

**MIDVALE CITY, UTAH
RESOLUTION NO. 2019-R-33**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT
WITH THE UTAH DEPARTMENT OF TRANSPORTATION TO INSTALL AND MAINTAIN
LANDSCAPING ON THE PROPERTY AT APPROXIMATELY 700 WEST 9TH AVE.**

WHEREAS, the Utah Department of Transportation (“UDOT”) is the owner of property located at the southeast corner of the intersection of 700 West and 9th Ave., Midvale (“the Property”); and

WHEREAS, the Property is currently vacant and lacks landscaping; and

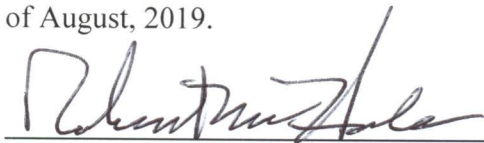
WHEREAS, Midvale City desires to increase the beauty of the community by having landscaping installed and maintained on the Property; and

WHEREAS, UDOT is willing to lease the Property to Midvale City for the purposes of installing and maintaining landscaping on the Property; and

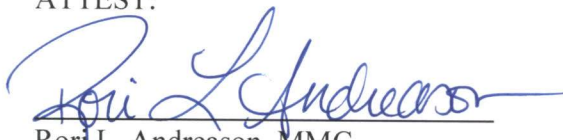
WHEREAS, Midvale City is willing to lease the Property for the purposes of installing and maintaining landscaping on the Property.

NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve the attached Lease Agreement and authorizes the Mayor to execute the same between Midvale City and the Utah Department of Transportation.

APPROVED AND ADOPTED this 6th day of August, 2019.


Robert M. Hale, Mayor

ATTEST:


Rori L. Andreason, MMC
City Recorder

Voting by the City Council	“Aye”	“Nay”
Bryant Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Gettel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Glover	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Hunt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Quinn Sperry	<input checked="" type="checkbox"/>	<input type="checkbox"/>



LEASE AGREEMENT

THIS LEASE AGREEMENT is made this ____ day of _____ 2019, and entered into by and between the **UTAH DEPARTMENT OF TRANSPORTATION** as "Lessor" (Landlord) and **MIDVALE CITY** as "Lessee" (Tenant).

1. **LEASED PREMISES (Premises):**

Landlord hereby leases to Tenant approximately 950 square feet, and further identified on the attached Exhibit "A" and "A1".

2. **PURPOSE:**

Tenant may use the Premises solely for Landscaping purposes.

3. **TERM:**

The term of this Lease Agreement shall be five (5) years commencing on April 1, 2019 and expiring on March 31, 2024 and renewing on month to month basis until the agreement is terminated by either party by providing a written thirty-day notice of intent to terminate.

4. **CONSIDERATION:**

As consideration for this Lease Agreement, Tenant will provide landscape maintenance for the parcel consistent with Midvale City master plan and in a manner that eliminates the need for any contract costs for UDOT.

5. **CONDITION OF PREMISES:**

Tenant hereby accepts the Premises in the condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state, and federal laws, ordinances and regulations governing and regulating the use of the Premises and accepts this Lease Agreement subject thereto and to all matters disclosed thereby. Tenant acknowledges that neither Landlord nor any agent of the Landlord has made any representation or warranty with respect to the condition of the Premises or the suitability thereof for the conduct of Tenant, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises. Tenant agrees to accept the Premises in its presently existing conditions "as is," and Landlord shall not be obligated to make any improvements or modifications thereto. Tenant represents and acknowledges that it has made a sufficient investigation of the conditions of the Premises immediately prior to the execution of this Lease Agreement and is satisfied that the Premises are fully fit physically and lawfully for Tenant's desired use. This Lease Agreement in no way cancels or negates the rights of public or private utilities to enter upon said Premises to construct, repair, or inspect their facilities.

6. **COMPLIANCE WITH LAW:**

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance, or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, or with the requirements of the State Fire Marshal or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises. Tenant agrees to obtain any licenses, permits and other necessary authorizations from federal, state and local agencies. Tenant shall not allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises and shall maintain the premises in compliance with all applicable city and county ordinances.

7. **CONDUCT OF OPERATIONS:**

- a. Landscaping shall be maintained in a clean and orderly manner free of overgrown, dead, diseased, or vegetation in accordance with all city and county ordinances. All grading, landscaping, etc., shall be accomplished in a manner to prevent rocks and dirt from coming into contact with all adjoining roads or highways and in a manner to protect the public.
- b. Tenant shall not allow any Hazardous Materials to enter the Premises. "Hazardous Materials" shall mean those materials, substances, wastes, pollutants or contaminants which are deemed to be hazardous, toxic or radioactive and shall include but not be limited to those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act 49 U.S.C. § 1801 et seq., and any other federal, state or local governmental statutes, laws, codes, ordinances, rules, regulations and precautions, or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) petroleum products or byproducts, or petroleum, including crude oil or any fraction thereof, or natural gas, natural gas liquids, liquefied natural gas, synthetic gas or mixtures of synthetic gas and natural gas, (iii) asbestos and (iv) polychlorinated biphenyls.
- c. Premises will be used for purposes only as identified in section 2 of this Lease Agreement and shall be maintained by Tenant in a manner which ensures the safety of the traveling and pedestrian public. No excavations, modifications, or other improvements shall be constructed without prior written approval from the Landlord. Tenant acknowledges that upon Landlord's re-occupancy of the Premises, Tenant is not eligible for relocation benefits as a displaced person or business.
- d. Tenant grants Landlord the right to enter the Premises at all times for the maintenance, construction, reconstruction, or inspection of the Premises or any adjoining roads. Landlord will exercise reasonable care as not to interfere or negatively impact Tenant's operations.
- e. Landlord reserves the right to re-occupy the Premises at no cost if the area is required for

transportation purposes as defined in Utah State Code 72-5-102, or to dispose of the Premises. Landlord shall give Tenant 30 days' written notice of its intent to re-occupy and this Lease Agreement shall terminate. Tenant will be required vacate the Premises at the sole cost of the Tenant's expense.

- f. Tenant is responsible for all costs, fees and utility charges in connection with the use of the Premises. Tenant agrees to keep the Premises in a clean and orderly condition during occupancy and, upon expiration or early termination of this Lease Agreement, restore the Premises to a clean and presentable condition in compliance with all applicable city and county ordinances.
- g. No ingress or egress, other than presently existing and of record, will be allowed on the Premises.
- h. This Lease Agreement is subject to any and all easements and rights of way and restrictions appearing of record or enforceable in law and equity and does not include any provision for the collection by the Tenant of any equity or income resulting from the existence of any easement, right of way or other restriction.

8. **INDEMNITY:**

The Tenant shall hold the Landlord harmless from any damage, liability, claims, judgments or losses arising out of or attributable to any acts and/or activities undertaken or permitted by or on behalf of the Tenant or Tenant's agents or employees on the Premises. The obligation to indemnify shall survive the expiration or termination of this Lease Agreement. Tenant shall obtain and keep in force a policy of liability insurance for the Premises and activities in an amount and type that would be reasonable for the activities and Premises described in this Lease Agreement. The amount shall be a minimum of \$1,000,000 if this property will be used by the general public.

9. **ASSIGNMENT:**

This Lease Agreement may not be assigned, nor transferred, by Tenant without the express written consent of the Landlord.

10. **NOTICES:**

Any notices or changes must be in writing and delivered to the

Landlord at the following address:

Utah Department of Transportation

4501 South 2700 West

PO Box 148420

Salt Lake City, UT 84114-8420

801.964.4462 Phone 801.965.3822 Fax

Tenant at the following address:

Midvale City
 Attn: Matt Dahl
 Community Development Director
 7505 S Holden Street
 Midvale, UT 84047
 801.567.7214
 Email: bberndt@midvale.com

11. **TERMINATION:**

- a. If, upon inspection, the Premises are not found to be properly maintained, Tenant will be given a notice of the findings and a deadline to correct the problem. Non-compliance with such notice shall constitute a breach and possible termination of this Lease Agreement.
- b. Tenant shall be liable to Landlord for any and all costs incurred as a result of any breach by Tenant.
- c. Landlord is not abandoning any rights or interests in the Premises for transportation purposes as defined in Utah State Code 72-5-102 *or* the right to dispose of the Premises according to Utah State Code 72-5-111. The Tenant, a voluntary party to this Lease Agreement, is not entitled to compensation for any costs, including but not limited to relocation benefits or moving expenses, which may be accrued by Tenant as a result of the expiration or early termination of this Lease agreement. If Landlord requires the Premises for transportation purposes, Landlord shall give Tenant thirty (30) days' notice of the termination of this Lease Agreement.
- d. The obligations of Tenant with respect to restoration and indemnification shall survive the expiration or termination of this Lease Agreement. Landlord's rights to recover damages for which Tenant is liable shall not be limited by the expiration or termination of this Lease Agreement.

12. **SUCCESSORS AND ASSIGNS:**

This Lease Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties. This provision shall in no way alter the restriction with regard to assignment in paragraph 9.

13. **MISCELLANEOUS:**

- a. The captions of the sections of this Lease Agreement are inserted for convenience only and shall not be used in the interpretation or construction of any provisions of this Lease Agreement.
- b. If any provision of this Lease Agreement is held invalid or unenforceable, the holding shall affect only the provision in question and that provision in other circumstances, and all other provisions of this Lease Agreement, shall remain in full force and effect.

- c. The failure of a party to insist upon strict performance of any provisions of this Lease Agreement shall not be construed as a waiver for future purposes with respect to any such provision or portion. No provision of this Lease Agreement shall be waived unless such waiver is in writing and signed by the party alleged to have waived its rights.
- d. Any ambiguities in this Agreement shall not be strictly construed against the drafter of the language concerned, but instead shall be resolved by applying the most reasonable interpretation giving full consideration to the intent of the parties at the time of execution.
- e. In any action brought to enforce the terms of this Lease Agreement, the Parties agree that the appropriate venue shall be the Third Judicial District Court in and for Salt Lake County, Utah.

14. **ENTIRE AGREEMENT:**

This Lease Agreement constitutes the entire agreement between the parties and no prior written or prior oral promises or representations shall be binding. This Lease Agreement may not be amended, changed or altered except by written instrument signed by both parties.

Parties to this Lease Agreement sign below:

Date 8 August 2019

Robert M. Hale

Tenant:

By: Robert M. Hale

Its: Mayor

Date _____

Landlord: Utah Dept. of Transportation

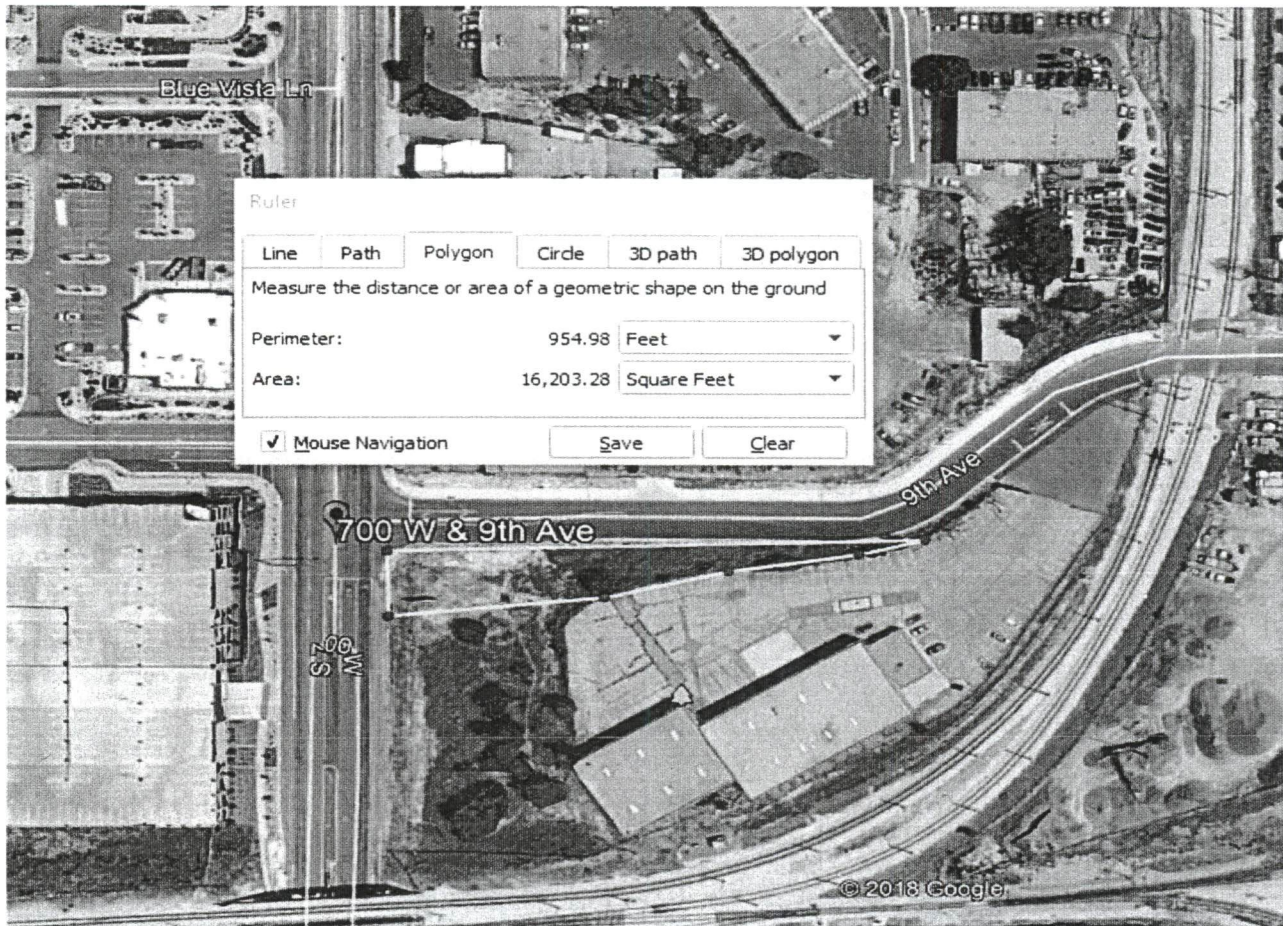
By: Charles Stormont

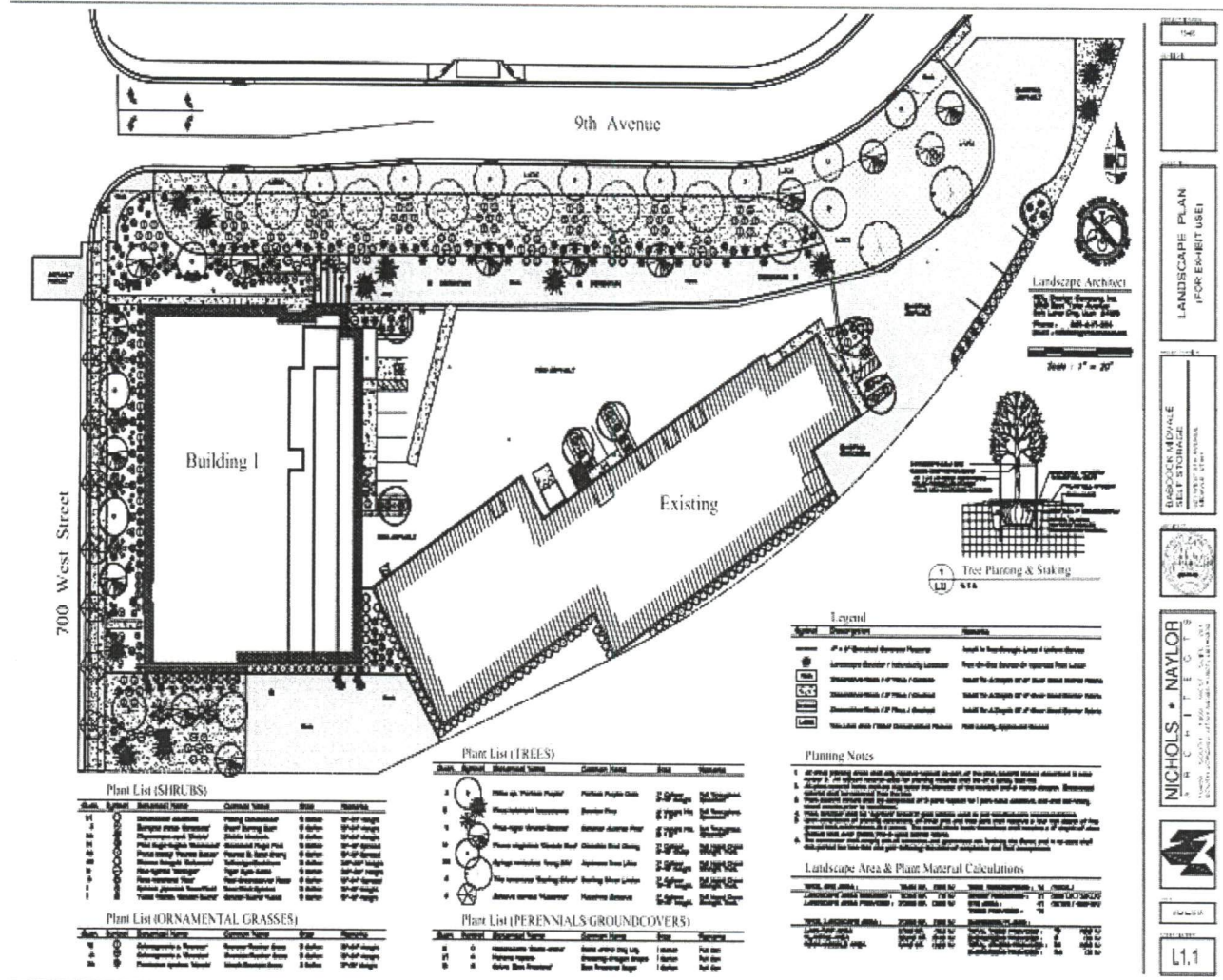
Its: Director of Right-of-Way

Attest: Lois L. Anderson
City Recorder



Exhibit 'A'





- c. The failure of a party to insist upon strict performance of any provisions of this Lease Agreement shall not be construed as a waiver for future purposes with respect to any such provision or portion. No provision of this Lease Agreement shall be waived unless such waiver is in writing and signed by the party alleged to have waived its rights.
- d. Any ambiguities in this Agreement shall not be strictly construed against the drafter of the language concerned, but instead shall be resolved by applying the most reasonable interpretation giving full consideration to the intent of the parties at the time of execution.
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Parties to this Lease Agreement sign below:

Date 8 August 2019

Robert M. Hale

Tenant:

By: Robert M. Hale

Its: Mayor

Date 2/18/2020

Charles H. Stormont

Landlord: Utah Dept. of Transportation

By: Charles Stormont

Its: Director of Right-of-Way

Attest: Dei L. Anderson
City Recorder



Exhibit 'A'