

**CITY OF VIENNA
CITY COUNCIL MEETING
VIENNA CITY HALL
205 North 4th Street
January 3, 2024
6:30 P.M.
AGENDA**

1. Mayor Calls Meeting to Order.

2. Roll Call:

Hill_____ Moore_____ Elliott_____ Pitts_____ Racey_____ Tuey_____

NEW BUSINESS

3. Omnibus Consent Agenda

- Approval of the December 20, 2023 Meeting Minutes
- Approval of the Warrant

Motion_____ Seconded_____

Hill_____ Moore_____ Elliott_____ Pitts_____ Racey_____ Tuey_____

4. Authorization and Approval of Pay Estimate #1 -Redbud Lane
E.T. Simonds, \$163,079.08 (General Funds)

Motion_____ Seconded_____

Hill_____ Moore_____ Elliott_____ Pitts_____ Racey_____ Tuey_____

5. Tom Loyd- Request of extension for TIF agreement for Vienna Outdoor Equipment

6. **PUBLIC COMMENT/ADDITION TO THE AGENDA**

7. Vienna Police Dept- Adoption of guidelines for officer worn body cameras policy
-*Jim Miller*

Motion _____ **Seconded** _____

Hill _____ Moore _____ Elliott _____ Pitts _____ Racey _____ Tuey _____

8. Discussion- Illinois Rt 146- Old 146 Loop- US 45 IDOT Agreement /MFT Resolution
-*Mayor Penrod*

9. Authorization and Approval of Memorandum of Understanding between Midwest Material, LLC and the City of Vienna, IL

Motion _____ **Seconded** _____

Hill _____ Moore _____ Elliott _____ Pitts _____ Racey _____ Tuey _____

10. **ELECTED/APPOINTED OFFICIALS**

- City Attorney
- Aleatha Wright, City Clerk
- Shane Racey, City Supt
- Michelle Meyers, Treasurer
- Jim Miller, Chief of Police
- Brent Williams, Fire Chief
- City Council
- Steve Penrod, Mayor

11. **Adjournment:**

POSTED: 12-28-23 BY: *A Wright*

CITY OF VIENNA
Red Bud Lane
HORNER & SHIFRIN, INC. JOB #22160
PAYMENT ESTIMATE - #1

ESTIMATE NO. #1
PAYABLE TO: E.T. Simonds Construction Company
ADDRESS: PO Box 2107
Carbondale, IL 62902

11/1/2023 TO 11/22/2023

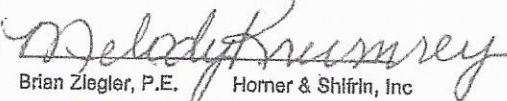
CONSTRUCTION AMOUNT
ORIGINAL: \$208,012.48
REVISED:

ITEM	AWARDED			THIS PERIOD		TOTAL TO DATE	
	QUANTITY	UNIT	UNIT PRICE	QUANTITY	AMOUNT	QUANTITY	AMOUNT
1 BITUMINOUS MATERIALS (TACK COAT)	1855	LB	\$ -		\$ -	0.00	\$ -
2 PCC SURFACE REMOVAL-BUTT JOINT	30	SQ YD	\$ 40.79	22.3	\$ 909.62	22.30	\$ 909.62
3 HMA SURFACE REMOVAL-BUTT JOINT	178	SQ YD	\$ 23.82	343.1	\$ 8,172.64	343.10	\$ 8,172.64
4 HOT-MIX ASPHALT BINDER COURSE, IL-19.0, N70	461	TON	\$ 90.92	423.0	\$ 38,459.16	423.00	\$ 38,459.16
5 HOT-MIX ASPHALT SURFACE COURSE, IL-9.5, MIX "C", N70	269	TON	\$ 111.35	284.00	\$ 31,623.40	284.00	\$ 31,623.40
6 INCIDENTAL HOT-MIX ASPHALT SURFACING	204	TON	\$ 173.22	22.0	\$ 3,817.77	22.04	\$ 3,817.77
7 CLASS D PATCHES, TYPE III, 10 INCH	42	SQ YD	\$ 238.71	12.0	\$ 2,864.52	12.00	\$ 2,864.52
8 AGGREGATE WEDGE SHOULDER, TYPE B	190	TON	\$ 56.51	91.9	\$ 5,193.27	91.90	\$ 5,193.27
9 MOBILIZATION	1	L SUM	\$ 10,763.34	1.0	\$ 10,763.34	1.00	\$ 10,763.34
10 PAINT PAVEMENT MARKING - LINE 4"	4254	FOOT	\$ 1.39	0.0	\$ -	0.00	\$ -
11 TRAFFIC CONTROL & PROTECTION, STANDARD 701501	1	L SUM	\$ 10,660.03	1.0	\$ 10,660.03	1.00	\$ 10,660.03
12 TRENCH BACKFILL	22	CU YD	\$ 197.99	22.0	\$ 4,355.78	22.00	\$ 4,355.78
13 AGGREGATE BASE COURSE, TYP B (6")	45	TON	\$ 97.80	45.3	\$ 4,430.34	45.30	\$ 4,430.34
14 BITUMINOUS MATERIALS (PRIME COAT)	840	LB	\$ -	0.0	\$ -	0.00	\$ -
15 BITUMINOUS MATERIALS (TACK COAT)	85	LB	\$ -	0.0	\$ -	0.00	\$ -
18 BITUMINOUS SURFACE REMOVAL, 1"	125	SQ YD	\$ 57.04	177.6	\$ 10,130.30	177.60	\$ 10,130.30
19 GUTTER REMOVAL	189	FOOT	\$ 18.71	200.0	\$ 3,742.00	200.00	\$ 3,742.00
20 PIPE CULVERT REMOVAL	44	FOOT	\$ 76.16	40.0	\$ 3,046.40	40.00	\$ 3,046.40
21 PIPE CULVERT CLASS A, TY, 1 15"	78	FOOT	\$ 63.96	80.0	\$ 5,116.80	80.00	\$ 5,116.80
22 CLASS SI (OUTLET)	2	CU YD	\$ 950.00	1.9	\$ 1,805.00	1.90	\$ 1,805.00
23 CONCRETE GUTTER, TYPE B	133	FOOT	\$ 72.55	132.0	\$ 9,576.60	132.00	\$ 9,576.60
24 CCC&G, TYPE B-6.18	96	FOOT	\$ 83.63	97.0	\$ 8,112.11	97.00	\$ 8,112.11
MANHOLE RINGS	2	EACH	\$ 150.00	2	\$ 300.00	2.00	\$ 300.00

	THIS PAY ESTIMATE	TOTAL TO DATE
AMOUNT EARNED.....	\$163,079.08	\$163,079.08
AMOUNT RETAINED (10%).....	\$0.00	
PREVIOUS PAYMENTS.....		\$0.00
AMOUNT DUE.....	\$163,079.08	\$163,079.08

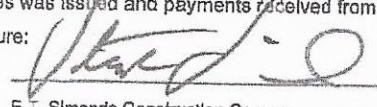
The undersigned certifies that the work has been carefully inspected and to the best of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.

Undersigned Engineer Signature:

By: 
Brian Ziegler, P.E. Horner & Shifrin, Inc

The undersigned Contractor certifies that to the best of their knowledge, information and belief the work covered by this payment estimate has been completed in accordance with the contract documents, that all amounts have been paid by the contractor for work for which previous payment estimates was issued and payments received from the owner, and that current payment shown herein is now due.

Undersigned Contractor Signature:

By: 
E.T. Simonds Construction Company

By: _____
Steve Penrod, City of Vienna-Mayor

Approved by owner:

Basic Guidelines for Officer-Worn Body Cameras:

Under the Law Enforcement Officer-Worn Body Camera Act, each agency which employs the use of officer-worn body cameras must adopt a written policy based upon the following guidelines, which are pending board approval. At a minimum, the agency policies must address the following and be compliant with the terms of 50 ILCS 706/10-20:

A. Operation:

- (1) *If an officer is assigned to wear a body-worn camera, it must be turned on at all times when the officer is:*
 - (a) on-duty,
 - (b) visibly wearing:
 1. any officially authorized uniform designated by a law enforcement agency, or,
 2. articles of clothing, a badge, tactical gear, gun belt, a patch, or other insignia that he or she is a law enforcement officer acting in the course of his or her duties
 - (c) and is:
 1. responding to calls for service, or
 2. engaged in any law enforcement-related encounter or activity:
 - A. This includes, but is not limited to, traffic stops, pedestrian stops, arrests, searches, interrogations, investigations, pursuits, crowd control, traffic control, non-community caretaking interactions with an individual while on patrol, or any other instance in which the officer is enforcing the laws of the municipality, county, or State, but
 - B. This does not include when the officer is completing paperwork alone or only in the presence of another law enforcement officer.
- (2) The officer must provide notice of recording, *verbal or otherwise*, to any person if the person has a reasonable expectation of privacy and proof of notice must be evident in the recording. If exigent circumstances exist which prevent the officer from providing notice, notice must be provided as soon as practicable.
- (3) If exigent circumstances exist which prevent the camera from being turned on, the camera must be turned on as soon as practicable.
- (4) Officer-worn body cameras may be turned off when the officer is inside of a patrol car which is equipped with a functioning in-car camera; however, the officer must turn on the camera upon exiting the patrol vehicle for law enforcement-related encounters.
- (5) Cameras must be turned off when:
 - (a) the victim of a crime requests that the camera be turned off, and unless impractical or impossible, that request is made on the recording;
 - (b) a witness of a crime or a community member who wishes to report a crime requests that the camera be turned off, and unless impractical or impossible that request is made on the recording; or

(c) the officer is interacting with a confidential informant used by the law enforcement agency.

(6) An officer may continue to record or resume recording a victim or a witness, if exigent circumstances exist, or if the officer has reasonable articulable suspicion that a victim or witness, or confidential informant has committed or is in the process of committing a crime. Under these circumstances, and unless impractical or impossible, the officer must indicate on the recording the reason for continuing to record despite the request of the victim or witness.

(7) Cameras may be turned off when the officer is engaged in community caretaking functions. *This applies to any task undertaken by a law enforcement officer in which the officer is performing an articulable act unrelated to the investigation of a crime. "Community caretaking function" includes, but is not limited to, participating in town halls or other community outreach, helping a child find his or her parents, providing death notifications, and performing in-home or hospital well-being checks on the sick, elderly, or persons presumed missing.* However, the camera must be turned on when the officer has reason to believe that the person on whose behalf the officer is performing a community caretaking function has committed or is in the process of committing a crime. If exigent circumstances exist which prevent the camera from being turned on, the camera must be turned on as soon as practicable.

B. Recording Capabilities:

(1) Cameras must be equipped with pre-event recording, capable of recording at least the 30 seconds prior to camera activation, unless the officer-worn body camera was purchased and acquired by the law enforcement agency prior to July 1, 2015.

(2) Cameras must be capable of recording for a period of 10 hours or more, unless the officer-worn body camera was purchased and acquired by the law enforcement agency prior to July 1, 2015.

C. Review:

(1) For the purposes of redaction, labeling, or duplicating recordings, access to camera recordings shall be restricted to only those personnel responsible for those purposes. The recording officer and his or her supervisor may access and review recordings prior to completing incident reports or other documentation, provided that the officer or his or her supervisor discloses that fact in the report or documentation.

D. Retention:

(1) Recordings made on officer-worn cameras must be retained by the law enforcement agency or by the camera vendor used by the agency, on a recording medium for a period of 90 days.

(a) Under no circumstances shall any recording made with an officer-worn body camera be altered, erased, or destroyed prior to the expiration of the 90-day storage period.

(b) If any data is altered, erased, or destroyed prior to the expiration of the 90-day storage period, the managing officer must complete an accidental deletion report indicating the name of the individuals involved, the dates of the recording, review and or deletion, the reason for the deletion, and any corrective actions taken as a result. This report must be reviewed and verified by a supervisor and the chief, sheriff or chief administrator . Any such reports must be included in the annual report provided to the Board.

(c) Following the 90-day storage period, any and all recordings made with an officer-worn body camera must be destroyed, unless any encounter captured on the recording has been flagged. An encounter is deemed to be flagged when:

- (i) a formal or informal complaint has been filed;
- (ii) the officer discharged his or her firearm or used force during the encounter;
- (iii) death or great bodily harm occurred to any person in the recording;
- (iv) the encounter resulted in a detention or an arrest, excluding traffic stops which resulted in only a minor traffic offense or business offense;
- (v) the officer is the subject of an internal investigation or otherwise being investigated for possible misconduct;
- (vi) the supervisor of the officer, prosecutor, defendant, or court determines that the encounter has evidentiary value in a criminal prosecution; or
- (vii) the recording officer requests that the video be flagged for official purposes related to his or her official duties.

(d) Under no circumstances shall any recording made with an officer-worn body camera relating to a flagged encounter be altered or destroyed prior to 2 years after the recording was flagged. If the flagged recording was used in a criminal, civil, or administrative proceeding, the recording shall not be destroyed except upon a final disposition and order from the court.

(2) Following the 90-day storage period, recordings may be retained if a supervisor at the law enforcement agency designates the recording for training purposes. If the recording is designated for training purposes, the recordings may be viewed by officers, in the presence of a supervisor or training instructor, for the purposes of instruction, training, or ensuring compliance with agency policies.

E. Purpose

(1) Recordings shall not be used to discipline law enforcement officers unless:

- (a) a formal or informal complaint of misconduct has been made;

- (b) a use of force incident has occurred;
- (c) the encounter on the recording could result in a formal investigation under the Uniform Peace Officers' Disciplinary Act; or
- (d) as corroboration of other evidence of misconduct.

(2) Nothing in this section shall be construed to limit or prohibit a law enforcement officer from being subject to an action that does not amount to discipline.

F. Care and Maintenance:

(1) The law enforcement agency shall ensure proper care and maintenance of officer-worn body cameras. Upon becoming aware, officers must as soon as practical document and notify the appropriate supervisor of any technical difficulties, failures, or problems with the officer-worn body camera or associated equipment.

(2) Upon receiving notice, the appropriate supervisor shall make every reasonable effort to correct and repair any of the officer-worn body camera equipment.

G. Public Recording:

(1) No officer may hinder or prohibit any person who is not a law enforcement officer, from recording a law enforcement officer in the performance of his or her duties in a public place or when the officer has no reasonable expectation of privacy.

(2) The law enforcement agency's written policy shall indicate the potential criminal penalties, as well as any departmental discipline, which may result from unlawful confiscation or destruction of the recording medium of a person who is not a law enforcement officer.

(3) However, an officer may take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order.

H. Reporting

(1) Each law enforcement agency which employs the use of officer-worn body cameras must provide an annual report to the Board, on or before May 1 of the year.

(2) The report shall include:

- (a) a brief overview of the makeup of the agency, including the number of officers utilizing officer-worn body cameras;
- (b) the number of officer-worn body cameras utilized by the law enforcement agency;
- (c) any technical issues with the equipment and how those issues were remedied;

(d) a brief description of the review process used by supervisors within the law enforcement agency;

(e) for each recording used in prosecutions of conservation, criminal, or traffic offenses or municipal ordinance violations:

(i) the time, date, location, and precinct of the incident;

(ii) the offense charged and the date charges were filed; and

(f) any other information relevant to the administration of the program.

(3) On or before July 30 of each year, the Board must analyze the law enforcement agency reports and provide an annual report to the General Assembly and the Governor.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made and entered into this 3rd day of *January*, 2024 by and between the City of Vienna, Illinois, a municipal corporation of 205 N 4th Street, Vienna, Illinois 62995 (hereinafter referred to as "City") and Midwest Material Supply, LLC, an Illinois Limited Liability Company, of 1510 North 7th Street, P.O. Box 1535, Murphysboro, Illinois 62966 (hereinafter referred to as "Midwest").

WHEREAS, Midwest has proposed to construct and operate an asphalt plant within the city limits of City; and

WHEREAS, the creation of an asphalt plant in City by Midwest will create jobs, generate the sales of commodities, create real property taxes, and otherwise contribute to the economic growth and wellbeing of City; and

WHEREAS, Midwest has informed City that Midwest is a large consumer of natural gas; and

WHEREAS, City is a retail supplier of natural gas; and

WHEREAS, Midwest and City anticipate that the natural gas consumed by the proposed asphalt plant will more than double the demand for natural gas on the City's system; and

WHEREAS, the development of an asphalt plant by Midwest will require the modification and installation of equipment, meters, and gas mains at City's natural gas supply station and with its delivery system from the natural gas supply station to the asphalt plant site; and

WHEREAS, the aforesaid modifications to the natural gas system and new construction have an estimated combined cost of \$207,621.00; and

WHEREAS, Midwest has offered to pay or reimburse the City of Vienna for all natural gas system modifications and new installations necessary for City to supply natural gas to the asphalt plant; and

WHEREAS, Midwest has offered to purchase all of its natural gas requirements from City which will greatly benefit City; and

WHEREAS, City in turn has offered to adjust its meter fee and its facility charge to make available a "large commercial customer" meter fee and facility charge consistent with City's increased cost of operation and maintenance and yet competitive with similar meter fee and facility charges imposed by investor owned retail suppliers of natural gas to similar sized customers; and

WHEREAS, City and Midwest desire to put their mutual agreements and understandings into writing; and

WHEREAS, City finds it has authority to make and enter into economic development incentive agreements pursuant to Section 8-1-2.5 of the Illinois Municipal Code(65 ILCS 5/8-1-2.5) and to expend funds for economic development purposes.

NOW THEREFORE IN CONSIDERATION of the covenants, conditions, and obligations set forth below, City and Midwest agree as follows:

1. **Recitals:** The parties agree that the above and foregoing recitals represent the intent of the parties and are incorporated within the operative portion of this agreement by reference as though fully set forth herein.
2. **Commitments of Midwest:** Midwest makes the following commitments to City in relations to the development and operation of an asphalt plant located in the City of Vienna's industrial park:
 - a. Midwest will develop the property as an asphalt plant.
 - b. Midwest shall within 30 days of receipt of an invoice for the same reimburse City all costs incurred by City to modify its natural gas supply station to accommodate the flow and pressure capacity demands for the proposed asphalt plant. The natural gas stations modifications will likely be performed by Trunkline Client Gas Company, LLC. or its contractor. The estimated cost for such modifications is \$86,921.00, but Midwest shall be responsible for all such costs irrespective of the estimate. City shall provide Midwest with a copy of all invoices received with respect to the supply station modifications and proof of payment by City.
 - c. Midwest shall reimburse City for the engineering, procurement, and construction of a dedicated gas main from the City's gas supply station North along Red Bud Drive and then West along Commercial Drive to the asphalt plant site. It is anticipated that the gas main will be designed, permitted, and installed by a Utility Safety & Design Inc. of Belleville, Illinois. The estimated cost for engineering, procurement, and construction of a dedicated gas main and related equipment and meter is \$120,700.00, but Midwest shall pay the actual cost regardless of the estimate. Midwest will reimburse City for all invoices received from USDI within 30 days from receipt of the same.
 - d. Midwest agrees to pay a monthly flat meter fee, a monthly facility charge for all natural gas flowing through its meter, and

an energy or natural gas charge for all gas flowing through the meter at the asphalt plant site.

- e. Midwest will commence construction within 30 days of approval of this Memorandum of Understanding and will complete construction of the asphalt plant within 8 months thereafter.
- f. Midwest will, for a term of not less than 20 years, purchase all natural gas required by it for operation of the asphalt plant and related facilities from the City of Vienna.

3. Commitments of City: City makes the following commitments to Midwest:

- a. City shall procure and obtain the necessary easements, at no cost to Midwest, to install a dedicated natural gas main from City's gas supply station to the site of the asphalt plant.
- b. The City agrees to cause modifications to be made to the City's natural gas supply station to expand its pressure and flow capacity to meet the projected needs of Midwest. Further, City agrees to pay for the cost of such modifications subject to Midwest's commitment to reimburse City within 30 days of receipt of an invoice for such cost.
- c. The City agrees to install a dedicated gas main from its gas supply station to the site of the asphalt plant. Said gas main and related equipment and meter to be designed, permitted if necessary, and installed by Utility, Safety & Design, Inc. of Belleville, Illinois. Cost of the engineering, procurement, and construction of said natural gas main and related equipment and meter shall be paid by City subject to reimbursement by Midwest within 30 days of the receipt of an invoice for the same.
- d. Subject to the Force Majeure clause set forth below, the City shall purchase and deliver a sufficient supply of natural gas to meet the needs of Midwest; with said natural gas to be provided at the same retail rate of gas as charged to other residential and commercial or business customers of City. However, should the acquisition of natural gas from City on behalf of Midwest result in a reduction in its wholesale cost due to volume, the City will pass through any reduced cost or discount to Midwest.
- e. The City shall impose a monthly delivery charge which includes a base rate equal to \$2.00 per MCF or Dekatherm of natural gas flowing through the Midwest meter for a period of 10 years; Midwest shall maintain an annual consumption of not less than 20,000 MCF or MMBtu's per calendar year. In the event that the annual consumption of natural gas from Midwest shall fall below 20,000 MCF or MMBtu's in a calendar year, thereafter the City shall impose a delivery charge with a base rate equal to

the base rate in effect for residential and business (non-large commercial) customers of the City. The residential business customer base rate shall remain in effect until such time as Midwest exceeds 20,000 MCF or MMBtu's in a calendar year at which point the base rate shall return to the base rate in place for large commercial customers.

- f. Notwithstanding any changes made to the base rate component of monthly delivery charge for large commercial customers by City, City commits for a period of 10 years that it shall impose a base rate equal to \$2.00 per MCF or Dekatherm on Midwest provided Midwest continues to qualify as a large commercial customer. Commencing January 1, 2044, City shall impose a monthly base rate on Midwest equal to \$2.50 per MCF or Dekatherm provided that Midwest shall remain qualified as a large commercial customer and such rate shall continue for a period of 10 years thereafter.
- g. City shall impose a monthly flat rate of \$100 for a meter charge.

- 4. **Winter Limitations:** Between December 1 and March 31 of the following calendar year, Midwest shall not operate the asphalt plant at a rate of production that exceeds 25% of the maximum hourly production capacity of the plant without the prior permission of City. Any request to operate in excess of the aforesaid limit during the months of December, January, February, and March shall be directed to the Mayor or his designee who shall have authority to approve or deny such request. Midwest may appeal a denial of such a request to the full City Council of the City, whose decision shall be final.
- 5. **Term:** Unless terminated as hereinafter provided, this Memorandum of Understanding shall continue in full force and effect after its adoption and execution by the parties hereto for a term of 20 years.
- 6. **Termination:** Either party may terminate this agreement for cause upon breach of any term or condition of this agreement and following written notice of such breach delivered to the breaching party by the non-breaching party and the failure of the breaching party to cure such breach within 30 days of receipt of said written notice. This agreement shall automatically terminate upon the occurrence of any of the following events:
 - 1) Cessation of business operations at the asphalt plants by Midwest for a continuous period of consecutive months;

- 2) Bankruptcy, dissolution or court ordered liquidation of the assets of Midwest;
- 3) City ceases to supply natural gas on a retail basis to any customers;
- 4) Any court order, administrative order, statute, rule, regulation, ordinance, Executive Order, or policy that renders this agreement void and unenforceable; Notice of breach, termination, or any other event for which notice is required or permitted hereunder shall be in county: Such notice shall be deemed received on the date of service if delivered in person, or by certified mail with postage, fully prepaid and with a return receipt requested, or by email if a receipt is actually generated or produced. Motion shall be sent to the parties at the following addresses:

If to "Midwest":

Midwest Material Supply, LLC

P.O. Box 1555

1510 North 7th Street

Murphysboro, IL 62966

If to "City":

City of Vienna

205 N. 4th Street

Vienna, IL 62995

Attn: Mayor

7. **Force Majeure:** Except with regard to a party's obligations to make payment(s), neither party shall be liable to the other for failure to perform the terms and conditions of this Memorandum of Understanding or any obligation created under it, to the extent that such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any clause not reasonably within the control of the party claiming suspension, as further defined herein. Force Majeure shall include, but not be limited to, the following:

- 1) Physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which will result in the evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe;
- 2) Weather related events affecting the entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe;

- 3) Interruption and/or curtailment of transportation and/or storage of transporters;
- 4) Acts of others such as strikes, lockouts, or other industrial disturbances, such as riots, sabotage, insurrections, or wars, acts of terror, or pandemics;
- 5) Governmental action such as necessity for compliance with any court-order, administrative order, law, statute, ordinance, regulation, executive order or policy having the effect of law promulgated by a governmental authority having jurisdiction.

Midwest and City shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and resolve the event or occurrence once it has occurred in order to resume performance.

8. **Natural Gas Shortage – Priority:** In the event of a nationwide, regional, or even local shortage in the supply of natural gas, Midwest and City agree that City shall have the right to prioritize the allocation and distribution of its available supply of natural gas first to residential customers, second to necessary units of government; third to essential business services such as those providing food, fuel, utilities and shelter; and last to all other business and commercial enterprises. In such event, parties agree that City shall have no liability for any interruption caused to Midwest's operations.
9. **Remedies:** In the event of a breach of this agreement by either party and a failure to cure after notice has been provided as required herein, the non-breaching party may maintain an action at law or in equity for any available remedies; including, but not limited to damages, specific performance, injunctive relief, rescission, or other appropriate legal or equitable remedy. In any such action, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs of suit. Both parties agree that neither party in any such action shall be liable for consequential, incidental, punitive, exemplary, or indirect damages, loss profits, or other business interruption damages regardless of whether the action is brought in tort or contract.
10. **Contract:** Neither party shall assign this Memorandum of Understanding or its rights herein without the prior written approval of the other party. Written approval shall not be unreasonably withheld.
11. **Governing Law:** This Memorandum of Understanding shall be governed by and construed in accordance with applicable federal law and Illinois State Law. Any action brought on account of a breach of this agreement or

rising out of or in connection with this agreement shall be brought in the Circuit Court of the First Judicial Circuit in Johnson County, Illinois.

12. **Complete Agreement:** This Memorandum of Understanding sets forth all of the understandings between the parties respecting each matter subject hereto and any prior contracts, understandings, agreements or representations whether oral or written, relating to such matters are merged into and superseded by this Memorandum of Understanding. This Memorandum of Understanding may be amended only by a writing executed by both parties.
13. **Effective Date:** This Memorandum of Understanding shall be deemed effective upon the signature of the authorized representative of each party.

This Memorandum of Understanding is executed on the date set forth above.

City of Vienna, Illinois
Municipal Corporation

Midwest Material Supply, LLC.

By: _____
Steven Penrod, Mayor

Member/Manager

Attest: _____
Aleatha Wright, City Clerk