June 24, 2022
City Approval:	July 8, 2022
Final Plans & Spec:	July 22, 2022
Bid Advertisement:	July 25, 2022
Bid Award:	August 17, 2022
Construction:	August-October

\* Assumed timeline based upon City review & approval

**Cost of Services:**

Services will be billed on a time and materials not-to-exceed (NTE) basis.

Attached is the labor estimate and cost summary (Attachment A).

**ATTACHMENT "A"**  
**LABOR ESTIMATE**  
**2022 Middleton Headworks Maintenance - ASA #1**

TASK AND DESCRIPTION	Project Manager Engineer	Project Engineer	Design Engineer	Structural Engineer	Survey Project Manager	Surveyor	Clerical	Electrical (sub-contract)	Expenses	subtask	Subtotal
Approx. Employee Hourly Pay Rate	\$225	\$130	\$100	\$130	\$180	\$120	\$70	Fee		Cost	Cost

	Time Estimate - Hours										
<b>1. Specification Document</b>								<b>\$9,650</b>		<b>\$9,650.00</b>	<b>\$12,395</b>
1.1 Design Planas & Specification	1	4	20							\$2,745.00	
<b>2. Bid Aministration and Support</b>								<b>\$1,850</b>		<b>\$1,850.00</b>	<b>\$1,850</b>
2.1 Contract Documents											
2.2 Pre-Bid Meeting											
2.3 Bid Administration											
2.4 Bid Opening											
<b>Total</b>	<b>1</b>	<b>4</b>	<b>20</b>					<b>\$11,500</b>		<b>\$14,245.00</b>	





ATTACHMENT "B"

May 26, 2022

Mr. Nate Runyan  
T-O Engineers  
332 N. Broadmore Way  
Nampa, Idaho 83687

RE: Middleton WWTP HW Maintenance Project Proposal

Dear Nate:

Control Engineers is pleased to provide this proposal for engineering design services in support of the City of Middleton, Idaho Headworks Maintenance Project. Based upon our discussions during our onsite meeting on May 11, 2022 we understand the project scope to include:

- Add (1) 20 HP lift pump #4 at headworks
  - Electrical & controls location plans
  - VFD schematic
  - One-line diagram
  - Generate 480V load list & confirm available utility transformer capacity
  - Add 480V panelboard – existing is full
  - Use old blower building feeder for new panelboard, refeed blower lights
- Relocate influent sampler from NE corner of building to NW
- Replace corroding conduits in HW wet well

Additional services, including PLC and HMI programming, commissioning and startup activities are not included in this proposal, but may be added as engineering services at a later date.

Task	Description	Fee
Design Engineering	All Electrical and Control System Design services for a complete and biddable project.	\$ 9,650
Construction Support	Bid selection support, RFI responses, Submittal Review, Record Documents	\$ 1,850

Thank you for your consideration and please contact me if you have any questions or concerns with this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Johnson', is written over a light blue circular stamp that contains the text 'Control Engineers, PA'.

Mike Johnson  
Project Manager

# **EXHIBIT “F”**

**Billing Address**

City of Middleton  
1103 W. Main St.  
billing@middletoncity.com  
Middleton, ID 83644  
UNITED STATES

**Delivery Address**

City of Middleton  
786 Whiffen Lane  
Middleton, ID 83644  
UNITED STATES

**OFFER:** 71009846 / V1  
Your Reference: Middleton, ID (291901)  
  
Your Reference:

Date printed: 5/18/22  
Our Reference: Cedric Anthony  
Phone: +1-704-990-2408  
Email: [Cedric.Anthony@hhusa.net](mailto:Cedric.Anthony@hhusa.net)  
  
Customer No.: 114455

Pos	Quantity	Unit	Item Description	Price USD	Total USD Tax (%)
110/1	24.00	HOURL	40001 Labor	150.00	3,600.00 0%
120/1	16.00	HOURL	40003 Travel Time	140.00	2,240.00 0%
130/1	1.00	pcs	10000002 Flight	800.00	800.00 0%
130/2	3.00	pcs	10000002 Hotel	125.00	375.00 0%
130/3	3.00	pcs	10000002 Car Rental	100.00	300.00 0%
130/4	3.00	pcs	10000002 Per Diem	65.00	195.00 0%
130/5	1.00	pcs	10000002 Rental Est. **Crane Rental 3 days**	1,500.00	1,500.00 0%
130/6	1.00	pcs	10000002 Freight Est.	1,100.00	1,100.00 0%

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Pos	Quantity	Unit	Item Description	Price USD	Total USD Tax (%)
			**Gang Box**		

Total net	USD	10,110.00
Including Sales Tax	USD	0.00
Total gross	USD	10,110.00

The quotation is subject to national or international export control regulations and embargoes or any other export restrictions.

Valid for: 90 days  
Delivery: prepaid and add  
Payment terms: Net 30 days

Best regards

Cedric Anthony  
Huber Technology, Inc.

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## Aftermarket Sales & Service Rates 2022

### Field Service Base Rates

Continental U.S., Mexico and Canada..... **\$150.00 per hour**  
 Outside Continental U.S., Mexico and Canada..... **\$226.00 per hour**

### Training

Product Training..... **\$150.00 per hour**

### Travel

Travel (time)..... **\$140.00 per hour**  
 Mileage..... **\$0.58 per mile**

### Manufacturing/Engineering Services in house

Services include failure analysis of returned hardware..... **\$145.00 per hour**

### Premium Rates

Overtime rate (in excess of 8 hours per day)..... **\$249.00 per hour**  
 Standby rate..... **Applicable base rate**  
 Double time rate (Sunday, Holiday, or in excess of 12 hours)..... **\$300.00 per hour**

### Expenses

Travel and accommodations..... **Actual cost**  
 Per Diem..... Business Rate Plan 1.. **\$60.00 per day**  
 High Cost Area Rate 2.. **\$70.00 per day**  
 Service Truck Rate ..... **\$80.00 per day**  
 Materials, Equipment Rental, Supplies..... **Actual cost plus 20%**  
 Laboratory testing..... **Actual cost plus 20%**

### Fees

Visa, work permits, taxes, user fees or special assessments, etc..... **Actual cost**

### Cancellation Charges

Prior to departure for travel expenses incurred (i.e. airline / change fees)..... **Actual cost**

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## Aftermarket Sales & Service Rates 2022

**Field service Base Rate.** Rates are calculated from the day the Service Specialist departs Huber Technology, Huntersville, North Carolina until the day the Service Specialist returns to Huber Technology, Inc., Huntersville, North Carolina. Rates include weekends and holidays. If a Service Specialist is required to travel from any other location, including, Germany the rates are calculated from when the Service Specialist departs the home office until the day the Service Specialist returns to the home office.

**Travel.** Time includes transportation to and from the airport, security clearance, time between flight changes, driving time and local travel to and from worksite. Travel time in excess of eight (8) hours may be billed at the premium rate.

**Double Time.** Any Sunday or **Recognized Huber Technology, Inc. Holiday.**

**Transportation.** The customer is responsible for reimbursing Huber Technology, Inc. for all transportation charges associated with service work. Flights will be booked as coach-tourist class unless it is unavailable. Rental car, gas, taxis, airport / hotel limousines, company or personal vehicles will be used when necessary.

**Standby rate.** Applies to the time a Service Specialist is available for work and is located at or near the job site but unable to work due to circumstances beyond his control. Time shall be considered time worked and will be charged at the applicable base or premium rate.

**Accommodations and Meals.** Meals are charged at \$60.00 per day or \$70.00 per day depending on the area (See Business Rate Plan 1 and 2). If an overnight stay is required, the customer is required to reimburse Huber Technology, Inc. for lodging charges. Hotel rooms will be booked on a business executive, single occupancy basis.

**Visa, Work Permits & Local Taxes.** The customer is responsible to pay any and all taxes, user fees or special assessments. If a visa or work permit is required before departing for an international assignment, the fee will be charged to the customer at actual cost (including any expediting charges).

**Warranties.** Per Huber Technology, Inc.'s Terms and Conditions of Sale, Huber Technology, Inc. warrants Field Service work performed at site. "Breach of Warranty" claims do not entitle the customer to refuse payment for field service work. HUBER TECHNOLOGY, INC. MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO THE DESIGN, SALE, MERCHANTABILITY OR FITNESS OF THE GOODS FOR A PARTICULAR PURPOSE OR USE EXCEPT AS EXPRESSLY SET FORTH IN HUBER TECHNOLOGY, INC.'S TERMS AND CONDITIONS. HUBER TECHNOLOGY, INC. IS NOT SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, TORT CLAIMS INCLUDING NEGLIGENCE AND STRICT LIABILITY, OR ANY OTHER THEORIES OF LAW. HUBER TECHNOLOGY, INC. IS UNDER NO EVENT LIABLE FOR ANY SPECIFIC, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS, DAMAGES, EXPENSE, INJURY, DISMEMBERMENT, OR DEATH OF ANY KIND WHATSOEVER.

**SCHEDULING – 10 Working Days Notice.** Request for field service should be made in writing (letter, fax or e-mail) to Huber Technology, Inc. at least ten (10) working days prior to the date for which services are requested. Confirmation of the service will be conveyed verbally by Huber Technology, Inc.

**Insurance.** All Huber Technology, Inc. Service Specialists are insured. Liability insurance certificates may be provided upon request by the customer in order to allow for sufficient time for document processing, the request must be made at least seven (7) working days prior to the date of services.

Huber Technology, Inc. can not offer fixed lump sum contracts for Field Service activities. The duration of site visitation is neither under our direct control nor influence, and as such we can only provide estimates of time on-site to affect the required service actions. Field service published rates and terms are valid through December 2022

### **Hazardous Locations.**

Huber Technology, Inc. reserves the right to recall its personnel if the worksite does not meet governmental health and safety standards.

**Minimum Daily Charge.** For all Field Service Base Rates or combinations of Base Rates, the minimum fee will be for eight (8) hours. If services are performed on the same day as travel, travel time will be billed in addition to service time.

**Overtime.** The overtime rate applies to work or travel in excess of eight (8) hours per day (weekdays) and all Saturday work. Workdays in excess of (16) hours are prohibited. Service specialist are NOT required to perform, and may decline, work in excess of twelve (12) hours. The overtime charge shall be at the base rate plus a one hundred percent (100%) premium.

**Recognized Huber Technology, Inc. Holidays** New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Eve and Christmas Day.

**Expenses.** The customer is responsible for ALL expenses associated with service work. All travel expenses including airfare, taxi, mileage for personal or company owned vehicles or any other chauffeured vehicle, living accommodations and meals will be invoiced. Invoices will include a cost

break-down. Copies of receipts will not be furnished unless specifically requested. Original receipts cannot be provided. Receipts for under \$25.00 cannot be provided. Use of personal or company owned vehicles will be invoice at the rate set by IRS mileage regulations.

**Payment.** All field service invoices are in U.S. Currency and all payments must be in U.S. Dollars. **Payment is due NET 30 DAYS from the date of invoice.**

**Purchase Orders.** A purchase order is required BEFORE any field service arrangements will be made. The purchase order is to be made out to Huber Technology, Inc. and must contain the following information:

- 1) Customer's name, 2) company, 3) billing address, 4) dates of service, 5) type of service requested (i.e. installation, commissioning, troubleshooting, training, etc.), 6) serial number / model number, 7) equipment purchase order number, and 8) equipment tag numbers. A "confirming-copy" purchase order must follow any preliminary arrangements. Equipment location including city, state, plant site, directions to the site, a local contact and telephone number must also be included.
  - 2) Amended Purchase Orders. An amended PO is required if services are extended beyond the cost of the original PO. If the Service Specialist is on site and an amendment is required, the PO must be completed and submitted to Huber Technology, Inc. before the Service Specialist can continue working.
- Applicable law.** Any purchase order accepted by Huber Technology, Inc. in conjunction with Field Service work, shall be deemed to have been executed, delivered and accepted in the State of North Carolina, USA and shall be governed, construed and enforced pursuant to the laws of the State of North Carolina, USA



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## Warranty and Returns Policy & Instructions

Huber Technology, Inc. ("Huber") warrants any **original** Huber part (mechanical or electrical) for a period of:

A. Twelve (12) months from the date of purchase and only when part(s) are installed by a Huber factory trained technician. Should the part(s) fail within the warranty period, a replacement shall be supplied at no cost to the owner ("Replacement Part")

1. Only valid if the product is operated in accordance with the manufacturer's instructions.
  2. The replacement part(s) must not be modified or changed in anyway.
  3. The replacement part(s) must be installed by a qualified person to the manufacturer's specifications
- Or

B. Three (3) months from the date of purchase and/or installed by a non-Huber factory trained technician.

1. Only valid if the product is operated in accordance with the manufacturer's instructions
2. The replacement part(s) must not be modified or changed in anyway.
3. The replacement part(s) must be installed by a qualified person to the manufacturer's specifications

**This warranty does not apply to any damage or defect arising out of any of the following circumstances:**

- Part(s) needing repair or replacement due to events or circumstances outside of normal use and operation of the equipment.
- Part(s) or components damaged due to power surges, short circuits, loss of power, lightning strikes, fire or water damage, vandalism, theft, or any other causes outside of normal use and operation of the equipment or that would normally be covered by casualty insurance on the equipment.
- Damage or defects caused by neglect, incorrect application, abuse, or by accidental damage of the parts or components.
- Repair or replacement of part(s) or components due to improper or negligent operation of the equipment.
- Damage or defects to the part(s), component(s), or equipment caused by the attempted repair by an unauthorized or unqualified person.

**All Huber parts warranties are non- transferable, and cannot be sold, assigned or transferred in any other way.**

This warranty of **original** Huber Service parts does not include the labor to remove the defective part nor the labor to install the new part. **All labor costs associated with the replacement of the part is the responsibility of the owner.** The request for assistance of a certified Huber technician is available upon the issuance of a purchase order by the owner. The fee for the assistance of a Huber technician includes labor (billed at prevailing Huber Field Service Base Rates) plus associated expenses for travel to and from the jobsite.

### Return of New Wear or Spare Parts:

- Any original Huber part(s) returned to Huber after a purchase order has been submitted is subject to a flat twenty percent (20%) restocking fee for each part returned.
- The customer has up to thirty (30) days to return a part from the purchase order submittal date to Huber.

**Returns will not be accepted past thirty (30) days.**

- Part(s) must be new and never installed. Any indication of wear or installation, at Huber's sole discretion, may result in the part(s) being shipped back to owner, at the owner's cost, and no credit shall be issued.

### • Exception:

The owner may exchange, without a restocking fee, if the incorrect part(s) is delivered and/or sold to the

**Offer:** 71009846  
Date printed: 5/18/22  
Page: 6 (7)

owner by a Huber team member. Huber will ship the correct part(s) to the owner expeditiously. A refund will be issued to the owner upon Huber's receipt of the incorrect part(s).

warehouse.

The customer may return, without a restocking fee, any original Huber part(s) if said part(s) was sold as part of a complete rebuild and the Huber technician concluded the part(s) were not needed. The customer has thirty (30) days from the date the service was completed. After thirty (30) days have expired, the normal Huber restocking fee shall apply.

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**Date printed:** 5/18/22  
**Page:** 7 (7)

## Warranty and Returns Policy & Instructions

### Return of Damaged / Defective Items

- In the event of a damaged or defective part, the return process can often be expedited by providing a digital image of the damage or defect (along with a clear description of the problem) in an email to the Huber Aftermarket Team ("Aftermarket Team") at the following email address: returns@hhusa.net. The phone and fax numbers for Aftermarket Team are: 704.990.2045; Fax: 704.896.2830. Huber reserves the right to inspect in person even if a digital image is provided as outlined above.
- If the damage or defect **cannot be verified over the phone or via email** contact, the item may be required to be returned to Huber Technology, Inc. for inspection before a determination can be made as to the state of the product.
- The Aftermarket Team will validate the warranty claim for the defective part.
- If the Aftermarket Team determines that the part is under warranty and should be replaced, the Aftermarket Team will provide a Return Merchandise Authorization ("RMA") number and a shipping address to the Customer for the return of the defective part.
- The Customer shall ship the part to the specified address with the RMA number listed on the outside of the package.
- When the warranty part has been repaired (or replaced) by Huber, the part will be shipped to the "ship-to" address included in the RMA information provided by the Customer.

### Return shipping cost

- ONLY in the event that an incorrect part is sold to the Customer by a Huber team member, will Huber pay for shipping. The Customer will be provided with a prepaid return shipping label.
- UNDER ALL OTHER CIRCUMSTANCES, the Customer returning the part(s) is responsible for any freight costs incurred for returning the part(s).
- UNDER NO CIRCUMSTANCE will Huber reimburse (or provide credit) for return shipping costs incurred by the Customer.

### How to Request an RMA (Return Merchandise Authorization)

Contact the Huber Technology Aftermarket Sales Team and request a Return Merchandise Authorization ("RMA") number.

- Completely fill out the RMA form.
- Include the completed RMA form in the package along with the item(s) to be returned.
- Write the RMA number conspicuously on the outside of the package to ensure proper routing upon receipt by the Aftermarket Team.
- Ship the package to:

o o Huber Technology, Inc.  
Aftermarket Sales and Service  
1009 Airlie Parkway  
Denver, NC 28037  
Phone: 704.874.8237 Fax 704.896.2830 Email: service@hhusa.net

# **EXHIBIT “G”**



**CITY OF MIDDLETON**  
 P O Box 487, MIDDLETON, ID 83644  
 208-585-3133, 208-585-9601 FAX  
[WWW.MIDDLETONIDAHO.US](http://WWW.MIDDLETONIDAHO.US)



**ADMINISTRATION**  
**NON-AERIAL FIREWORKS APPLICATION**  
 REV. 03/19

For retail sale of non-aerial fireworks at temporary fireworks stands within the City of Middleton.  
 Middleton City Code 1-15-14 and 1-15-14-2 Fireworks.

- Permit fee: \$50.00 for Non-Aerial Vendors Permit.  
 \$300.00 deposit, bond or letter of credit for prompt removal of structure and cleanup of debris.
- Insurance: Bond or Certificate of insurance is required and must be filed with the City prior to the issuance of permit.  
 Bond or valid certificate of public liability and property-casualty insurance providing coverage of at least one hundred thousand dollars (\$100,000.00) for personal injury and property damage required.

**I. General Information:**

**Name, Cell Phone, Business Phone, and Address of Applicant:**

Scott Thomson (208) 284-9354  
3205 Hamilton St. Boise, ID. 83705

**Name and Address of Business applicant is representing:**

Outlet Fireworks LLC  
David Weaver 3054 N. 3422 E. Kimberly, ID. 83341

**Address of location applicant has permission to sell fireworks; property owner name and phone:**

Middleton Village Mall  
206 E. Main St. 83644

**Applicant/Business Idaho State Sales Tax Permit number:**

002568351-5

**Date(s) of sale of fireworks:**

June 24 - July 5, 2022

**APPLICANT / BUSINESS REPRESENTATIVE**

[Signature]  
 Signature

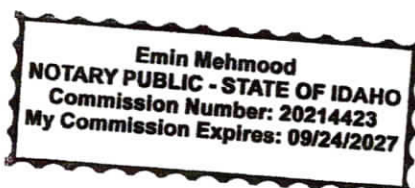
Date: 4-28-2022

Scott Thomson-Outlet Fireworks LLC - manager  
 Print name / Business Name and Representative Title

Subscribed and sworn before me this 28th day of April, 2022

(Seal)

Emin Mehmood  
 Notary Public for the State of Idaho  
 Residing at: Boise, ID  
 Commission expires: 09/24/2027





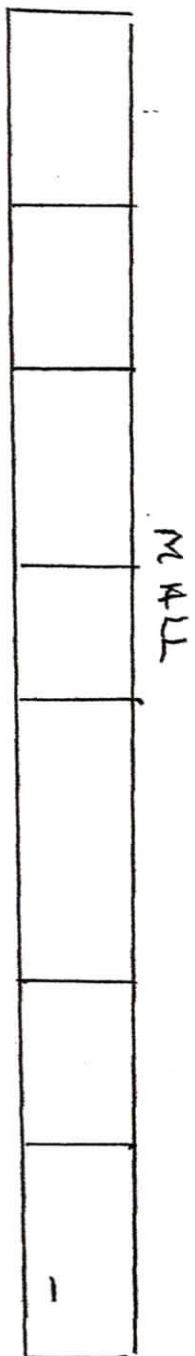


# NONAERIAL COMMON FIREWORKS SALES / STORAGE APPLICATION

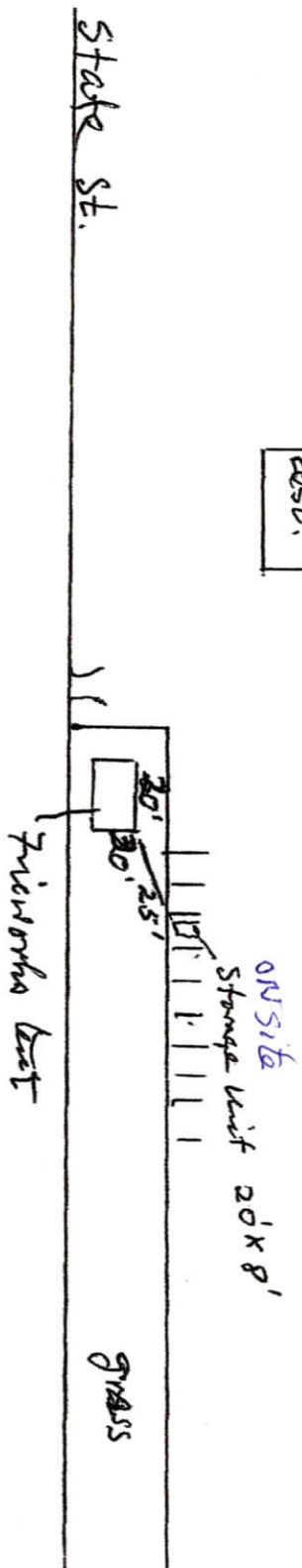
Operator's Name: <u>Scott Thomson</u>		Date of Birth: <u>3/12/1949</u>
Address: <u>3205 Hamilton St</u>		City: <u>Boise</u> Zip: <u>83725</u>
Phone/Mobile: <u>(208) 284-9354</u>	Email Address: <u>nonifam@msn.com</u>	
Supplier: <u>Outlet Fireworks LLC</u>		Local Rep: <u>Scott Thomson</u>
Address:		City:
Phone/Mobile:		Zip:
Email Address:		
LOCATION		
Location: <u>Middleton Village Mall 206 E. Main St. 83644</u>		
After-hours Storage Location: <u>on site storage container (steel)</u>		
EMPLOYEE LIST		
Name: <u>Scott Thomson</u>	Age: <u>73</u>	Phone: <u>208-284-9354</u>
Name: <u>W. Ma Thomson</u>	Age: <u>72</u>	Phone: <u>208-440-5743</u>
Name:	Age:	Phone:
Name:	Age:	Phone:
Name:	Age:	Phone:
ADDITIONAL INFORMATION REQUIRED		
<input type="checkbox"/>	Bond and Certificate: Attach the bond or valid certificate of public liability and property-causality insurance providing coverage up to One Hundred Thousand Dollars (\$100,000) for personal injury and property damage proving coverage at each location.	
<input type="checkbox"/>	Site Map: Attach a detailed site map.	
<input type="checkbox"/>	Product List: Attach a products list to ensure compliance.	
<input type="checkbox"/>	Property Utilization: Attach a written letter of consent form the owner(s) of the property where the temporary tent will be set.	
<input type="checkbox"/>	Fee: Permit/Inspection Fee \$50.00	
APPLICATION ACKNOWLEDGMENT		
I verify that the above information supplied is true and correct and agree to follow the rules and regulations set forth by Fire District.		
Applicant Signature: <u>[Signature]</u>		Date: <u>4-28-2022</u>
FOR OFFICE USE ONLY		
Application & Plans Received: (Date/ By)		Reviewed by Fire Code Official
Permit Fee \$ _____ <input type="checkbox"/> Paid Ck# _____		Authority Having Jurisdiction
Notes:		
<input type="checkbox"/> Bond or Certificate of Insurance	<input type="checkbox"/> Property Utilization	Meets the following:
<input type="checkbox"/> Site Map	<input type="checkbox"/> Information requested verified	<input type="checkbox"/> Idaho Code
<input type="checkbox"/> List of products from supplier	<input type="checkbox"/> Other: _____	<input type="checkbox"/> NFPA
This application form also serves as a Permit which shall be valid for twelve (12) months from the date of issuance and is nontransferable. This permit for is for the "Retail Sale of Non-Aerial Common Fireworks" herein issued shall be displayed in public view at the location listed above.		<input type="checkbox"/> County/City Code
		<input type="checkbox"/> Approved <input type="checkbox"/> Denied
Fire Code Official:		Permit #
Date:		



redacted  
206 E. Main



SUNSHED  
Best.



### License Agreement

Middleton Village Partners ("Licensor"), and Outlet Fireworks ("Licensee") hereby agree as follows:

1. Premise: Portion of the parking lot located at 206 East Main St. in Middleton, Idaho, also known as the Middleton Village Center, Lot 1.
2. Purpose: Licensor is the owner of real property described above. Licensee is seeking consent to use a portion of the property for a Fireworks Stand
3. Grant of License: Licensor hereby grants to Licensee a license to use a portion of the property consisting of an area approximately 800 square feet on Lot 1 of the property. ("Licensed Site"). Licensee may not use the Licensed Site for any other purpose.
4. Rent and Term: The term of this agreement is for the defined period, commencing June 15, 2022, and expiring July 8, 2022. Licensee shall pay Licensor a total license fee of One Thousand Four Hundred and No/100 (\$1,400.00). A deposit of \$700.00 needs paid, and the remainder due by June 1, 2022. If the gross receipts from sales exceed \$8000.00, Licensee will pay an additional 12% on anything over \$8000.00. Sales receipts to be provided to Licensor by July 8, 2022.
5. Utilities: Licensor will provide access to electricity. Licensee shall be responsible for any permit fees, trash pickup and portable restrooms, if necessary. Licensee shall return premises to the same condition in which it was delivered.
6. Licensor's Liability: Licensor will not be liable for any damages to the Licensed Site, nor for any injury or damage to any person or property arising from any cause on the Licensed Site as a result of the use of the property by Licensee, its agents, employees, suppliers, or invitees. Licensee will indemnify, defend (and pay all of Licensor's attorney's fees and costs), and hold Licensor harmless against any and all loss, liability, or expense arising out of any such injury or damage.
7. Insurance: Licensee shall procure and maintain at all times during the term of this License Agreement, commercial general liability insurance with a minimum combined single coverage of Five Hundred Thousand Dollars (\$500,000.00), naming Licensor as an additional insured thereon. Licensee shall provide Licensor with a Certificate of Insurance evidencing such coverage. Licensee shall be solely responsible for damages or loss to its furnishings, fixtures, and equipment at the Licensed Site.
8. Binding Effect and Governing Law: This License Agreement is intended to bind and benefit the parties hereto, their successors, and assigns. The laws of the State of Idaho shall govern it. The License Agreement constitutes the entire agreement of the parties with respect to the subject matter thereof.
9. Sale or Construction: This License Agreement may be cancelled by either party upon 60 days written notice in the event of sale of the property, or the

construction of a building on said property that would interfere with the sale of fireworks or be otherwise undesirable to the tenants of the new building. The maximum liability for contingency will be the return of the deposit money for any one year.

10. Additional Terms: Licensee shall meet all State, County, and City codes, requirements, or restrictions at the sole cost and expense of the Licensee. Licensee shall remove all equipment, stands, personal property and litter, if any, from the subject location no later than July 8<sup>th</sup>, 2022. This contract is void if city permits are denied. If for any reason permits are revoked during the term of this contract the license will pay a prorated share of the site rent based on the number of days they were "open for business." In the event governmental bodies prohibit the selling of fireworks on the Licensed Site, this License agreement shall be come null and void. Lessor will refund any deposits of payments for the current and future years.

Date: April \_\_, 2022

Date: April 26, 2022

Lessor:

Middleton Village Partners

P.O. Box 9325  
Boise, Idaho 83707  
Ph: 208-922-8027

By: 

As Agent: DS Property Management

Licensee:

Outlets Fireworks  
Bruce Weaver  
1619 Brookfield Ct.  
Twin Falls, Idaho 83301  
Ph: 208-734-5051

By: 

Scott Thompson

**DRAYTON INSURANCE BROKERS, INC.**

2500 CENTER POINT ROAD, SUITE 301  
BIRMINGHAM, ALABAMA 35215  
PHONE: (205) 854-5806  
FAX: (205) 854-5899

POST OFFICE BOX 94067  
BIRMINGHAM, ALABAMA 35220  
EMAIL: dib@draytonins.com

**CERTIFICATE OF INSURANCE**

NO. 250118

We certify that insurance is afforded as stated below. This Certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the insurance policy and the insurance afforded is subject to all the terms, exclusions and conditions of the policy.

**INSURER** Admiral Insurance Company **POLICY NO.** CA000003209-32-1104

**NAMED INSURED** Outlet Fireworks LLC  
3054 North 3422 East  
Kimberly, ID 83341

**POLICY TERM** April 1, 2022 to April 1, 2023; Both Days 12:01 A.M. Standard Time

**COVERAGE** Commercial General Liability: ☒ Occurrence Basis ☐ Claims Made Basis

**LIMIT OF LIABILITY** \$2,000,000 each occurrence, \$3,000,000 general aggregate, \$3,000,000 products/completed operations aggregate  
The limit of liability shall not be increased by the inclusion of more than one insured or additional insured.

**INSURED OPERATIONS** The sale of consumer fireworks (1.4G) and related products at the Insured location.

It is certified that, if named below, this policy includes as Additional Insureds 1) the operator of the Insured location and/or 2) the owner of the property on which the Insured location is situated and/or 3) the licensing authority issuing a permit or license for the operation of the Insured location and/or 4) an entity for which the Named Insured is required by written contract to provide coverage.

**NAME(S) OF  
ADDITIONAL INSURED(S)** Middleton Village  
Garrett Goldberg  
Middleton Village Partners

**THE CITY OF MIDDLETON ITS OFFICIALS, OFFICERS, AGENTS & VOLUNTEERS  
WHEN ACTING IN THEIR OFFICIAL CAPACITY.**

**ADDRESS OF  
INSURED LOCATION** 206 E Main  
Middleton, ID 83644

It is certified that this policy requires a 30 day mutual notice of cancellation between the Insurer and the Named Insured. In the event of such cancellation we will endeavor to mail 10 days written notice to the Additional Insured(s), whose name and address is shown hereon, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer and/or the undersigned.

**DRAYTON INSURANCE BROKERS, INC.**

05/01/2022  
DATE OF ISSUE

  
A.J. STRINGER, PRESIDENT

# **EXHIBIT “H”**

**CITY OF MIDDLETON**  
**EMERGENCY MORATORIUM ON RESIDENTIAL DEVELOPMENT**  
**MORATORIUM NO. 22-001**

**A MORATORIUM ENACTED BY ORDINANCE OF THE MIDDLETON CITY COUNCIL ADOPTING AND DECLARING A MORATORIUM UPON THE PROCESSING OF ALL RESIDENTIAL DEVELOPMENT APPLICATIONS AND PERMITS, INCLUDING, BUT NOT LIMITED TO, ALL ANNEXATIONS, REZONES, BUILDING PERMITS, DESIGN REVIEW, PRELIMINARY PLATS, CARIANCES, CONDITIONAL USE PERMITS, PLANNED UNIT DEVELOPMENTS, AND OTHER SIMILAR APPLICATIONS; DIRECTING STAFF TO BRING FORWARD A PERMANENT SOLUTION WITHIN 182 DAYS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND DECLARING THE SUBORDINATION OF ALL ORDINANCES, RESOLUTIONS, AND ORDERS IN CONFLICT HEREWITH.**

**RECITALS OF FACTS AND LAW**

**WHEREAS**, the City of Middleton is tasked with providing for the general welfare of the citizens of Middleton; and,

**WHEREAS**, the City of Middleton has road infrastructure that provides transportation to the citizens of Middleton and others using said infrastructure; and,

**WHEREAS**, the City of Middleton, along with the City of Star, Canyon Highway District #4, and Canyon County, intended to collect and expend impact fees jointly, as part of the Mid-Star Impact Fee program; and,

**WHEREAS**, the City of Middleton has duly adopted and begun collecting said impact fees; and,

**WHEREAS**, Canyon County has failed to adopt said impact fees and has failed to act on the same for nearly one (1) year; and,

**WHEREAS**, the impact fee study and capital improvement plan for the Mid-Star Impact Fees rely upon the collection of said fees by all participants therein; and,

**WHEREAS**, the County's failure to adopt the Mid-Star impact fees threatens the efficacy of the fees and planned capital improvements as a whole; and,

**WHEREAS**, it now being apparent that the County may not actually intend to adopt the Mid-Star impact fees; and,

**WHEREAS**, said failure jeopardizes the City of Middleton's ability to provide adequate road facilities within the City of Middleton; and,

**WHEREAS**, said failure jeopardizes the general welfare of the City of Middleton; and,



**WHEREAS**, by the adoption hereof, the City declares that the foregoing circumstance constitutes an imminent peril to the public safety and welfare of the City of Middleton and its citizens; and,

**WHEREAS**, the City is authorized, by Idaho Code 67-6523, to adopt emergency moratoriums if the City Council finds that there is an imminent peril to the public's safety and welfare; and,

**WHEREAS**, the City Council may, upon such finding, proceed without recommendation of the Planning and Zoning Commission to adopt a moratorium responding thereto; and,

**WHEREAS**, the adoption of the moratorium may be accomplished upon such abbreviated notice of hearing as the City Council deems practical; and,

**WHEREAS**, said hearing was posted to the City Council's meeting agenda on May 31, 2022, to be heard during the regularly scheduled meeting of the City Council; and,

**WHEREAS**, the City Council deems the notice provided to be appropriate; and,

**WHEREAS**, said hearing has been held; and,

**WHEREAS**, residential development presents traffic concerns and issues unique from those presented by commercial and industrial development due to mitigating that is possible on-site for commercial and industrial development; and,

**WHEREAS**, residential development presents traffic concerns and issues unique from those presented by commercial and industrial development due to the fact that residences generate entirely new vehicle trips, while commercial and industrial developments partially capture existing vehicle trips already occurring in the area.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City of Middleton, County of Canyon, State of Idaho:

**Section 1.** The foregoing recitals, being a true and accurate description of an imminent peril to the public welfare of the City of Middleton, a moratorium is hereby imposed upon the receipt, processing, and approval of all residential applications and permits, including those for annexations, rezones, building permits, design review, preliminary plats, variances, conditional use permits, planned unit developments, and other similar applications within the City of Middleton, except as provided in Section 2 of this moratorium. The moratorium shall be in place for one hundred and eighty-two (182) days following the adoption hereof.

**Section 2.** This moratorium shall not apply to any permit that has already been issued, nor shall it apply to any pending application or permit for which the applicant or owner has a vested property interest under the laws and constitution of the State of Idaho. No vested property interest shall be presumed to be held by any individual, however, any person claiming such an interest may request a review thereof by the City Attorney of the City of Middleton and may appeal any decision thereby to the City Council, which Council shall hear such appeal as soon as

reasonably possible pursuant to the hearing procedures set forth in Middleton City Code § 1-14-2, except that no public comment shall be taken.

This limitation shall not prohibit the Middleton City Council from exercising the control it is otherwise authorized to exercise over any such development.

**Section 3.** City staff are hereby directed to present a permanent solution to the problems addressed by this moratorium within ninety (90) days.

**Section 4.** This moratorium shall be in full force and effect immediately upon the date of its passage.

**Section 5.** This moratorium is hereby declared to be severable. If any portion hereof is declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purposes of this moratorium before the declaration of partial invalidity.

**Section 6.** If a conflict exists between this moratorium and any other ordinance, resolution, or order of the City of Middleton, this moratorium shall control until its expiration or termination by City Council.

**PASSED BY THE COUNCIL** of the City of Middleton, Idaho this 1<sup>st</sup> day of June, 2022.

**APPROVED BY THE MAYOR** of the City of Middleton, Idaho this 1<sup>st</sup> day of June, 2022.

APPROVED

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STEVE RULE, Mayor

ATTEST

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City Clerk, or Deputy